

COMMUNITY MEDIA CENTER FACILITY USE AGREEMENT

This Community Media Center Facility Use Agreement (the "Agreement"), effective July 1, 2019 through June 30, 2023, is entered into by and between the City of Hayward ("City"), a municipal corporation of the State of California, and Chabot-Las Positas College Community District ("Chabot"), a California community college district, who agree as follows:

RECITALS

WHEREAS, Comcast and AT&T ("State Franchisees") have each been granted a state franchise to provide video services in the City of Hayward pursuant to the California Digital Infrastructure and Video Competition Act ("DIVCA"); and

WHEREAS, the City adopted Ordinance No. 08-17, thereby amending and adding Section 11.1.100-800 of the Hayward City Code relating to implementation of the Digital Infrastructure and Video Competition Act of 2006 for state franchise holders providing video service throughout the City; and

WHEREAS, pursuant to the Comcast and AT&T DIVCA franchises and Chapter Section 11.1.100-800 of the Hayward City Code Comcast and AT&T must provide certain channel capacity, fiber links, and funding for PEG access; and

WHEREAS, Chabot manages a Community Media Center ("CMC") and provides public and educational access programming pursuant to agreements with Cities of Hayward and Fremont at its real property commonly known as the Television Center, located at 25555 Hesperian Boulevard, Building 100 Rooms 124A, 124B, and 124D, Hayward, CA. 94545 (referred to herein as the "Property"); and

WHEREAS, Chabot and the City wish to enter into this Agreement, pursuant to which a portion of the Property (see Exhibit A) will continue to serve as the CMC for PEG access production and programming.

NOW THEREFORE, Chabot and the City agree as follows:

AGREEMENT

1) Term of Agreement. Chabot hereby grants to the City the right to occupy and use the CMC for PEG access production and programming for a period of four years, commencing upon the effective date of this Agreement.

2) Rent. The City shall pay Chabot monthly rent ("Rent") for the CMC in the amount of \$9,750.00 (\$117,000.00 per annum). The Rent shall be inclusive of utilities, janitorial services, maintenance services, telephone, Internet, video and equipment use, and PEG services.

The initial Rent shall be due and payable upon the effective date of this Agreement and shall thereafter be due and payable on the first day of each month. If this Agreement is terminated, the monthly rent shall be pro-rated to the date City surrenders possession of the Property to Chabot.

3) Use. The Property shall be used as a CMC for operating and conducting therein a PEG access production and programming facility. The CMC shall be equipped with video and electronic media production equipment for use by and the benefit of the residents of the City of Hayward, the students and staff served by Chabot and other educational institutions in the City of Hayward, representatives of local governmental agencies that serve Hayward. The CMC access production and programming services provided by Chabot shall include the following.

- a. PEG Access Channel Management. Operate the educational and public/community access channel(s) in Hayward for public/community and educational access.
- b. Operate a Community Media Center. Operate and manage a community video/media production facility and equipment.
- c. Develop and Maintain Operating Policies and Procedures. Develop and maintain policies and procedures for use and operation of the PEG access equipment, facilities, and channels that are consistent with best practices in the community media field. The policies and procedures shall be filed with the City and shall be provided to any resident of the City who requests them.
- d. Equal Access. Provide access to the use of the equipment, facilities, channels and services provided hereunder on a non-discriminatory basis pursuant to operating rules promulgated by Chabot whether Hayward individuals, groups or organizations for the purposes of non-commercial programming.

CMC users must be Hayward/Fremont residents age 18 or over (or have a parent/guardian sponsor). As proof of identity and age, a current California driver's license or other official photo ID must be submitted. If a photo ID with the address is not available, some other printed proof of residency such as a utility bill or voter registration must be provided. A resident organization may designate a non-resident to be their Program Producer/Provider. Proof of business/organization residency and designation is required, such as a pay stub or some other form of official communication, and content produced should benefit the purpose of the business/organization. Personal letters and documents are not acceptable.

- e. Playback/Cablecast. Provide for playback and cablecasting of programs on the public/community and educational access channel(s) in a manner that is consistent with best practices in the community media field.
- f. Maintenance of Equipment. Provide regular maintenance and repair of all equipment and facilities purchased with monies received pursuant to this Agreement and or donated, loaned, or leased to Chabot.
- g. Training. Train Hayward residents and, when requested, City, school, and college employees on PEG access channel policies and use and in techniques of media production, and provide technical advice in the execution of productions. An initial one to two hour (depending on number of persons in class and knowledge level) introductory orientation class will be provided free of charge. PEG users are required to attend an introductory orientation during scheduled times or by appointment. The orientation will focus on safety and use policies. In addition, an initial free workshop on basic media production and equipment will be offered on various days and times including those outside of regular business hours to allow for interested parties to attend. Additional workshops by appointment may be scheduled depending upon staff availability. Chabot may charge community users a nominal fee to cover costs for other workshops offering

more advanced instruction and technical advice related to user productions.

