

ADMINISTRATIVE REPORT

Date: May 15, 2019

Agenda Item No.: 8E

Council Action Date: June 10, 2019

To: Honorable Mayor and City Council

From: Alex D. McIntyre, City Manager
Barry Fisher, Interim Assistant City Manager

Subject: Fourth Amendment - Community Access Partners Agreement

RECOMMENDATION

It is recommended that the City Council authorize the City Manager to execute the fourth amendment to the agreement with Community Access Partners of San Buenaventura extending the term of the agreement six months (July 1, 2019 through December 31, 2019).

PREVIOUS COUNCIL ACTION

2001 - City Council approved the initial agreement between the City and Community Access Partners of San Buenaventura, Inc. (CAPS), which designated CAPS as the entity responsible for providing Public Educational and Government (PEG) channels. That agreement expired on January 31, 2011.

January 10, 2011 - City Council approved an extension of that contract through April 30, 2011.

April 11, 2011 - City Council authorized the Mayor to execute an agreement with Community Access Partners of San Buenaventura (CAPS) to be in effect May 1, 2011 through June 30, 2016.

June 20, 2016 - City Council authorized an amendment to the agreement with Community Access Partners of San Buenaventura (CAPS) and extended the term of the agreement for one year, to be in effect July 1, 2016 through June 30, 2017.

June 19, 2017 - City Council authorized an amendment to the agreement with Community Access Partners of San Buenaventura (CAPS) and extended the term of the agreement for one year, to be in effect July 1, 2017 through June 30, 2018.

June 18, 2018 - City Council authorized an amendment to the agreement with Community Access Partners of San Buenaventura (CAPS) and extended the term of the agreement for one year, to be in effect July 1, 2018 through June 30, 2019.

DISCUSSION

Community Access Partners San Buenaventura is a private non-profit 501 (c)(3) Media Center that has been operating the City's public access channels since 2001. Public access channels are available for use by the general public. PEG television channels 6 (public) and 15 (education and government) are managed by CAPS who performs basic services determined by FCC guidelines and the agreement with the City.

PEG channels provide programming not provided by other media, such as local government meetings and programs from community groups. CAPS operates a Media Center that trains local citizens in media production and provides citizens with the opportunity to become sources of information in the electronic media.

In light of changing funding restrictions and shrinking revenues, staff has unsuccessfully worked with CAPS on creating a new business model for its service delivery to the City. During the next six months the City and CAPS will work to develop a financially sustainable model. City staff continues to work with CAPS representatives on a new longer-term renewal of the agreement to support the services CAPS provides to the City. Staff anticipates presenting a new agreement to the City Council before December 31, 2019.

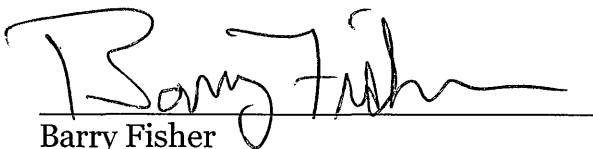
It is recommended that the City Council extend the term of the current agreement six months; to be in effect July 1, 2019 through December 31, 2019.

FISCAL IMPACTS

The cost of the six-month extension is \$300,000. There is sufficient funding in the FY 2019-20 General Fund budget to support the planned expenditures.

ALTERNATIVES

The City Council may elect to modify certain terms of the agreement.

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Barry Fisher
Acting Assistant City Manager

Administrative Report

June 10, 2019

Page 3

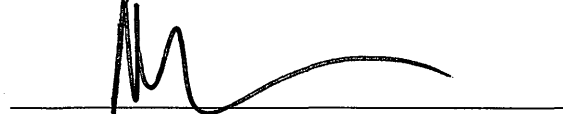
Reviewed as to fiscal impacts



Michael Coon

Finance and Technology Director

FORWARDED TO THE CITY COUNCIL



Alex D. McIntyre

City Manager

Attachment A:	Fourth Extension and Amendment to Agreement
Attachment B:	Third Extension and Amendment to Agreement
Attachment C:	Second Extension and Amendment to Agreement
Attachment D:	First Extension and Amendment to Agreement
Attachment E:	Agreement

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ATTACHMENT A
FOURTH EXTENSION AND AMENDMENT TO AGREEMENT

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**FOURTH EXTENSION AND AMENDMENT TO
AGREEMENT NO. 2011-023 BETWEEN THE CITY OF
SAN BUENAVENTURA AND COMMUNITY ACCESS
PARTNERS OF SAN BUENAVENTURA, INC.
AGREEMENT NO. 2016-038.3**

This Fourth Extension and Amendment (collectively "Fourth Amendment") to Agreement No. 2016.038.3 ("Agreement") is made and entered this _____ day of June, 2019 by and between the CITY OF SAN BUENAVENTURA, a charter city and municipal corporation of the State of California ("City"), and Community Access Partners of San Buenaventura, Inc., a California non-profit corporation ("CAPS").

