

AGREEMENT
For
PROFESSIONAL SERVICES
Between
THE CITY OF COLUMBIA, MISSOURI
And

For
THE OPERATION OF A COMMUNITY ACCESS CENTER AND PUBLIC ACCESS
CHANNEL OR OTHER NONCOMMERCIAL BROADCAST FORMAT FOR
NONCOMMERCIAL PROGRAMMING

THIS AGREEMENT (hereinafter "Agreement") between the City of Columbia, Missouri, a municipal corporation (hereinafter "CITY") and **click here and insert Consultant's name in text box**, with an address of **click here and insert Consultant's address in text box**, (hereinafter "CONSULTANT") is entered into on the date of the last signatory noted below (the "Effective Date"). CITY and CONSULTANT are each individually referred to herein as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, City desires to engage the Consultant to render certain professional services as outlined in the Scope of Work in Exhibit A; and

WHEREAS, Consultant represents and warrants that Consultant is equipped, competent, and able to provide all of the professional services necessary or appropriate in accordance with this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the Parties agree as follows.

1. Services and Performance Standards.
 - a. Scope of Services. The scope of services involves the professional and technical consulting services for **the operation of a community access center and public access channel or other noncommercial broadcast format for noncommercial programming** (hereinafter "Project"). The Project is more fully described in CONSULTANT's **Scope of Services**, which is attached as **Exhibit A**.
 - b. Prior to beginning any work on Project, CONSULTANT shall resolve with CITY any perceived ambiguity in Project. CITY shall issue a written notice to proceed.

c. CONSULTANT shall exercise reasonable skill, care and diligence in performance of its services and will carry out its responsibilities in accordance with the generally accepted standards of good professional practices in effect at time of performance. If CONSULTANT fails to meet the foregoing standards, CONSULTANT shall perform at its own cost, and without reimbursement from CITY, the professional services necessary to correct errors and omissions which are caused by CONSULTANT's failure to comply with the above standard.

d. Schedule. On or after the Effective Date, the CITY shall issue the notice to proceed and CONSULTANT shall proceed in accordance with the timeline contained in the **Schedule of Work**, which is attached as **Exhibit B**.

e. Provide Equal Access. Within sixty days of the Effective Date, CONSULTANT 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 CONSULTANT and consistent with federal, state and local law.

f. Promotion. CONSULTANT 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. CONSULTANT shall report all promotional efforts in its monthly report.

g. Service Model And Schedule. CONSULTANT shall provide the services as set forth in this Agreement and in Exhibit A in accordance with the Schedule in Exhibit B and as set forth herein.

h. Channel Open To Public. CONSULTANT 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 CONSULTANT shall control the content of programming placed on the public access channel so long as such programming is lawful.

i. Copyright Clearance. Before cablecasting video transmissions or streaming and or posting video content to the internet, CONSULTANT 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 CONSULTANT or over the internet. CONSULTANT 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.

2. Addition or Deletions to Services. CITY may add to CONSULTANT's services or delete therefrom, provided that the total cost of such work does not exceed the

total cost allowance as specified herein. CONSULTANT shall undertake such changed activities only upon the written direction of CITY. All such directives and changes shall be in written form and prepared and approved by the Parties. There shall be no change in the Schedule of Work unless specifically identified and agreed to by CONSULTANT and CITY at the time such services are added or deleted.

3. 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.
4. Personnel. CONSULTANT represents that CONSULTANT will secure at CONSULTANT's own expense, all personnel required to perform the services called for under this Agreement by CONSULTANT. Such personnel shall not be employees of or have any contractual relationship with CITY, except as employees of CONSULTANT. All of the services required hereunder will be performed by CONSULTANT or under CONSULTANT's direct supervision. All CONSULTANT's personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of CITY.
5. Term. This Agreement shall commence on the Effective Date and shall continue until the date that is one (1) year following the Effective Date. Thereafter, this agreement may be renewed by the City for up to two successive renewal terms, with each renewal term not exceeding one year.
6. Costs not to Exceed. The Parties have established a fixed sum of **thirty five thousand dollars (\$35,000.00)** for CONSULTANT's services as outlined in this Agreement.
7. Payment.
 - a. CONSULTANT shall be paid according to the payment schedule set forth in Exhibit C.
 - b. Conditioned upon acceptable performance. Provided CONSULTANT performs the services in the manner set forth in Paragraph 1 hereof, CITY agrees to pay CONSULTANT in accordance with the terms outlined herein, which shall constitute complete compensation for all services to be rendered under this Agreement; provided, that where payments are to be made periodically to CONSULTANT for services rendered under this Agreement, CITY expressly reserves the right to disapprove in whole or in part a request for payment where the services rendered during the period

for which payment is claimed are not performed in a timely and satisfactory manner.

- c. CITY shall have ten (10) days from the date of receipt of the invoice to register CITY's disapproval of the work billed on that invoice. Following CONSULTANT's receipt of said disapproval, CONSULTANT shall have ten (10) days to cure the issues presented. If cure cannot be obtained within ten (10) days, CONSULTANT shall notify CITY of the proposed amount of time for cure, and reach an agreement as to an acceptable alternative deadline.
- d. Upon receipt of the invoice and progress report, CITY will, as soon as practical, pay CONSULTANT for the services rendered. CITY shall pay CONSULTANT within thirty (30) days of receipt of an invoice.

8. Termination of Agreement.

- a. Termination for Breach. Failure of CONSULTANT to fulfill CONSULTANT's obligations under this Agreement in a timely and satisfactory manner in accordance with the schedule and description of services for the Project agreed to by both Parties shall constitute a breach of this Agreement, and CITY shall thereupon have the right to immediately terminate this Agreement. CITY shall give seven (7) days written notice of termination to CONSULTANT by one of three different means: Facsimile Transmission ("FAX") if CONSULTANT has a FAX number; U.S. Postal Service Mails; or by hand delivering a copy of the same to CONSULTANT; or may give notice by any combination of the above methods. The date of termination shall be the date upon which notice of termination is hand delivered to CONSULTANT or given by FAX, or the third day following mailing of the notice of termination, whichever first occurs. In the event of termination for breach, CITY, at its sole option, may utilize any and all finished or unfinished documents, data, studies, and reports or other materials prepared by CONSULTANT under this Agreement prior to the date of termination. CONSULTANT shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any such breach of this Agreement by CONSULTANT.
- b. Termination for Convenience. CITY shall have the right at any time by written notice to CONSULTANT to terminate and cancel this Agreement, without cause, for the convenience of CITY, and CONSULTANT shall immediately stop work. In such event CITY shall not be liable to CONSULTANT except for payment for actual work performed prior to such notice in an amount proportionate to the completed contract price and for the actual costs of preparations made by CONSULTANT for the performance of the cancelled portions of the Agreement, including a reasonable allowance of profit applicable to the actual work performed and such preparations. In the event of termination for convenience, CITY, at its sole option, may purchase, for just and equitable compensation any and all finished or unfinished documents, data, studies, and reports or other

materials prepared by CONSULTANT under this Agreement. Any reuse of any satisfactory work completed prior to the termination for convenience shall be at CITY's own risk and without any liability to CONSULTANT. Anticipatory profits and consequential damages shall not be recoverable by CONSULTANT.

9. Ownership of Intellectual Property and Work Product for Eight Arts Focus Shows. All legal rights, title and interest to the Art Focus Shows shall transfer to the CITY upon CITY's acceptance of the show(s). CONSULTANT may, at its own expense, keep copies of all its writing and production materials for its personal files. CONSULTANT shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of CONSULTANT's obligations under this contract without prior written consent of the City of Columbia; provided, however, that the CONSULTANT shall be allowed to use non-confidential materials for samples in pursuit of the work. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use written works. CONSULTANT represents and warrants that the work is solely the result of the artistic effort of the CONSULTANT and is original and unique, does not infringe upon any copyright, has not been sold elsewhere and is free from any liens.

10. Insurance. CONSULTANT shall maintain, on a primary basis and at its sole expense, at all times during the life of this Agreement the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as the CITY's review or acceptance of insurance maintained by CONSULTANT is not intended to, and shall not in any manner limit or qualify the liabilities or obligations assumed by CONSULTANT under this Agreement. Coverage to be provided as follows by a carrier with A.M. Best minimum rating of A-VI.
 - a. Workers' Compensation & Employers Liability. CONSULTANT shall maintain Workers' Compensation in accordance with Missouri State Statutes or provide evidence of monopolistic state coverage. Employers Liability with the following limits: \$500,000 for each accident, \$500,000 for each disease for each employee, and \$500,000 disease policy limit.

 - b. Commercial General Liability. CONSULTANT shall maintain Commercial General Liability at a limit of \$2,000,000 Each Occurrence, \$3,000,000 Annual Aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

c. Business Auto Liability. CONSULTANT shall maintain Business Automobile Liability at a limit of \$2,000,000 Each Occurrence. Coverage shall include liability for Owned (if applicable), Non-Owned & Hired automobiles. In the event CONSULTANT does not own automobiles, CONSULTANT agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

d. CABLECASTER'S ERROR and OMISSION INSURANCE. CONSULTANT shall maintain insurance 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. CONSULTANT may satisfy the liability limits required for Commercial General Liability or Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for either Commercial General Liability or Business Auto Liability. CONSULTANT agrees to endorse CITY as an Additional Insured on the Umbrella or Excess Liability, unless the Certificate of Insurance state the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

f. The City of Columbia, its elected officials and employees are to be Additional Insured with respect to the Project to which these insurance requirements pertain. A certificate of insurance evidencing all coverage required is to be provided at least ten (10) days prior to the Effective Date of the Agreement between the CONSULTANT and CITY. CONSULTANT is required to maintain coverages as stated and required to notify CITY of a Carrier Change or cancellation within two (2) business days. CITY reserves the right to request a copy of the policy

g. The Parties hereto understand and agree that CITY is relying on, and does not waive or intend to waive by any provision of this Agreement, any monetary limitations or any other rights, immunities, and protections provided by the State of Missouri, as from time to time amended, or otherwise available to CITY, or its elected officials or employees.