- h. Other. Chabot shall not be liable for an interruption or failure of the above facilities which occur for reasons other than the gross negligence or willful misconduct of Chabot, its agents or employees. Neither Chabot nor City shall use or allow the CMC to be used in violation of any law or ordinance. The CMC shall be maintained by Chabot in a clean and sanitary manner and in compliance with all applicable laws, ordinances, rules, and regulations.
- i. As a benefit for and goodwill towards the community, subject to staff resources and equipment availability, provide video footage for City of Hayward events four (4) times per year.

4) Access to the CMC. The CMC shall be used for PEG access, as set forth in Paragraph 3 above, and Chabot teaching purposes. City personnel shall be permitted access to the Property and the TV Studio during regular college business hours, except during campus planned closures and/or related safety needs and/or emergency.

In order to become a CMC User, an individual must demonstrate proficient use of facility equipment. The opportunity to demonstrate proficiency will be given on an individual basis as requested. Upon completion of the demonstration of proficiency, CMC users will receive written documentation that they have passed the proficiency test and be added to a list of proficient users that will be maintained by the CMC. Access will be established based on the availability of the TV Studio so as not to interfere with Chabot's use of the TV Studio for instructional and other academic purposes, which take priority. The TV Studio shall remain closed on holidays, but designated City personnel shall have access to the Property and the CMC on holidays if necessary for the operation of the CMC. City personnel and all users of the CMC shall follow and be subject to the security procedures and other rules for use of the Property as set forth in Chabot College Policies and Procedures and Community Media Center User Guide.

5) Hours of Operation. CMC Users shall be permitted access to the Property approximately 30 hours per week, Monday through Friday (excluding holidays), with specific hours to be determined. Access outside of regular business hours may be scheduled for CMC users according to staff availability. Chabot personnel shall be present at all times the CMC is open to CMC Users. Nothing in this Agreement requires the City to assign personnel to staff the CMC.

6) Utilities. Chabot shall provide and be responsible for all utility charges including gas, electricity, telephone, garbage, janitorial services, and other public utilities for the CMC during the term of this Agreement. Access to utilities (e.g., telephone, etc.) may be limited by Television Station personnel and/or other Chabot officials.

7) Security System. The parties agree to cooperate and coordinate with each other regarding the use of the Property's security system within the CMC.

8) Repairs, Maintenance and Upkeep. During the term of this Agreement and any renewal extension thereof, Chabot shall keep the exterior roof, interior and exterior painting and cosmetic appearance, electrical system, plumbing, heating, ventilating, air conditioning, structural supports, and foundation of the building of the Property and the CMC in good repair at its own cost and expense.

9) Surrender. On termination of this Agreement as hereinafter provided, the City shall promptly surrender occupation of that portion of the Property designated for the CMC in as good condition as it was on the date of this Agreement, reasonable wear and tear and damage by the elements or fire or any casualty beyond the control of the City excepted.