Pursuant to Agreement No. 2011-023 ("Agreement") executed by the parties on or about April 11, 2011, and in accordance with Section 33 of the Agreement, attached hereto, the Agreement is being amended as follows:

1. Section 2. Term of the Agreement is hereby amended to add the following:

"The term of this Agreement is extended for an additional six (6) months from July 1, 2019 to December 31, 2019."

2. Section 7-2 of the original Agreement is hereby amended to read as follows:

"7-2 During the term of this Fourth Amendment, the compensation due to CAPS from City shall be \$300,000 for services performed during this Fourth Extension. Funding shall be from City's General Fund with the provisions of Section 7-2 and 7-5 inapplicable to work performed pursuant to this Fourth Amendment and are hereby waived. To the extent that capital improvements are required to be made by CAPS during the term of this Fourth Amendment, it is not the intent of the provisions hereof to limit the same, but to require a separate written authorization and approval by City before the same is undertaken. City's City Manager is authorized to approve such written requests so long as the funding is available from PEG funds or to be reimbursed by PEG funds. CAPS authorizes its Executive Director to make such requests and to execute any documents necessary to effectuate the same."

3. Section 25, "Project Coordination and Supervision," of the original Agreement is hereby amended to read as follows:

"25. PROJECT COORDINATION AND SUPERVISION. Deputy City Manager Barry Fisher is designated as CITY's Representative and will monitor the progress and execution of this Agreement on behalf of CITY. CAP's Executive Director, or other person selected by CAPS, is designated as CAP's Project Manager and will provide supervision and have overall responsibility for the progress and execution of this Agreement."

4. Section 26, "Notices," of the original Agreement is hereby amended to read as follows:

"26. NOTICES. All notices given or required to be given pursuant to this Agreement will be in writing and may be given by personal delivery or by mail. Notice sent by mail will be addressed as follows:

To CITY: City of San Buenaventura
Barry Fisher, Deputy City Manager
501 Poli Street, Rm. 205
Ventura, California 93001

To CAPS: Community Access Partners of San Buenaventura, Inc.
Patrick Davidson, Executive Director
P.O. Box 6249
Ventura, California 93006-06249

and, when addressed in accordance with this paragraph, will be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices will be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner described in this paragraph."

5. Counterpart Execution. This Fourth Amendment may be executed in multiple counterparts, each of which so fully executed counterpart shall be deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Amendment is in the physical possession of the party seeking enforcement thereof.
6. Authority to Execute. Each party hereto expressly warrants and represents that he/she/they has/have the authority to execute this Fourth Amendment on behalf of his/her/their corporation, partnership, business entity, or governmental entity and warrants and represents that he/she/they has/have the authority to bind his/her/their entity to the performance of its obligations hereunder.
7. Agreement as Amended Remains in Effect. Except as otherwise specifically provided herein, all other provisions of the Original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have signed this Fourth Amendment on the dates set forth below.

CITY OF SAN BUENAVENTURA

By: _____
MATT LAVERE
Mayor

Date

ATTEST

ANTOINETTE MANN, MMC, CRM
City Clerk

APPROVED AS TO FORM
Gregory G. Diaz, City Attorney

By:  6/4/2019
GREGORY G. DIAZ Date
City Attorney

COMMUNITY ACCESS PARTNERS OF SAN BUENAVENTURA INC., a California non-profit corporation

By: _____
Patrick Davidson
Executive Director

Date

By: _____
Secretary

Date

p



Community Access Partners of San Buenaventura

To create an engaged and informed community through participation in electronic media

ENGAGE EDUCATE ENTERTAIN

June 5, 2019

Barry Fisher

Acting Assistant City Manager

City of Ventura

501 E Poli

Ventura, CA 93001

Re: CAPS Media extension (Fourth)

Barry,

Thank you and your staff for offering a contract extension to Community Access Partners of San Buenaventura (CAPS Media) for an additional six (6) months from July 1, 2019 to December 31, 2019.

As you know, CAPS Media is governed by the Brown Act, therefore we must hold a public meeting in order to obtain approval from the Board of Directors for this agreement. The next CAPS Media Board of Directors meeting is scheduled on Thursday, June 13. At that time, we will recommend approval of the agreement as presented in the attached document:

FOURTH EXTENSION AND AMENDMENT TO AGREEMENT NO. 2011-023 BETWEEN THE CITY OF SAN BUENAVENTURA AND COMMUNITY ACCESS PARTNERS OF SAN BUENAVENTURA, INC. AGREEMENT NO. 2016-038.3

Thank you for your assistance,

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Cliff Rodrigues

Chairperson

A handwritten signature in black ink, appearing to read "Patrick Davidson", is written over a horizontal line.

