

Exhibit B

Form of Agreement

AGREEMENT

This Agreement, by and between the City of Columbia, Missouri, a municipal corporation ("City") and VidWest, a Missouri nonprofit corporation ("CONTRACTOR"), 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.

See attached **Exhibit A**, which is incorporated herein by reference.

SECTION 2. CHANNEL OPEN TO PUBLIC. CONTRACTOR 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 CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR. CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR 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. CITY shall loan the equipment listed in **Exhibit C** to CONTRACTOR for CONTRACTOR's use during the term of this Agreement.

- B. CONTRACTOR 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, CONTRACTOR hereby grants to City a security interest in all of the assets and interests owned or hereafter acquired by CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR might wish to finance.

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

SECTION 6. INSURANCE. CONTRACTOR 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 CONTRACTOR and may be included in CONTRACTOR'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 CONTRACTOR 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 CONTRACTOR insurance and shall not contribute to it.
- F. *NOTIFICATION OF COVERAGE.* CONTRACTOR shall file with City proof of required insurance coverage. CONTRACTOR shall not start services until the CITY has received, reviewed and approved the proof of 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 CONTRACTOR is an independent contractor and that no relationship of principal/agent or employer/employee exists between City and CONTRACTOR. If in the performance of this Agreement any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the control, direction and supervision of CONTRACTOR. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment shall be determined by CONTRACTOR 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 CONTRACTOR, except as expressly authorized in writing by City.

SECTION 9. FINAL REPORT. At the end of the term, CONTRACTOR shall submit to the Manager of Cultural Affairs a final report. This report shall contain, at a minimum, the following information:

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

SECTION 10. RECORDS, FISCAL AUDIT.

- A. CONTRACTOR shall maintain all necessary books and records, in accordance with generally accepted accounting principles.
- B. Upon reasonable request from City, CONTRACTOR 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 CONTRACTOR:

- A. Video service providers operating in the city are required to designate three channels for noncommercial public, educational and governmental use. City will permit CONTRACTOR to manage one (1) of these channels for public access programming.
- B. City will pay CONTRACTOR thirty-five thousand dollars (\$35,000) upon execution of this Agreement to meet the terms set forth herein.
- C. CONTRACTOR may apply to City for additional funding outside of this Agreement, if any is available.

SECTION 12. PLAN AND BUDGET. CONTRACTOR's service model description and budget is set forth in **Exhibit D**. In addition, CONTRACTOR shall provide to the Manager of Cultural Affairs a Plan outlining activities and programs planned for the term 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 CONTRACTOR; and
- 4. A detailed operating and capital equipment and facilities budget.

SECTION 13. EXPENDITURE OF FUNDS. CONTRACTOR shall spend funds received from City solely for the purposes listed in its Plan and Budget and Section 1 (Scope of Services) of this Agreement and as otherwise set forth herein. Upon termination of this Agreement, all funds of any kind received from City and not expended by CONTRACTOR shall be returned to City. CONTRACTOR 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. CONTRACTOR 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, 2022 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 CONTRACTOR to terminate this Agreement for:
1. Breach of any provision of this Agreement by CONTRACTOR;
 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 CONTRACTOR; or
 5. At the City's convenience.
- B. CONTRACTOR 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 CONTRACTOR. City may also terminate this Agreement at the expiration of its term, or any extension thereof.
- C. CONTRACTOR shall have the right, upon one hundred twenty (120) days written notice to City, to terminate this Agreement if CONTRACTOR determines that it lacks sufficient funds for capital purposes.
- D. The parties specifically acknowledge that FCC rulemaking or orders may negatively affect the ability of the CITY to maintain a public access channel for the use of CONTRACTOR. CITY may terminate this Agreement with fifteen (15) days written notice if CITY incurs any additional expense or lost revenue associated with provision of the public access channel or if the number of public access channels available for use by the CITY is reduced at any time or for any reason.
- E. Upon termination of this Agreement, CONTRACTOR shall immediately transfer to City all equipment, deposit accounts and other assets received by or purchased by CONTRACTOR with funds received pursuant to this Agreement.

SECTION 17. EXTENSION OF AGREEMENT. This Agreement may be renewed or extended for additional periods upon mutual written 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
P.O. Box 6015
Columbia, MO 65205-6015
Phone: (573) 874-7512

To CONTRACTOR:

VidWest
c/o Matthew Schacht
1005 Cherry Street, Suite 105A
Columbia, MO 65201
Phone: 573-340-1127

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. CONTRACTOR shall comply with Missouri State Statute Section 285.530 in that CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR shall require each subcontractor to affirmatively state in its contract with CONTRACTOR 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. CONTRACTOR shall also require each subcontractor to provide CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR, 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 CONTRACTOR or by any subcontractor, or of anyone for whose acts the CONTRACTOR or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require CONTRACTOR to indemnify, hold harmless, or defend the City of Columbia from its own negligence.

SECTION 22. CONTRACT DOCUMENTS. This Agreement includes the following exhibits or attachments which are incorporated herein by reference:

<u>Exhibit/Attachment</u>	<u>Description</u>
A	Scope of Services
B	List of Organizations
C	Equipment List
D	Service Model Description and Budget

In the event of a conflict between the terms of an exhibit and the terms of this Agreement, the terms of this Agreement control.

SECTION 23. 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: _____
John Glascock, City Manager

Date: _____

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
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 _____ and that there is an unencumbered balance to the credit of such account sufficient to pay therefore.

By: _____
Matthew Lue, Director of Finance

CONTRACTOR:

By: _____

Date: _____

By: _____

Date: _____

ATTEST:
