

**EDUCATIONAL AND GOVERNMENTAL ACCESS CHANNEL
OPERATING AGREEMENT**

1. Parties and Date.

This Educational and Governmental Access Channel Operating Agreement ("Agreement") is entered into on October 28, 2024 (the "Effective Date of November 1, 2024"), between the Town of Truckee ("Town") and the Tahoe-Truckee Unified School District ("TTUSD"). Town and TTUSD are sometimes referred to individually herein as "Party" and collectively as "Parties."

2. Recitals.

2.1 AlticeUSA/ Optimum Communications ("Optimum") holds the franchise issued by the State of California pursuant to the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA") to provide cable television services to subscribers residing within Truckee.

2.2 Pursuant to applicable law, Optimum has designated four channels in their Truckee channel lineups for educational and/or governmental ("EG") access, which channels are currently designated and operated as EG channels (the "Channels") under the name Tahoe Truckee Media ("TTM").

2.3 Town and TTUSD wish to provide for the continued operation of the Channels by TTUSD under the TTM name, for the purpose of broadcasting government programming of Town, TTUSD, and other public agencies and special districts in the service area where TTM is broadcast, and for the purpose of broadcasting other public access and educational programming.

3. Term.

3.1 This Agreement shall remain in effect from November 1, 2024, through October 31, 2027, and shall thereafter renew for up to two one-year terms, provided that neither Party has provided notice of termination of this Agreement. Either Party may terminate this agreement without penalty at any time upon providing 90 days' written notice to the other Party. In the event that this Agreement is renewed as set forth herein, the service rates for video streaming and storage may be increased or reduced each year at the time of renewal, but any increase shall not exceed the Consumer Price Index, All Urban Consumers, San Francisco-Oakland-San Jose Area.

4. TTUSD's Operational Obligations.

4.1 TTUSD shall furnish all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately be responsible for all aspects of operation of TTM and the EG channels, under the terms set forth herein. TTUSD shall provide studio space and administrative support for TTM.

4.2 TTUSD shall be responsible for all programming and content aired on the educational channel ("Programming"). TTUSD shall administer Programming for the Governmental channel based on the needs of the Town and local governmental agencies. Content not produced by TTM shall be provided by the respective governmental agency. TTUSD will meet with the Town periodically to discuss governmental programming and content. The Programming shall be "non-commercial" within the meaning of California Public Utilities Code Section 5870.

4.3 TTUSD shall take all steps reasonably necessary to ensure that the Programming is timely and properly carried on the Channels. This includes arranging with Optimum for the installation of any facilities or equipment necessary for TTUSD to transmit the Programming to Optimum to be aired on the Channels, timely transmitting the Programming, and promptly notifying Town if Optimum fails to timely or professionally air the Programming.

4.4 TTUSD shall offer to air programming for other government agencies operating within the service area of the Channels ("Other Government Programming"). TTUSD shall offer to air such programming on the same schedule as it is being aired at time of the commencement of this Agreement, if applicable. Thereafter, the time and date of such programming may be changed pursuant to the mutual agreement of TTUSD and the agency producing the programming.

4.5 TTUSD shall make available to the Town and other local governmental agencies TTM studio space and equipment. TTUSD shall develop policies and procedures for such governmental use and shall submit such policies and procedures to Town for review and approval.

4.6 TTUSD may offer classes to TTUSD students on use of video cameras, editing equipment, other TTM equipment, and video production and editing techniques. TTUSD shall sponsor a media club at Truckee High School.

4.7 Additionally, TTUSD will be responsible for performing all of the following: (i) posting video of Town meetings to the Town website immediately after the meeting takes place if possible, and otherwise within 24 hours; (ii) removing each video one year from the meeting date; (iii) annually for the term of this Agreement producing four Town of Truckee Public Service Announcements, the content of which is to be determined; (v) providing Town access to the video bulletin board at no cost to Town and waiving any set-up fee for slide design services provided to Town; and (vi) providing video coverage of one Town event or activity annually designated by Town at no cost to Town.

4.8 The Parties shall meet at least annually to review TTM operations, the EG funding allocation and the usage of EG funding.

