

**AGREEMENT BETWEEN CITY OF SAN LUIS OBISPO
AND SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT
FOR USE OF PEG ACCESS FUNDS (E-PORTION)**

This Agreement is made on _____ by and between the City of San Luis Obispo, a municipal corporation ("City"), and the San Luis Coastal Unified School District ("SLCUSD"), who agree as follows:

RECITALS

WHEREAS, the City desires to provide support for the use of cable television, public, education, and governmental ("PEG") access channels operated pursuant to federal law; and

WHEREAS, the City has granted a franchise to Charter Communications to operate a cable television system in the city; and

WHEREAS, Ordinance No. 1278 (1995 Series) and the Cable Television Franchise Agreement dated April 20, 1995, indicates that the City may designate nonprofit access management entity(ies) to operate and administer PEG access facilities, services, and programming; and

WHEREAS, said franchise agreement with Charter Communications provides that certain channel capacity be made available for PEG access; and

WHEREAS, the franchise agreement with Charter Communications provides certain payments and in-kind services shall be provided by Charter Communications to support the operation of the PEG access facilities, equipment, and channels; and

WHEREAS, the Franchise Agreement with Charter Communications provides that a plan of operation for PEG access must be developed and approved by City before any funds dedicated to the provision of PEG access facilities, services, and programming may be released to the nonprofit management entities designated by City to provide such services; and

WHEREAS, a plan of operation for the public and government portions of PEG access have been developed by SLCUSD and approved by City.

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree as follows:

SECTION 1. PLAN OF OPERATION. In accordance with the requirement set forth in the City's franchise Agreement with Charter Communications, SLCUSD has developed and submitted for approval a Plan of Operation for the provision of educational programming and services, attached hereto as Exhibit 1 and hereby incorporated by reference to this agreement.

SECTION 2. SCOPE OF SERVICES. In exchange for the Education portion (E-portion) of PEG access funding provided by the City pursuant to this agreement, SLCUSD shall provide the following services:

1. Provide educational access programming for the citizens of San Luis Obispo in accordance with the terms, conditions and requirements of this Agreement, the cable franchise, local, state, and federal law, and any operational or-management policies and regulations adopted by the City Council and/or SLCUSD.
2. Provide training and video production opportunities to the students of SLCUSD in accordance with its approved Plan of Operation.
3. Develop operating policies, procedures, and guidelines for the use of equipment and facilities funded by the E- portion of PEG access funds provided by the City and for educational access programming, and file a copy of such policies, procedures, and guidelines with the City.

SECTION 3. INDEMNIFICATION. SLCUSD shall indemnify, defend, and hold harmless the City, its officers, agents, and employees and volunteers from and against any and all claims, suits, actions, causes of action, losses, damage, or liabilities of any kind, nature or description, including, payment of litigation costs and attorneys' fees, brought by any person or persons for or on account of any loss, damage or injury to person, property or any other interest, tangible or intangible, sustained by or accruing to any person or persons, howsoever the same may be caused, directly or indirectly arising or resulting from any alleged acts or omission of the SLCUSD, its officers, employees, agents or subcontractors arising out of or resulting from the performance of this Agreement.

SLCUSD shall indemnify and hold harmless City, its officers, agents, employees and volunteers from and against any and all claims or other injury, including costs of litigation and attorney's fees, arising from or in connection with claims or loss or damage to person or property arising out of the failure to comply with any applicable laws, rules, regulations or other requirements of local, state or federal authorities, for claims of libel, slander, invasions of privacy, or infringement of common law or statutory copyright, for breach of contract of other injury or damage in law or at equity which claims, directly or indirectly, result from SLCUSD use of channels, funds, equipment, facilities or staff granted under this Agreement or the franchise agreement.

The City shall indemnify, defend, and hold harmless SLCUSD, its officers, agents, and employees from and against any and all claims, losses, liabilities, or damage including payment of reasonable attorneys' fees arising out of or resulting from the performance of this Agreement, caused in whole or part by any act or omission of the City.

