

**DRAFT CONSULTANT SERVICE AGREEMENT BETWEEN THE CITY OF  
SUNNYVALE AND MOUNTAIN VIEW COMMUNITY TELEVISION  
FOR MANAGEMENT OF THE SUNNYVALE GOVERNMENT ACCESS  
AND PUBLIC ACCESS CHANNELS**

THIS AGREEMENT, dated \_\_\_\_\_, 2020, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and MOUNTAIN VIEW COMMUNITY TELEVISION, a non-profit corporation ("CONSULTANT").

WHEREAS, CITY is in need of specialized services in relation to the management of the CITY'S Government Access Channel KSUN 15 and Channel 26; and

WHEREAS, CONSULTANT possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide services in accordance with Exhibits A, B and C attached and incorporated by reference. CONSULTANT shall determine the method, details and means of performing the services. The parties agree that the nature of the services to be provided by CONSULTANT may necessitate that the services be performed on CITY'S premises. CITY therefore agrees to furnish space on its premises for use by CONSULTANT while performing these services.

2. Time for Performance

The term of this contract shall be for a three (3) year period, effective July 1, 2020, through June 30, 2023 with an option to renew annually for two (2) additional years. CONSULTANT shall deliver the agreed upon services as specified in Exhibit A.

3. Duties of CITY

CITY shall supply any documents, equipment or information available to CITY required by CONSULTANT for performance of its duties. Any materials provided shall be returned to CITY upon completion of the work.

4. Compensation

CITY agrees to pay CONSULTANT for the services rendered pursuant to this Agreement, the amounts in Exhibit B subject to the payment provisions and not-to-exceed sums set forth in this section.

In no event shall the total amount of compensation payable under this agreement for management of Government Access Channels KSUN 15 and Channel 26

exceed the sum of Fifty-five Thousand Dollars (\$55,000) per year, unless changed by written modification of this Agreement executed by both parties. In no event shall the total amount of compensation payable under this agreement for Optional Channel 26 Public Access programming services exceed the sum of Thirty Thousand Dollars (\$30,000) per year, unless changed by written modification of this Agreement executed by both parties. The total compensation for the term of this agreement shall not exceed Two Hundred Fifty-Five Thousand Dollars (\$255,000).

Optional Channel 26 services may include, but are not limited to:

1. Public Service Announcements (PSA)
2. Bulletin Board Postings
3. Job Announcements
4. Formal Bid Postings
5. Press Releases
6. Virtual Classes
7. Community Training Programs

All invoices for payment, including detailed backup, shall be sent to City of Sunnyvale, Accounts Payable, PO Box 3707, Sunnyvale, CA 94088-3707.

5. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

6. Confidential Information

CONSULTANT shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which CONSULTANT may become aware in the performance of its services.

7. Compliance with Laws

- a. CONSULTANT shall strictly adhere to all state and federal laws with respect to discrimination in employment and shall not discriminate against any individual on the basis of race, color, religion, gender, sexual orientation, marital status, national origin, age, or disability.
- b. CONSULTANT shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement.

8. Independent Contractor

CONSULTANT is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be

interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONSULTANT. CONSULTANT is responsible for paying all required state and federal taxes.

9. Indemnity

CONSULTANT agrees to indemnify and hold harmless CITY and its officers, officials, employees and volunteers from and against claims, damages, losses and expenses, including attorneys' fees, arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of CITY.

10. Insurance

CONSULTANT shall take out and maintain, during the life of this Agreement, policies of insurance as specified in Exhibit D, attached and incorporated by reference, and shall provide all certificates and endorsements as specified in Exhibit D.

11. CITY Representative

Teri Silva, Assistant City Manager, as the City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

12. CONSULTANT Representative

Bobby Chastain, Executive Director, shall represent CONSULTANT in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of CONSULTANT pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CONSULTANT representative.