Patrick Davidson

Executive Director

Board of Directors

Cliff Rodrigues – Chairperson | Darryl Dunn – Vice Chairperson | Kathleen Good – Secretary | Norm Bergman – Treasurer

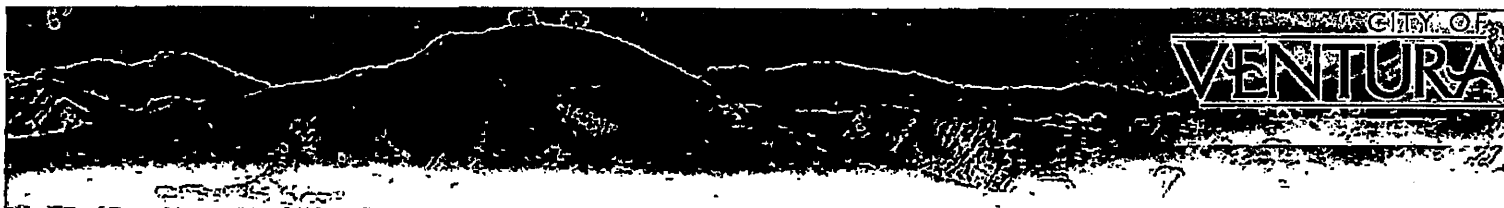
Bill De La Espriella | Kelly Flanders | Tim Harrison | Bill-E Johnson | Marieanne Quiroz | Cathy Peterson
Bill Schneider | Michael Velthoen

Community Access Partners of San Buenaventura

65 Day Road Ventura, CA 93003 | 805.658.0500 | www.capsmedia.org

ATTACHMENT B
THIRD EXTENSION AND AMENDMENT TO AGREEMENT

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Agreement No. 2016-038.3
June 18, 2018

THIRD EXTENSION AND AMENDMENT TO AGREEMENT NO. 2011-023 BETWEEN THE CITY OF SAN BUENAVENTURA AND COMMUNITY ACCESS PARTNERS OF SAN BUENAVENTURA, INC.

This Third Extension and Amendment (collectively "Amendment") to Agreement No. 2016.038.3 ("Agreement") is made and entered this 18th day of June, 2018 by and between the CITY OF SAN BUENAVENTURA, a charter city and municipal corporation of the State of California ("City"), and Community Access Partners of San Buenaventura, Inc., a non-profit corporation ("CAPS").

Pursuant to Agreement No. 2011-023 ("Agreement") executed by the parties on or about April 11, 2011, and according to Sections 2 and 33 of the Agreement, attached hereto, the Agreement is being amended as follows:

1. Section 2. Term of the Agreement is hereby amended to add the following:

"The term of this Agreement is extended for an additional twelve (12) months from July 1, 2018 to June 30, 2019."
2. This Amendment may be executed in multiple counterparts, each of which so fully executed counterpart shall be deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Amendment is in the physical possession of the party seeking enforcement thereof.
3. Authority to Execute. Each party hereto expressly warrants and represents that he/she/they has/have the authority to execute this Amendment on behalf of his/her/their corporation, partnership, business entity, or governmental entity and warrants and represents that he/she/they has/have the authority to bind his/her/their entity to the performance of its obligations hereunder.
4. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.

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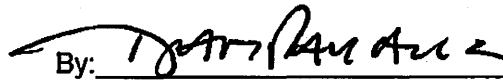
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A18-00211

F:\AGREEMENTS\AGREEMENTS (AMENDMENTS TO FOLLOW ORIGINATING AGREEMENT)\CITY MANAGER\2018\CAPS - THIRD EXTENSION AND AMENDMENT TO AGREEMENT.V2.5.22.2018.Docx

In witness whereof, the parties have signed this Third Amendment on the dates set forth below.

CITY OF SAN BUENAVENTURA

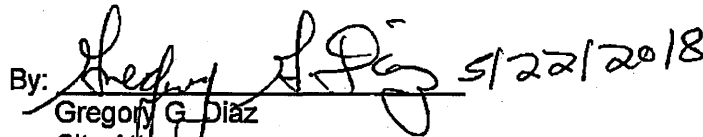
By: 
Dan Paranick
Interim City Manager

6/20/18
Date

ATTEST


Antoinette Mann, MMC, CRM
City Clerk

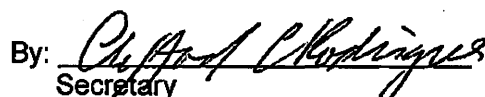
APPROVED AS TO FORM
Gregory G. Diaz, City Attorney

By:  5/22/2018
Gregory G. Diaz
City Attorney

COMMUNITY ACCESS PARTNERS OF SAN BUENAVENTURA INC., a California non-profit corporation

By: 
Patrick Davidson
Executive Director

2/18/18
Date

By: 
Secretary

7/18/18
Date

ATTACHMENT C
SECOND EXTENSION AND AMENDMENT TO AGREEMENT

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**SECOND EXTENSION AND AMENDMENT
TO AGREEMENT NO. 2011-023 BETWEEN
THE CITY OF SAN BUENAVENTURA AND
COMMUNITY ACCESS PARTNERS OF SAN
BUENAVENTURA, INC.** Agreement No. 2016-038.1
06-19-2017

This Second Extension and Amendment (collectively, "Amendment") is made and entered into this 19 day of June, 2017, by and between the City of San Buenaventura, a charter city and municipal corporation existing under its Charter and the laws of California ("City"), and Community Access Partners of San Buenaventura, Inc., California a non-profit corporation ("CAPS").

