

AGREEMENT

This Agreement, by and between the City of Columbia, Missouri, a municipal corporation ("City") and Columbia Access Television, a Missouri nonprofit corporation ("CAT"), and is a renewal and restatement of previous agreements is entered into on the date of the last signatory noted below. NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows:

SECTION 1. SCOPE OF SERVICES.

- A. *OPERATE PUBLIC ACCESS CHANNEL.* CAT will operate the public access channel dedicated by video service providers operating in Columbia. CAT will operate the channel in accordance with all federal, state and local laws and will exert its best efforts to substantially utilize the public access channel.
- B. *OPERATE A COMMUNITY ACCESS CENTER.* CAT will manage a video production facility and equipment, available for public use at such hours and times as it determines. Access to equipment and facilities shall be open to all those who satisfactorily complete training classes provided by CAT, pay a membership fee, or who receive a certification from CAT, stating that they have satisfied training requirements through means other than CAT training classes.
- C. *PROVIDE EQUAL ACCESS.* CAT will provide access to the equipment, facilities, channel and services provided under this Agreement on a non-discriminatory basis to all members of the community for non-commercial programming purposes, whether individuals, groups or organizations, on a first-come, first-served, non-discriminatory basis, pursuant to operating rules promulgated by CAT and consistent with federal, state and local law.
- D. *DEVELOP OPERATING POLICIES AND PROCEDURES.* CAT will develop policies and procedures for use and operation of the public access equipment, facilities and channel and file such policies and procedures with the City's Cultural Affairs Manager.
- E. *TRAINING.* CAT will train city residents in the techniques of video production, and provide technical advice in the execution of productions.
- F. *MAINTENANCE OF EQUIPMENT.* CAT will provide regular maintenance and repair of all video equipment purchased with monies received pursuant to this Agreement.
- G. *PROMOTION.* CAT will actively promote the use and benefit of the public access channel and facilities to cable subscribers, local media outlets, the public, public access users and local video service providers.

SECTION 2. CHANNEL OPEN TO PUBLIC. CAT agrees to keep the public access channel open to all potential users regardless of their viewpoint, subject to FCC regulations and other relevant laws. Neither City, local video service providers nor CAT shall control the content of programming placed on the public access channel so long as such programming is lawful.

SECTION 3. COPYRIGHT CLEARANCE. Before cablecasting video transmissions, CAT shall require all users to agree in writing that they shall make all appropriate arrangements to obtain all rights to all material cablecast and clearances from broadcast stations, networks, sponsors, music licensing organizations' representatives, and without limitation from the foregoing, any and all other persons as may be necessary to transmit its or their program material over the PEG access channel that is operated and managed by CAT. CAT shall maintain for the applicable statute of limitations for City's inspection, upon reasonable notice by City and for the term of the applicable statute of limitations, copies of all such user agreements.

SECTION 4. COPYRIGHT AND OWNERSHIP. Except as set forth herein, CAT shall own the copyright of any programs which it may choose from time to time to produce. Copyright of programming produced by the public shall be held by the persons who produce the programming.

SECTION 5. EQUIPMENT AND FACILITIES.

- A. CAT shall be responsible for maintenance of all equipment and facilities owned, leased or loaned to it under this Agreement or purchased with funds provided pursuant to this Agreement.
- B. CAT shall own all equipment and facilities acquired by it and purchased with funds received pursuant to this Agreement, except that upon termination or non-renewal of this Agreement, all such equipment or facilities purchased with funds received pursuant to this Agreement shall become the property of City.

To secure all or its obligations under this Agreement, CAT hereby grants to City a security interest in all of the assets and interests owned or hereafter acquired by CAT with funds provided by City, and the proceeds thereof, including but not limited to, all equipment and fixtures, that are or were acquired with funds provided by City. CAT agrees to take all steps reasonably requested by City to perfect and enforce City's security interest, including the execution and processing of financing statements and continuation statements under the Uniform Commercial Code.

City agrees to subordinate its interest if necessary to finance the purchase of equipment or property. The subordination shall only be with respect to the specific equipment or property that CAT might wish to finance.

- C. Upon the dissolution of CAT, it shall transfer all City-funded equipment, and the proceeds of the sale of any equipment, to City.

SECTION 6. INSURANCE. CAT shall maintain in full force and effect at all times during the term of this Agreement the insurance listed in this Section. The cost of such insurance shall be borne by CAT and may be included in CAT's annual budget.