4.9 TTUSD shall provide video streaming services and staffing for Town Council, Planning Commission, and special workshop meetings. Town shall notify TTUSD of all regular meetings at least 72 hours in advance. Town shall notify TTUSD of special meetings at least 24 hours before the meeting. TTUSD's services hereunder shall include, without limitation, the following:

- A. Providing a video technician to run the video control room during the meetings described above.
- B. Providing related streaming and video capture hardware (outside of the Town of Truckee facility).
- C. Live broadcasting of the meetings described above on the Optimum cable system (as provided by Optimum Communications), to customers within the respective Optimum service area.
- D. Providing live internet streaming video of the meetings described above at the rate of 384Kb for up to 3000 concurrent download streams.
- E. Making archived digital video of previous meetings available for viewing on demand on the Internet for a one-year period after each meeting.
- F. Providing related initial web pages to host video services, including: basic troubleshooting, web meeting calendar template, and web hyper-link set up services. All such pages shall be available as web pages which the Town of Truckee will be able to access from its website. The form and content of such pages shall be approved in advance by the Town of Truckee.

5. Fee Schedule for Airing Programming.

TTUSD may charge a fee for the airing of Programming, excluding the airing of Town Programming or Other Government Programming, which shall be paid by the person or group requesting the services. Such fees shall be in accordance with a current, published fee schedule. That fee schedule may be amended from time to time by TTUSD to reflect increases in costs of providing the services. TTUSD shall provide notice to Town of any amendments within 15 days of their adoption.

6. Personnel.

TTUSD hereby represents that it has the technical ability and skill to manage and operate the Channels as provided for in this Agreement and that it has, or will secure at its own expense, all personnel required to perform the services called for in this Agreement.

7. Funding and Equipment.

7.1 Town shall remit to TTUSD 70% of the EG funding received from Optimum during the term of this Agreement. TTUSD shall account for EG funding separately from

other sources of funding and shall expend EG funds in some amount solely to purchase, renovate, or repair facilities and/or equipment pursuant to Public Utilities Code § 5870. TTUSD shall not use the EG funds for operating expenses such as salaries, rent, or utilities.

7.2 TTUSD shall provide all equipment necessary for the operation of the Channels, using EG funding. TTUSD shall annually provide the Town with a list of all such equipment in the possession of TTUSD or TTM. Any equipment bought with Town EG funds shall be the property of Town, but TTUSD may use such equipment as long as this agreement is in effect. It is agreed that the useful life of equipment purchased shall be eight years. In the event that this agreement expires or is terminated prior equipment reaching the end of its useful life, TTUSD shall either promptly return all equipment purchased with EG funds to the Town, unless the Town agrees to allow TTUSD to reimburse the Town for equipment purchased with EG Funds at a value equal to the purchase price less depreciation.

7.3 Town shall compensate TTUSD for the streaming, archiving, and indexing services outlined in section 4.9 at a rate of \$850 per month. In addition, staffing for each meeting shall be charged at a rate of \$150 per meeting hour (two hours minimum), including not more than 1.5 hours of staff time, (or such additional amount of time requested by Town) prior to and following each meeting to set up and strike the equipment. Maintenance and troubleshooting, and Engineering time, when requested by Town, shall be charged at the same hourly rate of \$150 per hour. These fees for streaming, archiving, indexing services and the hourly rate charged for video production staffing shall be reviewed periodically and may be adjusted upon the agreement of the Parties. TTUSD shall submit monthly invoices for the services in section 4.9. Town shall review and pay the approved charges on such invoices in a timely manner.

8. Compliance with Laws and Regulations.

All Programming and all of TTUSD's operations shall comply with all federal, state, and local laws and regulations applicable to access or transmission requirements including Title 18, § 1468 of the United States Code regarding the distribution of obscene material over a cable system.

9. Advertising, Underwriting and Sponsorship Recognition.

9.1 TTUSD shall not offer or sell on-air advertisements, notwithstanding California Public Utilities Code § 5870. However, TTUSD may engage in any form of fundraising that does not involve exchanging airtime for funds.

9.2 If and when, in a particular quarter, after expenses, TTUSD makes a profit from fundraising, TTUSD may keep those profits for use only for activities authorized by California Public Utilities Code § 5870.