A. Pursuant to Agreement No. 2011-023 ("Agreement"), executed by the parties on or about April 11, 2011, and according to Sections 2 and 33 of the Agreement, the parties desire to extend the term of the Agreement for an additional one (1) year for the period of July 1, 2017 to June 30, 2018.

1. Section 2. Term, is amended to add the following:

"The term of this Agreement is extended for an additional one (1) year from July 1, 2017 to June 30, 2018."

B. This Amendment may be executed in any number or counterparts, each of which will be an original, but all of which together shall constitute one instrument executed on the same date.

C. Except as modified by this Amendment, all other terms and conditions of Agreement No. 2011-023 will remain the same.

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In witness whereof, the parties have signed this Second Amendment to Agreement on the dates set forth below.

Date:

7/5/17

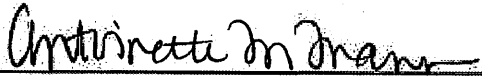
CITY OF SAN BUENAVENTURA

By



Mark Watkins
City Manager


ATTEST



Antoinette, Mann, MMC, CRM
City Clerk

APPROVED AS TO FORM
GREGORY G. DIAZ, City Attorney

By:



6/14/2017

Gregory G. Diaz
City Attorney

Date

COMMUNITY ACCESS PARTNERS OF
SAN BUENAVENTURA INC., a
California non-profit corporation

Date: 6/28/17

By: 

Patrick Davidson
Executive Director

By: 

Secretary

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ATTACHMENT D
FIRST EXTENSION AND AMENDMENT TO AGREEMENT

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**FIRST EXTENSION AND AMENDMENT TO
AGREEMENT NO. 2011-023 BETWEEN
THE CITY OF SAN BUENAVENTURA
AND
COMMUNITY ACCESS PARTNERS OF SAN BUENAVENTURA, INC.**

This First Extension and Amendment (collectively, "Amendment") is made and entered into this 30 day of June, 2016, by and between the City of San Buenaventura, a charter city and municipal corporation existing under the laws of California ("City"), and Community Access Partners of San Buenaventura, Inc., a non-profit corporation ("CAPS").

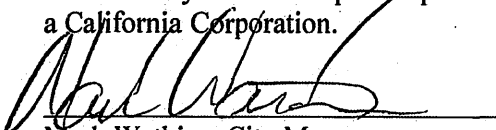
- A. Pursuant to Agreement No. 2011-023 ("Agreement"), executed by the parties on or about April 11, 2011, and according to Sections 2 and 33 of the Agreement, the parties desire to extend the term of the Agreement for an additional one (1) year for the period of July 1, 2016 to June 30, 2017.

1. Section 2. Term, is amended to add the following:

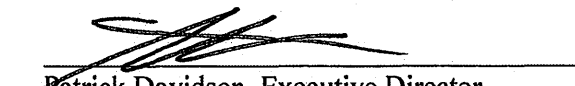
"The term of this Agreement is extended for an additional one (1) year from July 1, 2016 to June 30, 2017."

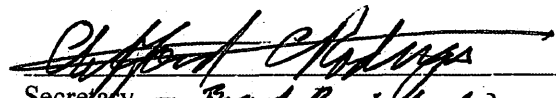
- B. This Amendment may be executed in any number or counterparts, each of which will be an original, but all of which together shall constitute one instrument executed on the same date.
- B. Except as modified by this Amendment, all other terms and conditions of Agreement No. 2011-023 will remain the same.

CITY OF SAN BUENAVENTURA,
a charter city and municipal corporation.
a California Corporation.

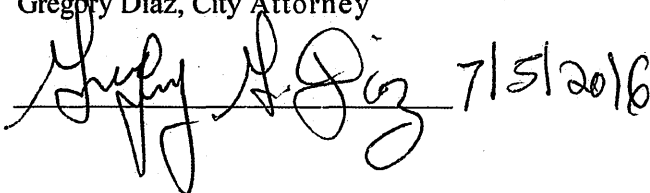

Mark Watkins, City Manager

Community Access Partners of San Buenaventura
Inc., a California non-profit corporation.


Patrick Davidson, Executive Director


Secretary - Board President

APPROVED AS TO FORM:
Gregory Diaz, City Attorney

 7/5/2016

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ATTACHMENT E
AGREEMENT

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Agreement No. 2011-023
City Council Approved: 4-11-11

**AGREEMENT BETWEEN THE CITY OF SAN BUENAVENTURA
AND
COMMUNITY ACCESS PARTNERS OF SAN BUENAVENTURA, INC.**

THIS AGREEMENT is entered into this 11 of April 2011, by and between CITY OF SAN BUENAVENTURA, a chartered city and municipal corporation ("CITY") and COMMUNITY ACCESS PARTNERS OF SAN BUENAVENTURA, INC., a California non-profit corporation ("CAPS").

