

**OPERATING AGREEMENT
Community Access Cable Television**

This agreement is made and entered into this acth day of Feh·(vl 11s by and between City of Tumwater, hereinafter referred to as "the City," and Thurston Community Television (dba Thurston Community Media), a Washington nonprofit corporation, hereinafter referred to as "TCMedia."

WHEREAS, the City has a franchise agreement with Comcast Cable of Washington, hereinafter "Comcast", to provide cable television services to residents of the City; and

WHEREAS, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 authorize cable franchising authorities to establish franchise requirements for facilities and equipment. Further the Acts permit franchise authorities to require channel capacities for public, educational, and governmental use by franchised cable companies and other companies providing similar services such as Open Video Services (OVS); and

WHEREAS, TCMedia has been organized to develop and promote the concepts of public, educational and governmental access to existing and future telecommunications media, and to establish and operate one or more media access centers to educate and assist individuals and organizations in the use of tools and techniques for the production of local cable television programming; and

WHEREAS, voting membership in TCMedia is open to any resident or nonprofit organization in the City, and the membership of TCMedia is broadly representative of the social service, cultural, educational, charitable and religious groups in the City; and

WHEREAS, TCMedia has established, operated, and maintained an access operation of service to the citizens, nonprofit organizations and government agencies of the City during the terms of previous Agreements.

NOW, THEREFORE, in consideration of the mutual undertakings and processes contained herein and the benefits to be realized by each party, and in further consideration of the benefit to the general public to be realized by the performance of this Agreement, the parties agree as follows:

A. RESPONSIBILITIES OF TCMedia

1. Services Provided – In General:

During the term of this Agreement, TCMedia shall operate, maintain and administer one or more public, educational and government access channels and one or more public community production facilities.

TCMedia shall administer public, educational and government access television channels, as defined in Addendum A, and community production facilities for the benefit of area residents, nonprofit organizations, and government

and educational agencies in conformity with the Addendums, Articles of Incorporation, Bylaws and Operating Policies of TCMedia attached hereto and incorporated herein by reference.

a. Promotion: TCMedia shall use its best efforts to promote and publicize the use of the access channel(s). TCMedia shall not discriminate in favor or against any organization, group or individual in promoting channel use.

b. Production Facilities and Equipment: TCMedia shall maintain community television production facilities with regular hours of operation for use by qualified users in accordance with the TCMedia Operating Policies. These facilities include, but are not limited to, a production studio, editing facilities and corporate offices located in the City of Olympia.

2. Public (Community) Access:

a. Program Scheduling: The Public Access Channel shall appear on a separate channel dedicated for this purpose. TCMedia shall schedule all public access programs on a nondiscriminatory basis and otherwise in accordance with the Operating Policies. TCMedia shall endeavor to schedule programming consistently to maximize audience potential by developing a regular program schedule in accordance with its policies.

b. Program Preview: In accordance with the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, neither the City nor TCMedia may regulate the content of public access programming unless such programming has been found in accordance with law to be obscene or otherwise unprotected by the Constitution of the United States, or in direct violation of local, state, or federal law. TCMedia agrees that, in cooperation with the City, it will:

(1) Require all public access producers or program suppliers to sign a contract with TCMedia, prior to the airing of a production or series of productions, which reasonably describes the nature of the programming.

(2) Invoke mandatory pre-broadcast review by TCMedia of any program by the producer, which, as described in the contract, portrays or depicts material considered sensitive for children under the Federal Cable Act of 1992 and Telecommunication Act of 1996.

(3) Provide for mandatory suspension of the program or series of programs if TCMedia determines that the producer materially misrepresented the content or nature of the production.

(4) Provide for mandatory suspension pending legal resolution of any program or series of programs if a court order should be issued against the program or series for any reason.

(5) Provide for mandatory suspension of any program or series of programs if the programming is obscene or otherwise unprotected by the Constitution of the United States, or is in direct violation of local, state, or federal law.

c. Dissemination of Public Information: TCMedia shall, at the request of the City, disseminate information regarding City sponsored events, public hearings, and public safety information on all channels. TCMedia will also cablecast public information programming at the request of the City including, but not limited to, City sponsored activities, public forums, and emergency and disaster information.

d. Training: TCMedia will schedule production and equipment training workshops on a regular basis. Training will be available to individuals and organizations as described in the TCMedia Operating Policies. Training will include an explanation of the producer's responsibility and legal accountability for the content of programming they produce. TCMedia will distribute printed information to all trainees that will include, but is not limited to, local statutes regarding the distribution of illegal material. Additionally, TCMedia shall, at the City's request, coordinate informational workshops for City employees on the use of video and cable access as a communications tool.