SECTION 4. COPYRIGHT CLEARANCE. Before cablecasting video transmissions, SLCUSD 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 channels that are operated and managed by SLCUSD. SLCUSD 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 5. COPYRIGHT AND OWNERSHIP. SLCUSD shall own the copyright of any programs which it may produce. Copyright of programming produced by the others, such as teachers and instructors, shall be held by such person(s) who produce(s) said programming.

SECTION 6. DISTRIBUTION RIGHTS.

1. SLCUSD shall require that all programs produced with funds, equipment, facilities, students, or staff granted under this Agreement shall be distributed on the channels whose use is authorized by this Agreement. This subparagraph shall not be interpreted to restrict other distribution (beyond distribution on channels authorized by this Agreement), so long as such other distribution is consistent with any pertinent guidelines established in the PEG access operating policies and procedures.
2. At least at the beginning and end of each day that video programming is cablecast on the PEG access channels whose use is authorized by this Agreement, SLCUSD shall display a credit stating, "Partial funding for the operation of this channel is provided by the City of San Luis Obispo." Such credit shall also state that opinions expressed in PEG access programs are the sole responsibility of the program producers.

SECTION 7. EQUIPMENT AND FACILITIES.

1. SLCUSD shall be responsible for maintenance of all equipment and facilities purchased with funds provided pursuant to this Agreement.
2. SLCUSD shall own all equipment and personal property acquired by it and purchased with funds received pursuant to this Agreement ("Acquired Property"), except that within thirty (30) days after termination or expiration of this Agreement, SLCUSD shall either (i) return all Acquired Property to City or (ii) retain some or all the Acquired Property and pay to City an amount equal

to the then fair market value of the retained Acquired Property. If any of the retained Acquired Property was purchased by a combination of funds received pursuant to this Agreement and other funds provided by SLCUSD, then the payment to retain said Acquired Property shall be prorated according to the respective percentages of funds contributed to the purchase.

SECTION 8. INSURANCE. SLCUSD shall maintain in full force and effect at all times during the term of this Agreement insurance as required by this Section. The cost of such insurance shall be borne by SLCUSD and may be included in SLCUSD annual budget.

1. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial general 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 coverage shall be: (1) bodily injury including death, \$ 1, 000,000 for each person, each occurrence and aggregate; (2) property damage, \$ 1, 000,000 for each occurrence and aggregate.
2. **EQUIPMENT INSURANCE.** Insurance shall be maintained on all equipment and facilities, including fixtures, 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.
3. **WORKERS' COMPENSATION.** Full Workers' Compensation Insurance and Employer's Liability with limits as required by (State) law with an insurance carver satisfactory to the City.
4. **CABLE CASTER'S ERRORS 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.
5. **CITY AS CO-INSURED OR ADDITIONAL INSURED.** The City shall be named as a co- insured or additional insured on all aforementioned insurance coverages. The policies shall provide that no cancellation, major change in coverage or expiration may be affected by the insurance company or SLCUSD without first giving the 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 the City, its officers, agents, employees, or volunteers shall be in excess of the SLCUSD insurance and shall not contribute to it.

6. NOTIFICATION OF COVERAGE. SLCUSD shall file with the City proof of insurance coverage as follows: (1) Comprehensive Liability and Workers' Compensation; (2) equipment insurance Upon the acquisition of any equipment; (3) cable caster's error and omission insurance within thirty (30) days of the commencement of cablecasting of programming on the designated access channel.

SECTION 9. NON- DISCRIMINATION IN EMPLOYMENT AND SERVICE.

SLCUSD shall not discriminate against any person, employee or applicant for employment or subcontractor on the basis of race, color, creed, religion, sex, sexual preference, marital status, ancestry, national origin or physical or mental handicap. Grantee shall not discriminate in the delivery of services on the basis on race, color, creed, religion, sex, sexual preference, marital status, an ancestry, national origin or physical or mental handicap.