9.3 A profit shall be considered to have been made from operating the Channels at such time as the income from advertising, underwriting, or sponsorship recognition exceeds the total cost associated with the management and operation of the Channels from the date this Agreement becomes effective. For purposes of making this determination, the costs that will be considered include:

- a. Facility costs including rent, utilities, and insurance;

- b. Equipment costs including playback, editing or remote production infrastructure;
- c. Personnel costs including staffing to manage the playback facility, production staff, or administrative staff; and
- d. Other costs incurred for reasonable expenses directly related to the operation and management of the Channels.

9.4 TTUSD shall maintain and keep all records necessary to make the determination of whether income exceeds costs, as set forth above, and shall permit Town to inspect those records during normal business hours at TTUSD's office upon a prior written request of no less than three days.

10. Channel Management and Preemption for Town Programming.

TTUSD acknowledges that state law grants to Town the right to control the Channels, and that Town has the sole discretion to decide whether and how to share the Channels with TTUSD. TTUSD shall provide to Town for Town's review and approval, a procedure for scheduling shows to be aired. Notwithstanding any other provision of this agreement, Town may override any Programming to provide information, news, or programming which Town reasonably determines to be of broad interest to the community ("Town Programming"), which includes but is not limited to the transmission of meetings of the Town Council and other legislative bodies of Town.

11. Indemnification.

TTUSD shall indemnify Town, its officers, boards, and commissions and members thereof, its employees and agents from and against any and all liabilities, losses, damages, claims, actions, causes of action, costs, and expenses (including reasonable attorney's fees) arising from or in any manner related to the use of the Channels for purposes of community access programming or the programming carried thereon (including commercial advertising or promotional material with respect thereto) including, but not limited to, with respect to the solicitation, production, content, selection, scheduling, funding, or presentation of such programming, as well as such liability as may arise from claims of libel, slander, defamation, invasion of privacy, infringement of copyright, musical performing rights, or any other right of any person. Should Town, its officers, boards and commissions and members thereof, its employees and agents be named in any suit or should any claim be made against them by suit or otherwise, whether the suit be groundless or not, arising out of or relating to this Agreement, TTUSD shall defend Town, its officers, boards, and commissions and members thereof, its employees and agents and indemnify them for any judgment rendered against them or any sums paid out in settlement or otherwise. It is further understood and agreed that TTUSD shall have no duty to defend or indemnify Town for any claim or action arising out of statements, events, or other occurrences with respect to Town Programming.

12. Insurance.

12.1 Time for Compliance. TTUSD shall not commence work under this Agreement until it has provided evidence satisfactory to Town that it has secured all insurance required under this Section. In addition, TTUSD shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to Town that the subcontractor has secured all insurance required under this Section.

12.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, TTUSD, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If its existing policies do not meet the insurance requirements set forth herein, TTUSD agrees to amend, supplement, or endorse the policies to do so.

- a. Commercial General Liability: Commercial General Liability Insurance that affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, or the exact equivalent, and shall be no less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) any other exclusion contrary to the Agreement.
- b. Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities shall be in an amount of not less than \$1,000,000 combined limit for each occurrence.
- c. Workers' Compensation: Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

12.3 Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to Town for approval.

- a. The policy or policies of insurance required by Section 12.2(A); Commercial General Liability shall be endorsed to provide the following:
 - (1) Additional Insured: TTUSD agrees to endorse the third-party general liability coverage required herein to include as additional insureds Town, its officials, employees and agents, using standard ISO endorsement No. CG 2010, with an edition date of 2010. TTUSD also agrees to require all contractors, subcontractors, and

anyone else involved in any way with the work contemplated by this Agreement to do likewise.

- (2) Cancellation: Required insurance policies shall not be cancelled, or the coverage reduced until a 30-day written notice of cancellation has been served upon Town except ten days shall be allowed for non-payment of premium.
- b. The policy or policies of insurance required by Section 12.2(B) Automobile Liability shall be endorsed to provide the following:
 - (1) Cancellation: Required insurance policies shall not be cancelled, or the coverage reduced until a 30-day written notice of cancellation has been served upon Town except ten days shall be allowed for non-payment of premium.
- c. The policy or policies of insurance required by Section 12.2(C), Workers' Compensation, shall be endorsed to provide the following:
 - (1) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.
 - (2) Cancellation: Required insurance policies shall not be cancelled, or the coverage reduced until a 30-day written notice of cancellation has been served upon Town except ten days shall be allowed for non-payment of premium.