h. Failure to maintain the required insurance in force may be cause for termination of this Agreement. In the event CONSULTANT fails to maintain and keep in force the required insurance or to obtain coverage from its subcontractors, CITY shall have the right to cancel and terminate this Agreement without notice.

- i. The insurance required by the provisions of this article is required in the public interest and CITY does not assume any liability for acts of CONSULTANT and/or CONSULTANT's employees and/or CONSULTANT's subcontractors in the performance of this Agreement.
11. Conflicts. No salaried officer or employee of CITY and no member of City Council shall have a financial interest, direct or indirect, in this Agreement. A violation of this provision renders this Agreement void. Any federal regulations and applicable provisions in Section 105.450 et seq. RSMo shall not be violated. CONSULTANT covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services to be performed under this Agreement. CONSULTANT further covenants that in the performance of this Agreement no person having such interest shall be employed.
 12. Assignment. CONSULTANT shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of CITY thereto. Notice of such assignment or transfer shall be furnished in writing promptly to CITY. Any such assignment is expressly subject to all rights and remedies of CITY under this Agreement, including the right to change or delete activities from this Agreement or to terminate the same as provided herein, and no such assignment shall require CITY to give any notice to any such assignee of any actions which CITY may take under this Agreement, though CITY will attempt to so notify any such assignee.
 13. Compliance with Laws. CONSULTANT agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of services hereunder.
 14. Employment Of Unauthorized Aliens Prohibited. CONSULTANT agrees to comply with Missouri State Statute section 285.530 in that CONSULTANT 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 Agreement, CONSULTANT 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. CONSULTANT 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. CONSULTANT shall require each subcontractor to affirmatively state in its contract with CONSULTANT 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. CONSULTANT shall also require each subcontractor to provide CONSULTANT

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.

15. **General Independent Contractor Clause.** This Agreement does not create an employee/employer relationship between the Parties. It is the Parties' intention that the CONSULTANT will be an independent contractor and not CITY's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri revenue and taxation laws, Missouri workers' compensation and unemployment insurance laws. CONSULTANT will retain sole and absolute discretion in the judgment of the manner and means of carrying out CONSULTANT's activities and responsibilities hereunder. CONSULTANT agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between CONSULTANT and CITY, and CITY will not be liable for any obligation incurred by CONSULTANT, including but not limited to unpaid minimum wages and/or overtime premiums.
16. **Hold Harmless Agreement:** To the fullest extent not prohibited by law, CONSULTANT 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) arising by reason of any act or failure to act, negligent or otherwise, of CONSULTANT, of any subcontractor (meaning anyone, including but not limited to consultants having a contract with CONSULTANT or a subcontractor for part of the services), of anyone directly or indirectly employed by CONSULTANT or by any subcontractor, or of anyone for whose acts CONSULTANT or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require CONSULTANT to indemnify, hold harmless, or defend the City of Columbia from its own actions, inactions, (willful or otherwise), or its own negligence.
17. **No Waiver of Sovereign Immunity.** 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.
18. **Professional Oversight Indemnification.** CONSULTANT understands and agrees that CITY has contracted with CONSULTANT based upon CONSULTANT's representations that CONSULTANT is a skilled professional and fully able to provide the services set out in this Agreement. In addition to any other

indemnification set out in this Agreement, CONSULTANT agrees to defend, indemnify and hold and save harmless CITY from any and all claims, settlements, and judgments whatsoever arising out of CITY's alleged negligence in hiring or failing to properly supervise CONSULTANT.

19. Professional Responsibility. CONSULTANT shall exercise reasonable skill, care, and diligence in the performance of its services and will carry out its responsibilities in accordance with customarily accepted good professional practices. If CONSULTANT fails to meet the foregoing standard, CONSULTANT shall perform at its own cost, and without reimbursement from CITY, the professional services necessary to correct the errors and omissions which are caused by CONSULTANT's failure to comply with above standard, and which are reported to CONSULTANT within one (1) year from the completion of CONSULTANT'S services for the Project.
20. 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 Agreement, 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.
21. No Third-Party Beneficiary. No provision of this Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such Person a third-party beneficiary under this Agreement.
22. Notices. Any notice, demand, request, or communication required or authorized by this Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to CITY:

City of Columbia

[click here and insert Department name in text box](#)

ATTN: [click here and insert name of contact in text box](#)

P.O. Box 6015

Columbia, MO 65205-6015

Fax: [click here to enter fax.](#)

If to CONSULTANT:

[click here and insert Consultant's name in text box](#)

ATTN: [click here and insert name of contact in text box](#)

[click here and insert address in text box](#)

[click here and insert city/state/zip code in text box](#)

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by

hand or facsimile and on deposit by the sending party if delivered by courier or U.S. mail.