- A. *COMPREHENSIVE LIABILITY INSURANCE.* Comprehensive liability insurance, including protective, completed operations and broad form contractual liability, property damage and personal injury coverage, and comprehensive automobile liability including owned, hired and non-owned automobile coverage. The limits of such insurance shall be: (1) bodily injury including death, \$1,000,000 for each person, each occurrence and \$2,000,000 aggregate; (2) property damage, \$1,000,000 for each occurrence and aggregate.
- B. *EQUIPMENT INSURANCE.* Insurance shall be maintained on all equipment funded in whole or in part under this Agreement to replacement cost. The insurance shall include, at a minimum, insurance against loss or damage beyond the user's control, theft, fire or natural catastrophe. City shall be shown as lien holder on all policies.
- C. *WORKERS' COMPENSATION.* Full Workers' Compensation Insurance and Employer's Liability with limits as required by Missouri Statute.
- D. *CABLECASTER'S ERROR and OMISSION INSURANCE.* Insurance shall be maintained to cover the content of productions which are cablecast on the access channel in, at minimum, the following areas: libel and slander; copyright or trademark infringement; infliction of emotional distress, invasion of privacy; plagiarism; misuse of musical or literary materials. This policy shall not be required to cover individual access producers.
- E. *CITY AS ADDITIONAL INSURED.* City shall be named as an additional insured on all required insurance. The policies shall provide that no cancellation, major change in coverage or expiration may be affected by the insurance company or CAT without first giving City thirty (30) days written notice prior to the effective date of such cancellation or change in coverage. Any insurance or self-insurance maintained by City, its officers, agents, employees or volunteers shall be in excess of the CAT insurance and shall not contribute to it.
- F. *NOTIFICATION OF COVERAGE.* CAT shall file with City proof of required insurance coverage.
- G. *NO WAIVER OF IMMUNITIES.* In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or

official immunities and protections as provided by federal and state constitution or law.

SECTION 7. INDEPENDENT CONTRACTOR. It is understood and agreed that CAT is an independent contractor and that no relationship of principal/agent or employer/employee exists between City and CAT. If in the performance of this Agreement any third persons are employed by CAT, such persons shall be entirely and exclusively under the control, direction and supervision of CAT. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment shall be determined by CAT and City shall have no right or authority over such persons or terms of employment.

SECTION 8. ASSIGNMENT. Neither this Agreement nor any interest herein shall be assigned or transferred by CAT, except as expressly authorized in writing by City.

SECTION 9. ANNUAL REPORTS. Before April 15 of each year, CAT shall submit to the Manager of Cultural Affairs an annual report for the preceding fiscal year (January 1 through December 31). This report shall contain, at a minimum, the following information:

- A. Statistics on programming and service provided;
- B. Current and complete listing of CAT's Board of Directors; and
- C. Year-end financial statements.

SECTION 10. RECORDS, FISCAL AUDIT.

- A. CAT shall maintain all necessary books and records, in accordance with generally accepted accounting principles.
- B. Upon reasonable request from City, CAT shall, at any time during normal business hours, make available all of its records with respect to all matters covered by this Agreement.

SECTION 11. FUNDING AND OTHER RESOURCES. City agrees to make the following funds and resources available to CAT:

- A. Video service providers operating in the city are required to designate three channels for noncommercial public, educational and governmental use. City will permit CAT to manage one (1) of these channels for public access programming.
- B. In Fiscal Year 2018, City will pay CAT thirty-five thousand dollars (\$35,000.00) upon execution of this Agreement to meet the terms set forth herein. CAT will provide the following services for the list of community organizations listed in "Attachment A":

- Complimentary full-year organizational membership in CAT, which comes along with access to high-tech video equipment, CAT's high-definition studios, training (additional fees may apply), resources and support.
- Annual consultations with CAT's staff to assure that the organizations utilize the CAT membership to its full capacity.
- An invitation to appear on a CAT-produced arts show, developed in conjunction with the Office of Cultural Affairs. The 30-minute show would be produced monthly in CAT's high-definition studio.
- Opportunity to sign up for one of two "PSA Days," to produce template 30-second PSAs for the organizations.

C. CAT may apply to City for additional funding outside of this Agreement, if any is available.

SECTION 12. ANNUAL PLAN AND BUDGET. On or before July 1 of each year in which this Agreement is in effect, CAT shall provide to the Manager of Cultural Affairs an Annual Plan and Budget outlining activities and programs planned for the following fiscal year with funds received from City. Such plan shall contain:

1. A statement of anticipated number of hours of local original PEG access programming;
2. Training classes to be offered and frequency of classes;
3. Other access activities planned by CAT; and
4. A detailed operating and capital equipment and facilities budget.

SECTION 13. EXPENDITURE OF FUNDS. CAT shall spend funds received from City solely for the purposes listed in its Annual Plan and Budget and Section 1 (Scope of Services) of this Agreement and as otherwise set forth herein. Funds not expended in the year covered by the Annual Budget may be carried over by CAT into succeeding years. Upon termination of this Agreement, all funds of any kind received from City and not expended by CAT shall be returned to City. CAT shall provide for such fiscal control and accounting procedures as are necessary to assure proper disbursement and accounting for funds received from City.

SECTION 14. FUNDING FROM OTHER SOURCES. CAT during the course of this Agreement shall seek supplemental funds from other sources, including, but not limited to fundraising activities.