- 10) Parking. CMC Users will comply with all Chabot College parking regulations and fees.
- 11) Accessibility. The CMC shall be accessible to CMC Users at all times during which the CMC is open for operation pursuant to Paragraph 8 above.
- 12) Signs. Chabot shall erect and maintain signage which clearly identifies the CMC location to CMC Users.
- 13) Liability and Indemnification. Governmental Code Section 895.2 imposes certain tort liability jointly upon public agencies solely by reason of such public agencies being parties to an agreement as defined in Government Code Section 895. Therefore, the parties hereto, as between themselves, pursuant to the authorization contained in Government Code Sections 895.4 and 895.6, each assumes the full liability imposed upon it for any of its officers, agents, representatives or employees by law for injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement, to the same extent that such liability would be imposed in the absence of Government Code Section 895.2. To achieve this purpose, each party shall be responsible for any and all claims, demands, loss or liability as a result of or arising out of the negligence of that party, its officers, agents, employees, or guests. In the event that any claim, demand, loss or liability arises out of the negligence of both parties; each party shall be responsible based upon its proportionate share of negligence. The City shall defend, indemnify, and hold harmless Chabot, its officers, employees and agents from and against all claims, damages, losses and expenses, including attorney fees and costs arising out of the use of the CMC which may be caused in whole or in part by any act or omission of the City, or which otherwise may be incurred by Chabot solely by virtue of Governmental Code Section 895.2. Chabot shall likewise defend, indemnify, and hold harmless the City, its officers, employees and agents from and against all claims, damages, losses and expenses, including attorney fees and costs arising out of the use of the CMC which may be caused in whole or in part by any act or omission of the Chabot, or which otherwise may be incurred by City solely by virtue of Governmental Code Section 895.2.
- 14) Insurance. Without limiting the above indemnification provision and during the term of this Agreement, the parties shall obtain and maintain, and shall require any subcontractors to obtain and maintain, liability insurance coverage as provided for below. During the term of this Agreement, each party shall list the other party as additional named insured on its respective comprehensive liability insurance policy insuring the City and Chabot against claims and liabilities arising out of the operation, condition, use, or occupancy of the Property for the purposes of the CMC and all areas appurtenant thereto, including parking areas. Each party shall list the CMC as a sponsored activity of that-party under its respective insurance coverage.
- a. Such insurance shall be in an amount of not less than one million dollars (\$1,000,000) for bodily injury or death and property damage as a result of any one occurrence and a two million dollars (\$2,000,000) general aggregate policy. Upon the effective date of this Agreement, each party shall deliver to the other party a certificate of insurance evidencing the existence of the policy required hereunder and stating that such policy shall:
 - i. State the coverage is primary to and not contributing with any other insurance or self-insurance programs maintained by the other party, and shall be provided and maintained at the party's own expense.
 - ii. Contain a cross liability endorsement; including a separate endorsement naming the
 - b. Not be canceled or altered without thirty (30) days prior written notice to the other;

other party as an additional insured.

- iii. At least thirty (30) days prior to the expiration of such certificate, and every such subsequent certificate, each party shall deliver to the other a new certificate of insurance consistent with all of the terms and conditions required in connection with the original certificate of insurance as described in this paragraph.
- c. The parties mutually agree to notify one another of any accident or incident relating to services performed under this Agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against any of the parties, and, of any actual third party claim or lawsuit arising from or related to services under this Agreement.
- d. Each party shall obtain and maintain Workers' Compensation Insurance for its respective employees and agents during the coverage term of this Agreement in conformance with the laws of the State of California and applicable federal laws. Both parties agree to provide one another a workers' compensation certificate of insurance upon request.

15) Property Insurance. At its own cost and expense during the term of this Agreement, Chabot shall keep its property located in the CMC insured for its full replacement cost against loss or destruction by fire and the perils, including special causes of loss, commonly covered under the standard special form policy in the county where the Property is located. Upon the effective date of this Agreement, Chabot shall provide the City with a certificate of insurance indicating the existence of insurance as described herein. Further, should any of the subject policies be canceled before the expiration date of said certificate, Chabot shall require its insurer to mail written notice to the City; provided, however, failure to mail such notice shall impose no obligation or liability of any kind upon the insurer, its agents or representatives.

16) Destruction. Should the CMC area of the Property be damaged or destroyed during the term of this Agreement, the party responsible for same shall promptly repair or replace the damaged or destroyed portions to the extent not covered by proceeds of any applicable insurance of the responsible party. Should any equipment be destroyed, either party shall replace the equipment to the extent not covered by proceeds of any applicable insurance of the responsible party.

17) Licenses and Permits. City represents and warrants to Chabot that, to the extent it is required to do so, City and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to conduct the activities contemplated in this Agreement. City represents and warrants to Chabot that City and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to conduct the activities contemplated in this Agreement.

18) Compliance with Law. Each party agrees that it will meet all Federal, State, County and City laws and regulations so far as applicable to its obligations under this Agreement. Each party further agrees that it will comply with all reasonable orders and directives of appropriate agencies and to satisfy any such directives from such agencies to meet obligations under this Agreement.

19) Independent Contractor Status. The parties hereby acknowledge that they are independent contractors. As such, each party shall be liable for any debts, obligations, acts and omissions relating to its own agents, representatives, students or employees, including the deduction of all federal, state and local income taxes, social security, FICA and other charges, if any, to be deducted from the compensation of its employees. Furthermore, in no event shall this Agreement be construed as

establishing the relationship of agent, servant, employee, partnership, joint venture, association or any similar relationship between the parties hereto. As independent contractors, each party will be solely responsible for determining the means and methods for performing the services described herein. Each party understands and agrees that other party is engaged in an independent business or enterprise and the party shall have no right to direct or control in any way or to any degree the manner of other party's performance hereunder. Each party further understands that it is not authorized and shall not make any agreement, contract or representation on behalf of the other party or create any obligation, express or implied, on the part of the other party.