RECITALS

1. **RECITALS.** This Agreement is made with reference to the following facts and objectives:

- 1-1 The CITY believes that it is in the public interest to require cable television companies operating within CITY's jurisdiction to provide public, educational, and government (collectively "PEG") access to cable television systems.
- 1-2 San Buenaventura Municipal Code Section 6.470.220 calls for a cable service provider operating under a state franchise issued by the California Public Utilities Commission ("State Franchisee") to pay a fee to the City in support of PEG access within CITY.
- 1-3 Charter, Time-Warner, and AT&T ("State Franchisees") have each been granted a state franchise to provide video services in the CITY by the California Public Utilities Commission pursuant to the Digital Infrastructure and Video Competition Act ("DIVCA").
- 1-4 DIVCA provides that certain channel capacity shall be provided for public, educational, and government ("PEG") access.
- 1-5 DIVCA authorizes the City to receive certain grant payments from State Franchisees for PEG access purposes.
- 1-6 CAPS is a non-profit corporation formed for the specific purpose of operating, maintaining, and promoting PEG access within CITY's jurisdiction. Among

other things, CAPS will be responsible for maintaining PEG facilities, equipment, and programming.

- 1-7 The City has determined that it wishes to designate CAPS as the access management organization to develop, manage and administer the PEG access channels and to operate one or more Community Media Centers.
- 1-8 CAPS has provided these services to the City and its residents for many years and has indicated its interest in continuing to serve the community by developing, programming, administering the PEG access channels, and operating a Community Media Center from which to provide services as described herein.
- 1-9 By separate agreement, CITY leases property owned by the Ventura County Community College District upon which the Community Media Center operated by CAPS is located.
- 1-10 In addition to support provided by State Franchisees, City has in the past provided and will continue to dedicate forty percent (40%) of franchise fees collected from State Franchisees to support PEG access. .

TERM AND TERMINATION

2. TERM. Unless otherwise provided by written amendment to this Agreement, the term of this Agreement will be for the approximately five (5) years and two months between May 1, 2011 and June 30, 2016.

3. TERMINATION OF AGREEMENT.

- 3-1 The City shall have the right upon one hundred twenty (120) days written notice to CAPS to terminate this Agreement for:
 - 3-1.1 Material breach of any provision of this Agreement by CAPS;
 - 3-1.2 Malfeasance, misfeasance, misuse of funds; or
 - 3-1.3 Loss of 501(c)(3) status by CAPS or revocation or suspension of its Articles of Incorporation by the State of California.
 - 3-1.4 Failure of State Franchisees to provide funds obligated for PEG purposes to CITY resulting in CITY's inability to provide funding.

- 3-2 The written contract violation notice provided by CITY shall cite the specific section of this Agreement that CITY believes CAPS to have breached and shall provide sufficient detail to permit CAPS to clearly understand the nature of the cure requested by CITY.
- 3-3 CAPS 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 CAPS. If the nature of the default is such that more than one hundred twenty (120) days are reasonably required for its cure, then CAPS shall not be deemed to be in default if it has commenced a cure within the one hundred twenty (120) day period and thereafter diligently prosecutes such cure to completion within the time period reasonably established by the CITY.

4. RESPONSIBILITIES UPON TERMINATION.

- 4-1 Upon termination of this Agreement, all funds of any kind received from CITY and not spent by CAPS will be returned to CITY. In addition, CAPS will immediately transfer title to CITY of all equipment, real property, fixtures, contracts, leases, deposit accounts or other assets received by or purchased by CAPS with funds received pursuant to this Agreement.
- 4-2 CITY may, but is not required to, direct CAPS to transfer title of all equipment, real property, fixtures, contracts, leases, deposit accounts or other assets received by or purchased by CAPS with funds received pursuant to this Agreement to a non-profit organization designated by CITY.

5. TERMINATION PROCEDURES. CAPS understands and agrees that a clause allowing CITY to terminate this Agreement without cause was omitted in order to facilitate CAPS's ability to obtain long-term financing. Such action, however, is not intended to, nor should be interpreted to, entitle CAPS to procedural due process protections other than as provided herein. Accordingly, CAPS explicitly and voluntarily waives any procedural due process rights it might otherwise have, other than as set forth above, in the event this Agreement terminates.

SCOPE OF SERVICES

6. SERVICES PROVIDED BY CAPS. CAPS will provide the following services:

- 6-1 Operate the PEG Access Cable Channel(s). CAPS shall operate the PEG access cable channel(s) for PEG access programming in accordance with the San Buenaventura Municipal Code.
- 6-2 City Meetings and Events. CAPS will provide the following production services to CITY:
 - 6-2.1 Produce live and replay coverage of City Council meetings. CAPS will also serve as a consultant/adviser for the audio, visual, and production technology, equipment, and facilities for City Council meetings;
 - 6-2.2 Produce live and replay coverage of Planning Commission meetings;
 - 6-2.3 Produce live and/or tape delay coverage of other government meetings or events upon request;
 - 6-2.4 CAPS will assist CITY by providing equipment, filming/editing personnel, and an individual who will serve as the program producer to produce programs regarding topics identified by CITY. CITY agrees to determine the topics to be covered during this program.
- 6-3 Public Schools and Ventura Community College. CAPS will cooperate with Ventura Unified School District K-12 schools and Ventura Community College to produce programming that meets local educational goals. CAPS will also coordinate and work collaboratively with these schools to develop internship programs for students. CAPS shall also coordinate with CITY to provide a one-week CAPS for Kids digital storytelling class during the Ventura Unified School District summer recess with an organization to be determined by CITY.
- 6-4 Community Media Center. Manage a video production facility and equipment, available for public use at such hours and times as are

determined by CAPS. Access to equipment and facilities will be open to all those who receive CAPS certification.