12.4 Primary and Non-Contributing Insurance. All insurance coverages shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

12.5 Waiver of Subrogation. Required insurance coverages shall not prohibit TTUSD from waiving the right of subrogation prior to a loss. TTUSD shall waive all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.

12.6 Deductible. Any deductible or self-insured retention must be approved in writing by Town and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

12.7 Evidence of Insurance. TTUSD, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by Town. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least 15 days prior to the expiration of any such

policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with Town. If such coverage is cancelled or reduced, TTUSD shall, within 10 days after receipt of written notice of such cancellation or reduction of coverage, file with Town evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

12.8 Failure to Maintain Coverage. TTUSD agrees to suspend and cease all operations hereunder during such period as the required insurance coverage is not in effect and evidence of insurance has not been furnished to Town. Town shall have the right to withhold any payment or funds due to TTUSD until TTUSD has fully complied with the insurance provisions of this Agreement.

12.9 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Notwithstanding the foregoing, TTUSD may satisfy its obligations under sections 12.1-12.9 by arranging for coverage through a self-insurance pool for school districts and/or other government entities.

12.10 Insurance for Subcontractors. All subcontractors shall be included as additional insureds under TTUSD's policies, or TTUSD shall be responsible for causing subcontractors to purchase the appropriate insurance in compliance with the terms of this Agreement, including adding Town as an additional insured to the subcontractor's policies.

13. Default.

If TTUSD fails to fulfill in a timely and proper manner its obligations under this Agreement, or if TTUSD violates any of the provisions herein, Town may provide TTUSD with a written notice of such violations. If TTUSD fails to diligently pursue a cure of all such violations within 14 days of receipt of such notice, or if, for any reason, all such violations are not cured within 30 days of receipt of the written notice, Town may terminate this Agreement by giving ten days written notice to TTUSD of such termination and specifying the effective date of the termination.

14. Independent Contractor.

Neither TTUSD nor any party related to TTUSD, including any of its employees or agents shall be considered to be employees of Town for any purpose whatsoever. TTUSD and any other person performing duties under this Agreement shall be an independent contractor.

15. Discrimination Prohibited.

In performing the services required by this Agreement, TTUSD shall not discriminate against any other person on the basis of race, color, religion, sex, national origin or ancestry, age, physical handicap or disability as defined in the Americans with Disabilities Act, gender, veteran status, sexual orientation, gender identity, or medical condition.

16. **Assignment.**

TTUSD shall not assign or otherwise transfer any interest in this Agreement to any other party without the prior written consent of Town.

17. **Notices.**

Any notice, request, demand or other communication given pursuant to this Agreement may be given wither by either personal delivery or by deposit in the United States Mail, first class, postage prepaid, addressed as follows:

To Town:

Kelly Carpenter
Town Clerk
Town of Truckee
10183 Truckee Airport Road
Truckee, CA 96161

To TTUSD:

Kerstin Kramer
Superintendent of Schools
Tahoe Truckee Unified School District
11603 Donner Pass Road
Truckee, Ca 96161

18. **Governing Law and Venue.**

This Agreement shall be governed by the laws of the State of California. Any action to interpret or enforce this Agreement shall be brought in the Truckee branch of the Nevada County Superior Court.

19. **Assignment and Subcontracting.**

TTUSD shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of Town. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest due to such attempted assignment, hypothecation or transfer. Notwithstanding the foregoing, TTUSD may subcontract portions of the operation of the Channel, provided that TTUSD shall remain fully responsible for complying with the obligations set forth herein.

20. **Waiver.**

No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

21. **Severability.**

The unenforceability of any particular provision of this Agreement shall not affect any other provisions thereof, but the Agreement shall be construed in all respects as if such invalid provisions were omitted.

22. **Amendment.**

This Agreement may only be amended by a writing executed by duly authorized representatives of the Parties.

23. **Counterparts.**

This Agreement may be signed in counterparts, each of which shall constitute an original.

TOWN OF TRUCKEE

TAHOE TRUCKEE UNIFIED SCHOOL DISTRICT

Approved by:

Jen Callaway
Town Manager

Kerstin Kramer
Superintendent of Schools

Approved as to Form:

Andy Morris
Town Attorney