SECTION 10. INDEPENDENT CONTRACTOR. It is understood and agreed that SLCUSD is an independent contractor, and that no relationship of principal/agent or employer/employee exists between the City and SLCUSD. If in the performance of this Agreement any third persons are employed by SLCUSD, such persons shall be entirely and exclusively under the control, direction, and supervision of SLCUSD. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment shall be determined by SLCUSD and the City shall have no right or authority over such persons or terms of employment.

SECTION 11. ASSIGNMENT AND SUBLETTING. Neither this Agreement nor any interest herein shall be assigned or transferred by SLCUSD, except as expressly authorized in writing by City.

SECTION 12. ANNUAL REPORTS. Prior to January 1 of each year, SLCUSD shall submit to City an annual report for the preceding fiscal year (July 1 — June 30). This report shall contain, at a minimum, a written narrative describing the manner in which the Plan of Operation was fulfilled during the prior year, a list of equipment purchased by the E- portion of public access funds, and a list of proposed equipment to be purchased in the upcoming fiscal year.

SECTION 13. RECORDS, FISCAL AUDIT.

1. SLCUSD shall maintain all necessary books and records of the receipt, disbursement and use of funds received under this Agreement in accordance with generally accepted accounting principles. These transactions shall be included in the scope of the annual audit performed by SLCUSD.
2. Upon reasonable request from City, SLCUSD shall, at anytime during normal business hours, make available all of its records with respect to all matters covered by this Agreement.

SECTION 14. FUNDING AND OTHER RESOURCES. The City agrees to release to SLCUSD one-half of all PEG access funds that it receives from Charter Communications for PEG access equipment and facilities purposes within 60 days after those funds are received. SLCUSD shall spend funds received from the City solely for the purposes listed in its approved Plan of Operation and for the purposes delineated in this Agreement. The initial transfer of the E- portion of PEG access funds that have been accruing in an account set aside by the City for SLCUSD shall be executed within sixty (60) days following execution of this Agreement and upon written notice by SLCUSD to the City requesting the funds. Upon termination of this Agreement, the E- portion of PEG access funds received by the City that have not been expended or committed via written contract by SLCUSD shall be returned to the City within 60 days.

SECTION 15. TERM OF AGREEMENT. This Agreement shall be for a period of three (3) years commencing on and ending on unless terminated earlier, as provided in this Agreement. This Agreement may be extended, by mutual agreement of the City and SLCUSD, in writing, for two additional periods of three (3) years each.

SECTION 16. TERMINATION OF AGREEMENT: TRANSFER OF ASSETS. The City shall have the right upon one hundred twenty (120) days written notice to SLCUSD to terminate this Agreement for.

1. Breach of any provision of this Agreement by SLCUSD.
2. Malfeasance, misfeasance, misappropriation of public funds.
3. SLCUSD may avoid termination by curing any such breach to the satisfaction of the City within one hundred twenty (120) days of notification or within a time frame agreed to by the City and SLCUSD. The City may also terminate this Agreement at the expiration of its term, or any extension thereof.

SECTION 17. TIME. Time is of the essence in this Agreement and for the performance of all covenants and conditions of this Agreement.

SECTION 18. COOPERATION. Each party agrees to execute all documents and do all things necessary and appropriate to carry out the provisions of this Agreement.

SECTION 19. APPLICABLE LAW. This Agreement shall be interpreted and enforced under the laws of the State of California.

SECTION 20. 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:

City of San Luis Obispo
City Clerk's Office
990 Palm Street
San Luis Obispo, CA 93401

San Luis Coastal Unified School District
Assistant Superintendent of Educational Services
1500 Lizzie Street
San Luis Obispo, CA 93401

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

SECTION 21. 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

CITY OF SAN LUIS OBISPO
A Municipal Corporation

SAN LUIS COASTAL UNIFIED
SCHOOL DISTRICT

By: Mayor Heidi Harmon

By: Eric Prater, Superintendent

ATTEST:

Teresa Purrington, City Clerk

APPROVED AS TO FORM:

J. Christine Dietrick, City Attorney