- 6-5 Equal Access. Provide access to the use of the equipment, facilities, channels, and services provided hereunder on to all members of the community for noncommercial programming purposes on a first-come, first-served basis pursuant to operating rules promulgated by CAPS.
- 6-6 Develop Operating Policies And Procedures. Develop policies and procedures for use and operation of the PEG access equipment, facilities, and channel(s).
- 6-7 Training. Train persons in the techniques of video production, and provide technical advice and certification in the execution of productions.
- 6-8 Playback/Cablecast. Provide for the playback/broadcasting of programs on the PEG access channels and manage the transmission of programming from live origination sites located within CITY as designated in Franchisee's franchises.
- 6-9 Equipment Maintenance. Provide regular maintenance and repair of all video equipment used in the production and playback of public meetings at the time this Agreement is executed and video equipment purchased with monies received pursuant to this Agreement and/or donated, loaned, or leased to CAPS by CITY.
- 6-10 Special Needs Groups. Support special needs groups, including, without limitation, the hearing impaired, in program production.
- 6-11 Promotion. Actively promote the use and benefit of the PEG access channels and facilities to cable subscribers, the public, PEG access users, and the State Franchisees.
- 6-12 Performance Review. After four (4) years of operations under this agreement, CAPS will contract with a third-party expert in PEG access to

conduct a performance review of CAPS's operations. This review will include an opportunity for PEG access users and cable subscribers to provide input. Upon completion, a copy of the performance review will be submitted to CITY.

- 6-13 Other Activities. Undertake other PEG access programming activities and services as deemed appropriate by CAPS.
- 6-14 Limitation on Services. All CAPS provided services are subject to the limitations inherent in CAPS's annual budgets under this Agreement.

PEG ACCESS FUNDING AND RESOURCES

7. FUNDING AND RESOURCES. The CITY agrees to make the following funds and resources available to CAPS:

- 7-1 The California Public Utilities Commission has granted to each State Franchisee a franchise to provide video services in the CITY. Pursuant to those state franchises each State Franchisee is obligated to provide a minimum of three and a maximum of four channels for PEG access purposes. The CITY agrees to permit CAPS to manage that bandwidth/channel capacity for PEG access programming purposes.
- 7-2 Pursuant to those state franchises and San Buenaventura Municipal Code Section 6.470.220, each State Franchisee is obligated to provide to the CITY for PEG access purposes one and six-tenths percent (1.6%) of its gross revenues derived from the delivery of video services in San Buenaventura. No later than thirty (30) days after the CITY receives the quarterly PEG fee payment from the State Franchisees, the CITY shall transfer those funds to CAPS.
- 7-3 State Franchisees are obligated pursuant Section 5870 of DIVCA to provide to the CITY connectivity necessary to transport/interconnect PEG programming from public, educational, and government primary program origination sites to

the State Franchisee for transmission on PEG channels to cable/video service subscribers. The CITY shall transfer to CAPS the ability to use this PEG connectivity to deliver PEG programming.

- 7-4 Should the PEG access obligations of State Franchisees serving the CITY be modified, CAPS and the CITY will meet and confer to determine if and if so how this Agreement would need to be modified to accommodate the changed PEG obligations of the State Franchisees.
- 7-5 Throughout the term of this Agreement the CITY will provide CAPS with forty percent (40%) of the franchise fees paid to the City by State Franchisees to be used for the purposes described in this Agreement.
- 7-6 The City shall provide CAPS throughout the term of this Agreement with certain real property, upon which is located the Community Media Center located at 65 Day Road, to the extent and for so long as permitted by its lease with the Ventura County Community College District.
- 7-7 The City shall make available to CAPS certain space within City Hall which is housing access equipment for broadcast of public meetings and other PEG access purposes.
- 7-8 Pursuant to Institutional Network Agreements between Time-Warner and the City and Charter and the City, the City receives from those former local cable franchisees access to certain optical fiber and equipment know as the Institutional Network to be used for video, voice, and data purposes. The City shall permit CAPS access to that connectivity for the PEG purposes delineated in this Agreement and for other purposes as directed by the City.
- 7-9 Nothing in this Agreement shall be deemed to prohibit the CITY from contracting with CAPS for additional services.

8. SPENDING FUNDS. CAPS will spend funds received from CITY for PEG access purposes and the services specified in this Agreement. Funds not spent during the fiscal year may be brought forward into succeeding years. CAPS will provide for

such fiscal control and accounting procedures as are necessary to ensure proper disbursement and accounting for funds received from CITY.