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or sent by commercial courier, addressed as follows:

To CITY:	Teri Silva, Assistant City Manager CITY OF SUNNYVALE P. O. Box 3707 Sunnyvale, CA 94088-3707
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To CONSULTANT: Bobby Chastain, Executive Director  
MOUNTAIN VIEW COMMUNITY TELEVISION  
211 E. Weddell Dr.  
Sunnyvale, CA 94089

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial courier, or hand delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of two days after mailing, unless such date is a date on which there is no mail service. In that event, communication is deemed to occur on the next mail service day.

13. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

14. Termination

If CONSULTANT defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option, may terminate this Agreement by giving written notice to CONSULTANT. If CITY materially fails to meet its obligations under this Agreement, CONSULTANT at its option, may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days.

Without limitation to such rights or remedies as CITY or CONSULTANT shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon thirty (30) days written notice to the other party. In the event of such termination by CITY, CONSULTANT shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate.

15. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

16. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

17. Mediation

All claims, disputes, and controversies arising out of or in relation to the performance, interpretation, application, or enforcement of this Agreement, including but not limited to breach thereof, shall be referred to mediation before, and as a condition precedent to, the initiation of any adjudicative action or proceeding, including arbitration.

18. Attorneys' Fees

In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover court costs and the fees of its attorneys in such action or proceeding (whether at the administrative, trial, or appellate level) and such amount as the court or administrative body may judge reasonable.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
City Manager

MOUNTAIN VIEW COMMUNITY  
TELEVISION  
("CONSULTANT")

APPROVED AS TO FORM:

By \_\_\_\_\_

\_\_\_\_\_  
Name/Title

By \_\_\_\_\_  
City Attorney

## **SCHEDULE OF EXHIBITS**

Exhibit A – Scope of Services

Exhibit B – Compensation

Exhibit C – Errors Beyond Camera Operator's Control

Exhibit D – Insurance Requirements

## **EXHIBIT A SCOPE OF SERVICES**

CONSULTANT and CITY will work closely together to ensure a successful and professional operation of KSUN Government Access Channels 15 and 26. The Scope of Services includes outcome measures that define an acceptable level of service delivery expected from CONSULTANT.

### **1. Cablecasting of Public Meetings and Other Programming**

CONSULTANT shall provide a trained operator to cover and cablecast live meetings of the Sunnyvale City Council and Planning Commission produce coverage of other meetings or events such as the Budget Workshop and Study Issues Workshop, and arrange their playback on KSUN Channel 15 (and duplicated as necessary on Channel 26) in accordance with CITY-approved playback schedules.

CITY shall give CONSULTANT at least 72 hours advanced notice of all meetings to be covered. If such 72 hours advanced notice is not given, CONSULTANT shall make every reasonable effort to cover such meetings but is not required to do so.

CITY expects cablecasts of live meetings to be as error-free as possible. Noticeable and significant programming and operator errors within CONSULTANT'S control should be kept to a minimum and should not exceed two (2) instances per six (6) month period. Errors noted by CITY will be reported by the City Clerk. CONSULTANT will keep a record in an online reporting document made available to the City Clerk at all times. CONSULTANT also will document the recommendations for resolution and/or outcomes in the reporting document. This will be reviewed quarterly per Section 9. Performance Remedies.

### **2. Maintaining 24-Hour Programming for KSUN Channel 15 and Channel 26**

CONSULTANT shall regularly update and maintain the KSUN Channel 15 programming (and duplicated as necessary on Channel 26) according to the criteria defined below. CONSULTANT shall track time spent programming and include those hours in a monthly service level report.

From time to time, CONSULTANT shall play back other programming (beyond the public meetings cited in Section 1 above) on KSUN Channel 15 for which both the content and scheduling shall be approved in advance by the City Clerk (e.g. public service announcements or public meetings from other agencies).