3. Government and Educational Access Channels & Programming:

a. Channel Use: Government, Educational and Community Service programming shall appear on a channel dedicated for this purpose that is separate from the public access channel. There is one channel designated for use by the City of Tumwater for Tumwater TV. There is a separate channel shared by Olympia, Lacey and Thurston County. From time to time but no less than annually, TCMedia shall, in cooperation with the funding jurisdictions, review and modify rules and procedures regarding the equitable scheduling and use of such channel(s).

b. Government Access Production Support: The TCMedia CEO, or other designated staff, will act as the liaison with the funding jurisdictions when TCMedia production services are requested. The TCMedia Executive Director, or assigned staff, will determine the appropriate technical support required for the development of government access programming. Each jurisdiction will identify a staff person to act as the liaison with TCMedia regarding production needs. Ninety (90) days prior to the end of the calendar year, the liaison from the jurisdiction will meet

with the liaison from TCMedia to determine the production support needed by the jurisdiction for the coming year.

Each year this contract is in effect, TCMedia will provide 700 TCMedia staffhours to the City to use for the creating video programs or other digital communications services or products for which TCMedia has the technology, equipment and staff skills to support. Unused hours will expire at the end of the fiscal year.

Charges will be assessed to the City for all TCMedia staffhours required for City productions that exceed the total annual allocation by more than five percent (5%). Per hour charges will be based on the TCMedia production services rates established by the TCMedia Board of Directors. The base hourly rate is \$50 per hour. These rates are subject to change upon annual review by the TCMedia Board of Directors.

Production efforts by TCMedia on behalf of government agencies are governed by available staff and equipment resources and must be scheduled in advance. TCMedia recognizes that on occasion there are production needs that require a short advance notice and timely playback. TCMedia will make every effort to accommodate these special circumstances.

c. Program Content: The government agency or office requesting production services from TCMedia has primary responsibility for coordinating program content. The City will work with TCMedia to clarify details to ensure high production quality, and serve as an interface between TCMedia and event coordinators to ensure minimal interference with the functioning of public meetings, hearings or events. Government access production support by TCMedia will be for the primary purpose of creating programs for cablecast on the access channels but may, in addition, be used for training and other public purposes.

4. Channel Designations:

It is recognized that from time to time Comcast may realign the access channels. When that realignment occurs, the government access channel shall be placed on the lowest channel number available.

5. Rules and Procedures:

The policies and procedures in TCMedia Operating Policies, Bylaws, charges, and hours of operation may be modified to reflect changes in access operation provided that the City receives written notification forty-five (45) days prior to the effective date of said changes. The City's jurisdictional representative shall be notified of any such modifications.

6. Fiscal Responsibility:

TCMedia shall maintain fiscal records and accounts and shall annually render to the City a written financial operating statement within ninety (90) days after the end of the fiscal year. Such fiscal records and reports shall be retained in a manner consistent with the Budgeting, Accounting, and Reporting System for Counties and Cities and other Local Governments as issued by the State Auditor. The City shall have the right to monitor and audit the fiscal components of TCMedia to ensure actual expenditures are consistent with the terms of the contract. No less than 120 days before the end of the fiscal year, TCMedia shall submit to the City a request for funding for the coming year.

TCMedia shall submit monthly invoices to the City for payment for services rendered during the month. None of the funds provided under this Agreement shall be used by TCMedia for any partisan political activity, or to further the election or defeat of any candidate for public office, or to lobby for or against federal, state or local legislation of any kind whatsoever. This is not intended to restrict programs presenting factual information on topics of general community interest.

7. Access Operations Records and Reports:

TCMedia shall keep daily program logs containing the program title and playback time of each program. Maintenance records for all production equipment shall be kept for a period of three (3) years. Within 90 days of the close of the fiscal year, TCMedia shall provide the City with an annual report consisting of the numbers of training attendees and user certifications, hours of equipment and studio use, and numbers of first run and replayed programs by origin.