9. ADDITIONAL FUNDING. Nothing contained in this Agreement limits CAPS's ability to raise and receive funds from other sources including, without limitation, fundraising activities.

10. OWNERSHIP. Unless otherwise provided by separate written agreement or written amendment to this Agreement, CAPS will own all equipment and facilities acquired by it and purchased with funds received pursuant to this Agreement.

REPORTING REQUIREMENTS

11. ANNUAL PLAN AND BUDGET.

11-1 On or before January 1 of each year, CITY will provide CAPS with an estimate of the funds that will be available to CAPS for the upcoming fiscal year. The fiscal year will begin on July 1 and end on June 30.

11-2 On or before April 30 of each year, CAPS will provide CITY an Annual Plan and Budget outlining activities and programs planned for the following fiscal year. At a minimum, the Annual Plan and Budget will contain:

11-2.1 A statement of anticipated number of hours of local original PEG access programming;

11-2.2 Training classes to be offered and frequency of classes;

11-2.3 Other access activities planned by CAPS; and

11-2.4 A detailed operating and capital equipment and facilities budget.

12. ANNUAL REPORTS. Beginning on April 30, 2011, and on every April 30 for each subsequent year, CAPS will submit an annual report to CITY for the preceding fiscal year.

That report will, at a minimum, contain the following:

12-1 Statistics on programming and services provided;

12-2 Current and complete listing of CAPS's Board of Directors; and

- 12-3 Year-end financial statements audited or reviewed by an independent certified public accountant.

OPERATING REQUIREMENTS

13. **VIEWPOINT NEUTRAL PROGRAMMING.** Unless required by law, neither CITY nor CAPS may censor or control the content of programming that is cablecast on PEG access channels; all qualified users may develop and cablecast lawful programming regardless of viewpoint. Nothing in this paragraph is intended to, nor will it, prevent CAPS from imposing reasonable time, place, and manner restrictions for programs placed on PEG access channels including, without limitation, time restrictions on the use of equipment, facilities, and/or programming services.

14. **EQUIPMENT MAINTENANCE.** CAPS will be responsible for maintaining all equipment and facilities owned, leased, or loaned to it under this Agreement or purchased with funds provided pursuant to this Agreement.

INTELLECTUAL PROPERTY

15. **COPYRIGHT CLEARANCE.** Before allowing any cablecast, CAPS will require PEG access users to execute written warranties that the user owns the programming to be cablecast or has obtained all permissions required by law to cablecast programming material over the PEG access channels. All such agreements will contain provisions that require the user to defend and indemnify CAPS, the Franchisees, and CITY from violations of any applicable intellectual property laws. CAPS will store these agreements for the applicable statute of limitations and, upon CITY's request, provide copies of such agreement for CITY's inspection.

16. **COPYRIGHT OWNERSHIP.** Pursuant to the Copyright Act of 1976, as amended (17 U.S.C. §101, *et seq.*), and limited only by intellectual property rights that may be asserted by other authors for materials included in the programming, persons producing programming for PEG access channel broadcasts will own the copyright and all other

rights thereto.

17. INTELLECTUAL PROPERTY LICENSING. A person seeking to have programming cablecast on a PEG access channel will grant CAPS an irrevocable worldwide license to cablecast that programming in any noncommercial manner whatsoever including, without limitation:

17-1 Television programs for educational and/or informational purposes.

17-2 For any other PEG purpose including, without limitation, promotion of a PEG access channel.

18. DISTRIBUTION RIGHTS. CAPS will require that any program produced by members with funds, equipment, or facilities granted under this Agreement will be cablecast on the PEG access channels. Nothing herein will prevent additional distribution, so long as such other distribution is consistent with any pertinent guidelines established in the PEG access operating policies and procedures.

19. CREDITS. At least at the beginning and end of each day that programming is cablecast on the PEG access channels, CAPS will display a credit stating "Funding made possible by the City of San Buenaventura." Such credit will also state that opinions expressed in programming on the PEG access channels are the sole responsibility of the program producers. Programming cablecast on PEG access channels will also contain a notice of copyright ownership.

20. INTELLECTUAL PROPERTY WAIVER. Pursuant to 17 U.S.C. § 106A(3), and only to the extent required by this Agreement, a person seeking to have a program cablecast on a PEG access channel will expressly waive any right that the person may have under California Civil Code § 987 or 17 U.S.C. §§ 101 *et seq.*, including, without limitation, 17 U.S.C. §§ 106, 106A, and 113, or any successor statute(s) or regulation(s).

INDEMNIFICATION AND INSURANCE

21. HOLD HARMLESS.

21-1 Except as set forth below, CAPS will hold CITY, and its agents, harmless and free from any and all liability arising out of this Agreement, or its performance, including any such liability caused, in part, by the passive negligent act or omission of CITY, or its agents. Should CITY, or its agents, be named in any suit, or should any claim be against it, or any of its agents, by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, pursuant to this Agreement, CAPS will defend CITY (with counsel satisfactory to CITY), and its agents, and will indemnify them for any judgment rendered against them or any sums paid out in settlement or otherwise.