Programming of video playback and posts to the electronic bulletin board will be completed by CONSULTANT at the request of CITY. Programming will be

completed within 48 hours of CITY request, will air at times and dates specified by CITY, and will be properly programmed so that they do not override the City Council and Planning Commission live cablecasts (with the exception of an interruption to announce emergency public information such as a natural disaster or major crisis). Acceptable programming includes, but is not limited to:

- i. Public Service Announcements (PSAs);
- ii. Full page still slides for the Bulletin Board;
- iii. Job Announcements and Formal Bid Advertisements;
- iv. Virtual Classes and Community Training; and,
- v. City Council meetings, Council Study Sessions, and Planning Commission meetings.

3. Coordinating, Scheduling and Monitoring Services

CONSULTANT shall administer programming, personnel, scheduling and record-keeping; develop and update procedures associated with channel operations; and regularly provide channel operations management information to CITY. This information shall be in the form of a monthly report which shall include the following items:

- a. Live meetings broadcast (by meeting type, meeting length, date, hours spent on live broadcasting, and name of operator);
- b. Playback programming (by program type, date, and program length);
- a. An itemized description of all preventative maintenance activities undertaken by CONSULTANT and the time allocated to this maintenance;
- b. Number of Bulletin Board pages, Job Announcements, Formal Bids posted, hours allocated to do so, date, and name of operator;
- e. Training activities (shall be limited to 30 hours per year; additional hours for training new operators shall be pre-approved by CITY);
- f. Special Projects, Virtual Classes, Community Training (showing date, description, and hours worked); and
- g. Duplication and upload services.

4. Preventative Maintenance and Troubleshooting

CONSULTANT shall provide technical assistance, preventative maintenance, troubleshooting and advice regarding the maintenance, operation, repair and replacement of CITY-owned production equipment. "Equipment" is defined as those components that affect cablecasting, production and scheduled programming on Channels 15 and 26. Such service shall be limited to eight hours



of CONSULTANT'S engineer time per month; additional hours needed in a month shall be pre-approved by CITY.

CONSULTANT shall notify CITY immediately of any issues affecting cablecasting or playback (e.g., equipment malfunctions) and add the issues to the online reporting document. CONSULTANT and CITY shall work together to determine the appropriate resolution and ensure that cablecasting and programming are restored in a timely manner. Actual equipment repair and replacement costs, including the procurement of any necessary technical vendor services, shall be the responsibility of CITY.

5. Production of Original Programming for City Events

CITY may occasionally request additional services from CONSULTANT such as production or studio services to develop original programming to cover special CITY events such as State of the City. These services may include pre-production planning, remote production, van rental, production staffing, editing and post-production services and related activities. These services are to be covered under this Agreement as long as rates are in accordance with Exhibit B and the additional costs are within the total not-to-exceed confines of this Agreement.

6. Emergency Public Information

CONSULTANT shall assist CITY in developing plans for operations and training regarding the use of the cable channels for emergency public information.

7. Archiving

- a. A DVD disc(s) or other suitable media as approved by the City shall be made available to CITY for each Council meeting and Planning Commission meeting. Copies shall be available to CITY within 24 hours of the conclusion of the meeting. The master copy will be stored in the CITY'S control room.
- b. Occasional copying and/or requests for additional discs or files of either official meetings or special programming shall be provided under the terms of this Agreement. Only authorized CITY staff shall make such requests. Turnaround time for receipt by CITY of these duplicate copies shall be no longer than five (5) business days from the date of request to CONSULTANT. In either case, CITY shall pay for the cost of all necessary media in accordance with the provisions contained with Exhibit B.

8. Access To Control Room

CITY will provide CONSULTANT access to the control room for the on-duty board operator or engineer performing maintenance only. Others are only permitted access if approved in advance by the City Clerk.

9. Performance Remedies

CONSULTANT and CITY agree that live television, by nature, is often unpredictable and spontaneous and some operational errors will be beyond CONSULTANT'S control. These errors include, but are not limited to, the examples identified in Exhibit C.