8. Liability Insurance:

TCMedia shall obtain liability insurance coverage for program content of \$1 million dollars, naming the City as an additional party.

9. Nondiscrimination:

TCMedia agrees that in operating the access facilities pursuant to this Agreement, it shall not discriminate in any way against any person, group or organization on the basis of race, color, national origin, sex, religion, age, marital status, veteran status, sexual orientation, political affiliation or disability in violation of the ordinances or resolutions of the City or the laws or Constitutions of the State of Washington or the United States of America. TCMedia shall take necessary steps to fully comply with all provisions of the Americans with Disabilities Act including efforts to expand access for those with disabilities; including but not limited to an assessment of closed or open caption devices for the hearing impaired, and greater access to TCMedia services and facilities for all those with disabilities.

B. RESPONSIBILITIES OF THE CITY

1. Compensation:

- a. Operating Support.** The City shall pay operating support to TCMedia of an amount not less than the 2018 allocation of \$75,401.15. This allocation will be adjusted each year by the semi-annual first half Seattle Tacoma Bellevue Consumer Price Index "U" applied to the previous year's operating support allocation.
- b.** Such payments for services shall be made in monthly installments upon receipt of an invoice. Funding for capital support shall be paid separately from operating support.
- c. PEG Capital Support.** The City shall disperse to TCMedia for the purpose of Public, Educational and Governmental Access (PEG Access) capital costs, 50 percent (50%) of the capital contribution received by Comcast of Washington, N, Inc., under its Cable Television Franchise with CITY. Upon receipt of an invoice from TCMedia, the CITY will make support disbursements thirty (30) days following the end of the quarter.

The support for PEG Access capital costs may only be applied by TCMedia toward capital expenditures, whether through purchase or lease, related to PEG Access including, but not limited to, studio Tumwater City Council Chambers equipment, portable production equipment, program or playback equipment, PEG Access related facilities or equipment purchases, equipment or facility repair, renovation or construction, local origination, new return feeds, or for I-NET purposes.

2. Content and Indemnification:

The City shall have no responsibility for program content on the public access channel, unless the programming was produced by an agent or employee of the City as part of the City's access programming efforts. TCMedia shall indemnify and hold harmless the City from any claims, suits, liability, loss or damage, including attorney fees, caused by or arising out of any public access programming not produced by the City including but not limited to, any claim or legal action for alleged violation or infringement of copyright or other intellectual property right, invasion of privacy, obscenity or defamation, provided further that the City shall inform TCMedia in writing within twenty (20) working days of its receipt of notice of the existence of any such claim or action. TCMedia shall have sole discretion and authority for decisions regarding standards for program, quality and scheduling except as provided herein. It shall be TCMedia's responsibility to insure compliance with the standards provided by law relating to defamation, privacy or obscenity.

3. Production Guidelines - City Facilities:

The City may establish written guidelines for access to City facilities by production crews.

C. TCMedia BOARD APPOINTMENTS

The TCMedia Board shall, during the term of this Agreement, include one appointed representative from City of Tumwater and each of the jurisdictions who have entered into funding an agreement with, as designated by their respective elected bodies.

D. TERMS OF AGREEMENT

1. Term:

The term of this Agreement shall be in full force and effect from the date signed to December 31, 2022. At the end of said term, this Agreement may be extended as agreed between the parties.

2. Termination:

- a. Right to terminate: Either party shall have the right to terminate this agreement with or without cause upon ninety days (90) written notice to the other party by registered or certified mail, return receipt requested.

Either party shall have the right to terminate this agreement by reason of the other party's default. Notice of termination shall be by ninety (90) days written notice by registered or certified mail, return receipt requested. A notice of termination shall specify the basis thereof, including a detailed explanation of any alleged events of default. At least the following shall constitute an event of default of the part of the City:

- 1) Failure to make any payment to TCMedia required by this Agreement when due, or within a sixty (**60**) day grace period thereafter
 - 2) Any other material breach of the Agreement.
- b. Default conditions: At least one of the following shall constitute an event of default on the part of TCMedia
- 1) Any material failure by TCMedia to comply with the Operating Policies, or Bylaws of TCMedia.
 - 2) Material failure to maintain fiscal records and accounts regarding TCMedia operations.

3) Any other material breach of the Agreement.