Neither Chabot nor any of its agents, representatives, students or employees shall be considered agents, representatives, or employees of City as a result of this Agreement.

Furthermore, each and every person employed by Chabot who is providing services to City under this Agreement shall, at all times, remain an employee of Chabot. Chabot employees shall not, at any time, or in any way, be entitled to sick leave, vacations, retirement, or other fringe benefits from City, nor shall they be entitled to overtime pay from the City. City will make no State or Federal unemployment insurance or disability insurance contributions on behalf of Chabot and/or its agents or employees. Neither Chabot nor its employees shall be included in any bargaining unit or have any property rights to any position, or have any of the rights that an employee of the City may otherwise have in the event of termination of this Agreement.

Neither City nor any of its agents, representatives, or employees shall be considered agents, representatives, or employees of Chabot as a result of this Agreement. Furthermore, each and every person employed by City who is providing services to Chabot under this Agreement shall, at all times, remain an employee of City. City employees shall not, at any time, or in any way, be entitled to sick leave, vacations, retirement, or other fringe benefits from Chabot, nor shall they be entitled to overtime pay from the Chabot. Chabot will make no State or Federal unemployment insurance or disability insurance contributions on behalf of City and/or its agents or employees.

Neither City nor its employees shall be included in the classified or faculty service, have any property rights to any position, or have any of the rights that an employee of the Chabot may otherwise have in the event of termination of this Agreement.

20) Annual Report. Chabot shall annually prepare and submit to the City no later than 120 days after the close of Chabot's fiscal year, a report describing the use of funds provided by the City to Chabot for the purposes of this Agreement.

21) Default. Upon any default by any party in the performance of any of its duties and obligations contained herein and as may otherwise be required by law, the other party shall have all of the rights and remedies which may be provided by law.

22) Non-Waiver. No delay or omission to exercise any right, power, or remedy accruing to a party upon any breach or default by the other party to this Agreement shall impair such right, power, or remedy of the non-defaulting party; nor shall such delay or omission be construed as a waiver of any such breach or default, or of any similar breach or default thereafter occurring; nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers under this Agreement must be in writing. All remedies either under this Agreement or by law afforded to any party hereto shall be cumulative and not alternative or exclusive.

23) Amendment. This Agreement may be amended or modified only by a writing executed by each of the parties hereto.

24) Attorney's Fees. The prevailing party in any dispute under this Agreement is entitled to recover

reasonable attorney's fees and costs.

25) Termination. This Agreement may be terminated as follows: (a) by mutual written agreement of the parties; (b) the conclusion of the initial term, or any extension thereof; (c) the termination of the Agreement without cause upon 10 days' written notice; or (d) immediately upon the breach or default by either party of any of the terms, obligations or covenants of this Agreement, which is not waived in writing by the non-defaulting party.

26) Successors. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the City and Chabot, respectively.

27) Time of Essence. Time is expressly declared to be of the essence in this Agreement.

28) Entire Agreement. This instrument constitutes the entire Agreement between the City and Chabot regarding the CMC.

29) Notice. For the purposes of this Agreement, any notices required to be given to the parties hereto shall be given in writing and by personal service or by first class mail, postage prepaid, at the addresses hereinafter set forth after the signature of each party, or to such other addresses as each party may substitute by notice to the other. Notice shall be deemed complete upon personal service or, if by mail, *five* (5) days after the date of the postmark thereon.

30) Non-Assignment. No party shall assign this Agreement or any right or privilege any party might have under this Agreement without the prior mutual written consent of all parties hereto, which consent shall not be unreasonably withheld, provided that the assignee agrees in a written notice to all parties to carry out and observe each applicable party's agreements hereunder.

31) Non-Liability of Officials. No officer, member, employee, agent, or representative of either party shall be personally liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon, shall be personally enforced against any such officer, official, member, employee, agent, or representative.

32) Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not signatory to this Agreement.

33) Captions. The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.

34) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. Any photocopy of this executed Agreement may be used as if it were the original.

IN WITNESS WHEREOF, the parties, through their authorized representatives, affix their signatures to this Agreement.

CITY OF HAYWARD

CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney

Doug Roberts

Vice Chancellor of Business Services
Chabot-Las Positas Community College District

Attest:

City Clerk

EXHIBITS

Exhibit A: TV Studio Floor Plan - See attached enclosure

Exhibit A TV Studio Floor Plan

(Rooms 124A, 124B, and 124D – First Floor – Building 100 – Chabot College)

LOBBY
101

FELU 6011-1

HALLWAY
103

HALLWAY
104