SECTION 15. TERM OF AGREEMENT. This Agreement shall be for a period commencing on the execution of this Agreement and ending on September 30, 2018, unless terminated earlier, as provided in this Agreement.

SECTION 16. TERMINATION OF AGREEMENT: TRANSFER OF ASSETS.

- A. City shall have the right upon one hundred twenty (120) days written notice to CAT to terminate this Agreement for:
1. Breach of any provision of this Agreement by CAT;
 2. Malfeasance, misfeasance, misappropriation of public funds;
 3. Failure to properly maintain financial records necessary to monitor expenditure of City funds paid under this Agreement; or
 4. Loss of 501(c)(3) status by CAT; or
 5. At the City's convenience.
- B. CAT may avoid termination by curing any such breach to the satisfaction of City within one hundred twenty (120) days of notification or within a time frame agreed to by City and CAT. City may also terminate this Agreement at the expiration of its term, or any extension thereof.
- C. CAT shall have the right, upon one hundred twenty (120) days written notice to City, to terminate this Agreement if CAT determines that it lacks sufficient funds for capital purposes.
- D. Upon termination of this Agreement, CAT shall immediately transfer to City all equipment, deposit accounts and other assets received by or purchased by CAT with funds received pursuant to this Agreement.

SECTION 17. EXTENSION OF AGREEMENT. This Agreement may be renewed or extended for additional periods upon agreement of the parties.

SECTION 18. NOTICES. All notices and other communications to be given by either party may be given in writing, depositing the same in the United States mail, postage prepaid and addressed to the appropriate party as follows:

To City:

City of Columbia
Manager of Cultural Affairs
300 S Providence
Columbia, MO 65201
Phone: (573) 874-7512

To CAT:

Columbia Access Television
Managing Director
20 N 2nd Street, Suite A
Columbia, MO 65203
Phone: (573) 442-4447

Any party may change its address for notice by written notice to the other party at any time.

SECTION 19. GOVERNING LAW AND VENUE. This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this contract document, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

SECTION 20. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED. CAT shall comply with Missouri State Statute Section 285.530 in that CAT shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri. As a condition for the award of this contract, CAT shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. CAT shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. CAT shall require each subcontractor to affirmatively state in its contract with CAT that the subcontractor shall not knowingly employ, hire for employment or continue to employ an unauthorized alien to perform work within the State of Missouri. CAT shall also require each subcontractor to provide CAT with a sworn affidavit under the penalty of perjury attesting to the fact that the subcontractor's employees are lawfully present in the United States.

SECTION 21. HOLD HARMLESS AGREEMENT. To the fullest extent not prohibited by law, CAT shall indemnify and hold harmless the City of Columbia, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) for bodily injury and/or property damage arising by reason of any act or failure to act, negligent or otherwise, of CAT, of any subcontractor (meaning anyone, including but not limited to consultants having a contract with Contractor or a subcontractor for part of the services), of anyone directly or indirectly employed by CAT or by any subcontractor, or of anyone for whose acts the CAT or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require CAT to indemnify, hold harmless, or defend the City of Columbia from its own negligence.

SECTION 22. ENTIRE AGREEMENT. This Agreement is the entire agreement of the parties and supersedes all prior negotiations and agreements whether written or oral. This Agreement may be amended only by written agreement and no purported oral amendment to this Agreement shall be valid.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their duly-authorized officers on day and year of the last signatory noted below

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

Date: _____

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor

CERTIFICATION: I hereby certify that this Contract is within the purpose of the appropriation to which it is to be charged, that is, account 11004610 504990 and that there is an unencumbered balance to the credit of such account sufficient to pay therefore.

By: _____
Michele Nix, Director of Finance

COLUMBIA ACCESS TELEVISION

By: _____
Sean P. Brown, Managing Director

By: _____
Shelly Silvey, Board President

ATTEST:

ATTACHMENT A

OFFICE OF CULTURAL AFFAIRS FUNDED AGENCIES FY18

Boone County Historical Society
Choral Arts Alliance of Missouri
Citizen Jane Film Festival
Columbia Art League
Columbia Chapter of the MO Writer's Guild
Columbia Civic Orchestra
Columbia Community Band
Columbia Entertainment Company
Columbia Handbell Ensemble, Inc.
Dismal Niche Arts
GreenHouse Theatre Project
Jabberwocky Studios
Maplewood Barn Association
Mid-Missouri Traditional Dancers
Mid-Missouri Woodcarvers
Missouri Contemporary Ballet
Missouri Symphony Society
North Village Arts District
Odyssey Chamber Music Series
PACE – Performing Arts in Children's Education
Ragtag Film Society
Resident Arts
School of Service, Access Arts
Talking Horse Productions
The Columbia Book Festival, Inc.
The Missouri Review
TRYPS Institute
University Concert Series
“We Always Swing” Jazz Series