Upon receipt of written notice of termination and/or of alleged events of default, the recipient shall have ninety (90) days to cure the default(s) before termination shall become effective. The availability of this remedy shall not bar any action by either party for specific performance of the provisions of the Agreement or any other remedy.

3. Arbitration:

In the event that any dispute shall arise to the interpretation of this Agreement, or in the event of a breach of this Agreement and if the parties cannot mutually settle such differences, then, the matter shall first be referred to mediation with a mutually selected mediator and, if necessary, to arbitration with an arbitrator mutually selected by the parties.

4. Notices:

Any notice herein provided, to be given to the City, shall be addressed and delivered to: City of Tumwater, 555 Israel Road SW, Tumwater, WA 98501.

Any notice to be given to TCMedia shall be addressed and delivered to: TCMedia, 440 Yauger Way SW, Suite C, Olympia WA 98502

5. Reopener:

Either party may request in writing that this agreement be reopened for renegotiation of all or part of the provisions set forth herein. Good faith discussions must commence within 30 days of receipt of the written request. Additionally, this contract shall be reopened at the time a request for activation of additional access channels is made for the purpose of discussion and determination of appropriate policies and operating procedures for the new channels, or for the purposes of determining an appropriate capital funding mechanism when provided by the renewal of the existing cable franchise agreement(s).

Further, should the Cable Communications Policy Act be further amended by Congress and/or different rules are promulgated by the FCC, which affect this Agreement, the Agreement may be reopened to address those changes.

The parties agree that this Contract is the complete expression of its terms and conditions. Any oral or written representations or understandings not incorporated in the Contract are specifically excluded.

IN WITNESS THEREOF, the parties have hereunto set their hands the day and year first above written.

FOR TCMedia:

By: [Signature]
President, TCMedia Board of Directors

By: [Signature]
S. Vinsel, Executive Director

FOR CITY OF TUMWATER:

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Pete Kmet, Mayor

ATTEST:

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Approved as to form:

[Signature]
Karen Kirkpatrick, City Attorney

ADDENDUM A

Definitions

Public Access Channel -a local cable channel used as a public forum and dedicated for non-commercial television programming presented by local residents or non-profit organizations free from editorial control. Responsibility for the content of programs on the public access channel rests with the program producer or local sponsor and must not violate any local, state, or federal law. Administration and rules for use of the public access channel are guided by existing federal cable legislation and the local cable franchise contracts.

Public Educational Access Channel -a local cable channel dedicated for use by public educational institutions. Programming scheduled on the educational access channel must be by, for or about a local public educational institution. Programming from schools must be sanctioned by the school district or college administration. Programs will be produced by the various educational institutions and districts or may be imported. Programming may include: Distance Learning; After School Enrichment such as homework help with programs for students (i.e., Tech Time); Teacher In-service Training; School- to-work; Community Information such as school menus, policies, calendar of events, parent information; Telecourses; Satellite delivered services such as the NASA Channel, The Classic Arts Showcase, policy and informational teleconferences. Scheduling of programs on the educational access channel rests with TCMedia. Educational access channels are not open for use by the general public. Administration and rules for use of the public educational access channel are guided by existing federal cable legislation and the local cable franchise contracts.

Government Access Channel -a local cable channel dedicated for use by local government offices and agencies. Programming on the government access channel must be by, for or about a local government office or agency. Unless otherwise agreed to by City, programming support from TCMedia staff will be provided to the City without additional charge. Full production services may be provided by contract with other government agencies such as the LOTT Partnership, the Port of Olympia, Timberland Regional Library, Thurston Conservation District; Thurston Regional Planning Council, InterCity Transit, Animal Services, local fire districts, and other recognized local governmental agencies. On occasion, programming from state or federal agencies may also be shown on this channel. Government access channels are not open for use by the general public. Administration and rules for use of the government access channel are guided by existing federal cable legislation and the local cable franchise contracts.

Community Service Programming: Programs produced by TCMedia to supplement the government and public educational access programming may appear on either the Government and Education Access Channel or the Public Access Channel. Events that are sponsored by the funding jurisdictions, school sports, public meetings, cultural events, and parades that are not included in contractual production requirements are examples of community interest programming. Generally, TCMedia will take the initiative in production of these programs.

Facilities - channels, equipment, buildings administered by TCMedia for the purpose of providing access television services to government, educational, and public access program producers or suppliers.