CITY and CONSULTANT will join in a quarterly review of performance under the Agreement to resolve any mutually identified issues of concern through good faith negotiation.

## **EXHIBIT B COMPENSATION**

1. In consideration for the following CONSULTANT provided services annually, as described in EXHIBIT A,

- Cablecast, Playback, Programming, Scheduling of all City Council and City Planning Commission meetings
- All Bulletin Board Scheduling and Coordination
- All Supervisory Management
- Operator Training
- Preventive Maintenance & Troubleshooting (8 hours per month)
- Three (3) All-day Special Event Productions, or any combination not to exceed 36 hours

and during the Term of this Agreement, CITY shall pay CONSULTANT an annual sum of \$55,000.00, payable in 12 equal monthly payments of \$4,584.00, with these amounts fixed for the first three years. Subsequent renewal periods are subject to the potential yearly changes defined in Section 7 below.

2. CONSULTANT shall keep a running total of its hours spent for each category above and report such to CITY on a monthly basis.
3. If the annual usage of services exceeds the number of hours for each category below, CITY shall pay the indicated hourly rates for such excess hours:

	Hours in Excess of:	Shall be Paid at:
a) Cablecast, Playback, Programming, Scheduling of all City Council and City Planning Commission meetings	303 hrs @	\$ 46.10/hr
b) All Bulletin Board Scheduling and Coordination	75 hrs @	46.10/hr
c) All Supervisory Management	72 hrs @	55.10/hr
d) Training	30 hrs @	46.10/hr
e) Preventive Maintenance & Troubleshooting (8 hrs/mo)	96 hrs @	95.10/hr
f) Special Events Productions (crew of 5)	36 hrs @	650.33/hr

4. CONSULTANT may, at CITY request, provide the following optional original programming services for the prices indicated. Programs would be recorded for later viewing (aired on cable channel and website) with basic slate graphic at beginning and end.

- a. **External Study Sessions** – \$550 for 1 camera and 1 technician for 4 hours with a minimum of 2 hours for set up, site visit, etc. After 4 hours, service assessed at \$225 per hour.
  - b. **External Study Session with Truck** – \$1450 for 3 cameras, 1 technician and 3 crew members for 4 hours with a minimum of 2 hours for set up, site visit, etc. After 4 hours, service assessed at \$225 per hour.
  - c. **External Study Session with multi camera shoot** – \$1050 for 3 cameras and 3 technicians for 4 hours with a minimum of 2 hours for set up, site visit, etc. After 4 hours, service assessed at \$225 per hour.
  - d. **School Sports with Truck** - \$1650 for 3 cameras, 1 technician, and 3 crew members for 5 hours with a minimum of 2 hours for set up, site visit, etc.
  - e. **School Sports with multi camera shoot** - \$1350 for 3 cameras and 3 technicians for 4 hours with a minimum of 2 hours for set up, site visit, etc.
  - f. **Community Event with Truck** - \$1950 for 3 cameras, 1 technician, and 3 volunteers for 8 hours with a minimum of 2 hours for set up, site visit, etc.
  - g. **Community Event with multi camera shoot** - \$1350 for 3 cameras and 3 technicians for 4 hours with a minimum of 2 hours for set up, site visit, etc.
  - h. **Public Safety Announcements** – Basic public service announcements (e.g., simple backdrops, live to tape, no editing or graphics) are provided free to CITY and nonprofit organizations.
5. CONSULTANT will provide 24-hour public access programming for Channel 26 over a dedicated Sunnyvale signal for \$30,000 per year. Priority would be given to Sunnyvale producers for all prime time slots. CONSULTANT will work with the community to promote and expand programming to contain a majority of Sunnyvale-based content filled in as necessary by other relevant community programming. CONSULTANT will manage all aspects of the public access channel, to include, but not limited to, working with independent show producers, providing studio space and production training, and providing the cablecasting, scheduling and troubleshooting tools needed.
6. Total Compensation shall not exceed \$255,000 for the first three years of this agreement.
7. The City will negotiate potential compensation adjustments based on the Bureau of Labor Statistics for the San Francisco Bay Area annual Consumer Price Index (CPI) set during the month of April each year for each subsequent renewal period.