23. Public Records Act. CITY is subject to the Missouri Sunshine Law. The Parties agree that this Agreement shall be interpreted in accordance with the provisions of the Missouri Sunshine Law as amended and CONSULTANT agrees to maintain the confidentiality of information which is not subject to public disclosure under the Sunshine Law.
24. Amendment. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.
25. Audit. Consultant shall maintain financial records according to generally accepted accounting standards. City has the right, at its sole expense and during normal working hours, to examine the records of Consultant to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. Upon termination of this Agreement, all funds of any kind received from City and not expended by CONSULTANT shall be returned to City. CONSULTANT shall provide for such fiscal control and accounting procedures as are necessary to assure proper disbursement and accounting for funds received from City.
26. Nondiscrimination. During the performance of this Agreement, Consultant shall not discriminate against any employee, applicant for employment or recipient of services because of race, color, religion, sex, sexual orientation, gender identity, age, disability, national origin, or any other legally protected category. Consultant shall comply with all provisions of laws, rules and regulations governing the regulation of Equal Employment Opportunity including Title VI of the Civil Rights Act of 1964 and Chapter 12 of the City of Columbia's Code of Ordinances.
27. Americans With Disabilities Act. CONSULTANT shall comply with all applicable provisions of the Americans with Disabilities Act and the regulations implementing the Act, including those regulations governing employment practices. CONSULTANT shall make the services, programs, and activities governed by this Agreement accessible to persons with disabilities as required by the Americans with Disabilities Act and its implementing regulations. Payment of funds under this Contract are conditional upon CONSULTANT certifying to the CITY in writing that its services and the videos produced, broadcast and streamed are done so in a manner that complies with the Americans with Disabilities Act and 28 CFR Part 35.
28. Equipment.

- a. CONSULTANT 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 the Agreement. CITY shall loan the equipment listed in Exhibit D to CONSULTANT for CONSULTANT's use during the term of this Agreement.
 - b. CONSULTANT will provide regular maintenance and repair of all video equipment purchased with city funds or provided to CONSULTANT by the CITY pursuant to this Agreement. CONSULTANT shall report all equipment maintenance and repair on its monthly report.
 - c. Upon the dissolution of CONSULTANT and/or termination of this Agreement, CONSULTANT shall transfer all City loaned equipment, any and all City-funded equipment, and the proceeds of the sale of any equipment, to CITY. CONSULTANT shall not dispose of or sell CITY owned equipment to any other party without the written consent of the City.
29. **Transfer Of Assets Upon Termination.** Upon termination of this Agreement, CONSULTANT shall immediately transfer to CITY all equipment listed in Exhibit D or subsequently procured with CITY funds, deposit accounts and other assets received by or purchased by CONSULTANT with funds received pursuant to this Agreement.
30. **Counterparts and Electronic Signatures.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Faxed signatures, or scanned and electronically transmitted signatures, on this Agreement or any notice delivered pursuant to this Agreement, shall be deemed to have the same legal effect as original signatures on this Agreement.
31. **Contract Documents.** The Contract Documents include this Agreement and the following attachments and exhibits which are incorporated herein by reference.

Exhibit:

- A Scope of Services
- B Schedule of Work
- C Payment Schedule
- D Equipment
- E List of Community Organizations

In the event of a conflict between the terms of any of the Contract Documents and the terms of this Agreement, the terms of this Agreement control. In the event of a conflict between the terms of any Contract Documents, the terms of the documents control in the order listed above.

32. Entire Agreement. This Agreement represents the entire and integrated agreement between the Parties relative to the Project herein. All previous or contemporaneous contracts, representations, promises and conditions relating to CONSULTANT's services on this Project described herein are superseded.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have set their hands on the day and year written below.

CITY OF COLUMBIA, MISSOURI

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor/rw

CERTIFICATION: I, hereby certify that this Agreement is within the purpose of the appropriation to which it is to be charged, Account Number _____, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

By: _____
Director of Finance

(Seal)

By: _____

Date: _____

ATTEST:

By: _____

Name: _____

EXHIBIT A
Scope of Services

EXHIBIT B
Schedule of Work

EXHIBIT C
Payment Schedule

EXHIBIT D
Equipment

EXHIBIT E
List of Community Organizations