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**  
**CITY OF SUNNYVALE, CALIFORNIA**

SUPPLIER shall obtain, at its own expense and from an admitted insurer authorized to operate in California, the insurance coverage detailed below and shall submit Certificate(s) of Insurance to the City of Sunnyvale, Purchasing Division, 650 West Olive Ave, PO Box 3707, Sunnyvale, CA 94088-3707; fax (408) 730-7710.

SUPPLIER shall take out and maintain during the life of the contract Workers' Compensation and Employer's Liability Insurance for its employees. The amount of insurance shall not be less than \$1,000,000 per accident for bodily injury or disease.

SUPPLIER shall take out and maintain during the life of the contract such Commercial General Liability Insurance as shall protect SUPPLIER, CITY, its officials, officers, directors, employees and agents from claims which may arise from services performed under the contract, whether such services are performed by SUPPLIER, by CITY, its officials, officers, directors, employees or agents or by anyone directly or indirectly employed by either. The amount of insurance shall not be less than the following: Single Limit Coverage Applying to Bodily and Personal Injury Liability and Property Damage: \$1,000,000.

The liability insurance shall include, but shall not be limited to:

- Protection against claims arising from bodily and personal injury and damage to property, resulting from SUPPLIER'S or CITY'S operations and use of owned or non-owned vehicles.
- Coverage on an "occurrence" basis.
- Broad form property damage liability. Deductible shall not exceed \$5000 without prior written approval of CITY.
- Notice of cancellation to CITY'S Purchasing Division at least thirty (30) days prior to the cancellation effective date.

The following endorsements shall be attached to the liability insurance policy, and copies shall be submitted with the Certificate(s) of Insurance:

- The policy must cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property, damage must be eliminated.
- CITY must be named as additional named insured with respect to the services being performed under the contract.
- The Coverage shall be primary insurance so that no other insurance effected by CITY will be called upon to contribute to a loss under this coverage.

## **EXHIBIT D**

### **ERRORS BEYOND CAMERA OPERATOR'S CONTROL**

CONSULTANT and CITY recognize that live television is often unpredictable and some operational errors may occur. The following list contains examples of operational and programming errors that may be beyond the camera operator's control.

1. Power outages.
2. Unexpected equipment failure in the Control Room.
3. Unexpected equipment failure in the Council Chambers.
4. Missing equipment in the Control Room.
5. Missing equipment in the Council Chambers.
6. Pan/tilt controller inaccurate control or error due to design flaws of pan/tilt controller failure.
7. Poor picture quality, caused by cameras needing to be recalibrated.
8. Missing signal caused by cable operator (Comcast) error.
9. General misinformation or misdirection caused by staff during regular meetings or special meetings.
10. Incorrect tags caused by misinformation or misdirection by staff during regular meetings or special meetings.
11. Missing tags due to speakers who were not clearly recognized or introduced by either City officials or the speaker themselves.
12. Diminished sound quality caused by speaker talking too close to the microphone, too far away from the microphone or moving the microphone stem.
13. Diminished sound quality caused by speaker's volume.
14. Errors caused by distraction from unnecessary presence in the Control Room while camera operator is trying to concentrate on the meeting.
15. Delayed camera moves due to staff failing to introduce him/herself clearly, failing to recognize the speaker, talking out of turn or sitting off camera where the camera operator has trouble finding them.
16. Diminished or incorrect composition due to speaker shifting, leaning or walking off camera.
17. For meetings that go past four hours, there may be a brief missing sequence during playback due to the operator needing to change tapes during the meeting. Operator will make every effort to change tapes at a point least disruptive to the recorded information.
18. For meetings that run long, without a recess, there may be an extended wide shot while the camera operator takes a brief bathroom break.