21-1.1 This provision will not apply to liability arising solely from the actions or inactions of CITY employees acting within the course and scope of their employment with CITY while using CAPS's services, facilities, and/or CAPS's personal property.

21-2 It is expressly understood and agreed that the foregoing provisions will survive termination of this Agreement.

21-3 The requirements as to the types and limits of insurance coverage to be maintained by CAPS as required by paragraph 22 below, and any approval of said insurance by CITY, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by CAPS pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

22. INSURANCE. Not later than May 1, 2011, and continuing for the term of this Agreement, CAPS will maintain insurance as required by this Agreement at its own cost.

22-1 CAPS will provide comprehensive business general liability, broad form general liability insurance and business automobile liability insurance that meets or exceeds the requirements of ISO forms GL0002, GL0404,

and CA0001, Code 1, respectively, in their most current State of California approved forms, in connection with CAPS's performance of SCOPE OF SERVICES in the amount of not less than \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage for the policy coverage. Liability policies will be endorsed to name CITY, its officials, and employees as "additional insureds" undersaid insurance coverage and to state that such insurance will be deemed "primary" such that any other insurance that may be carried by CITY will be excess thereto. Such insurance will be on an "occurrence," not a "claims made," basis and will not be cancelable or subject to reduction except upon thirty (30) days prior written notice to CITY.

- 22-2 During performance of this Agreement, CAPS will maintain Worker's Compensation and Employer's Liability insurance for all of its employees who are in any way connected with performance of SERVICES. The Worker's Compensation Insurance will comply with all applicable State laws. Employer's Liability coverage will be for a minimum of \$250,000.
- 22-3 CAPS will maintain insurance for all equipment and facilities, including fixtures, funded in whole or in part under this Agreement to replacement cost. At a minimum, the insurance will include insurance against loss or damage beyond the user's control, theft, fire, or natural catastrophe. CITY will be shown as a named insured, as its interest may appear, on all policies.
- 22-4 CAPS will maintain errors and omissions insurance to cover the content of productions cablecast on the PEG 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 will not be required to cover individual access producers.
- 22-5 CAPS will furnish to CITY duly authenticated Certificates of Insurance evidencing maintenance of the insurance required under this Agreement and such other evidence of insurance or copies of policies as may be

reasonably required by CITY from time to time. Insurance must be placed with insurers with a current A.M. Best Company Rating equivalent to at least a 2010 A.M. Best Company Rating of "A:VII."

BROWN ACT AND POLITICAL REFORM ACT REQUIREMENTS

23. **RALPH M. BROWN ACT.** In consideration of its public funding and support, CAPS agrees to abide by all provisions and requirements of the Ralph M. Brown Act (California Government Code §§ 54950, *et seq.*), and any successor statute or regulation. CAPS understands that this provision is a material term of this Agreement without which CITY would not execute this Agreement.

24. **POLITICAL REFORM ACT.** In consideration of its public funding and support, CAPS agrees to abide by all provisions and requirements of the Political Reform Act ("PRA") of 1974 (California Government Code §§ 81000, *et seq.*) including, without limitation, all regulations promulgated pursuant thereto and any succeeding statute or regulations. If required, CAPS will adopt a conflict of interest code in accordance with the PRA. CAPS understands that this provision is a material term of this Agreement without which CITY would not execute this Agreement.

MISCELLANEOUS PROVISIONS

25. **PROJECT COORDINATION AND SUPERVISION.** Denise Sindelar, Community Partnerships Manager is designated as CITY'S Representative and will monitor the progress and execution of this Agreement on behalf of CITY. CAPS's Executive Director, or other person selected by CAPS, is designated as CAPS's Project Manager and will provide supervision and have overall responsibility for the progress and execution of this Agreement.

26. **NOTICES.** All notices given or required to be given pursuant to this Agreement will be in writing and may be given by personal delivery or by mail. Notice sent by mail will be addressed as follows:

To CITY: City of San Buenaventura
Denise Sindelar, Community Partnerships Manager
501 Poli St., P.O. Box 99
Ventura, CA 93002-0099
(805) 648-1030 (facsimile)

To CAPS : Community Access Partners of San Buenaventura, Inc.
Todd Thayer, Executive Director
P.O. Box 6249
Ventura, CA 93006-06249

and, when addressed in accordance with this paragraph, will be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices will be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this paragraph.

27. DISPUTES AND REMEDIES.

27-1 Claims, disputes, and other matters in question between the Parties to this Agreement, arising out of or relating to this Agreement or the breach thereof, must be resolved by the following procedure:

27-1.1 A determination by CITY's Representative within two (2) weeks after receiving the dispute;

27-1.2 If unresolved within thirty (30) days, then CITY's Director of Parks, Recreation and Community Partnerships, or designee, will make a final determination;

27-1.3 If unresolved within thirty (30) days, the parties may, but are not required, to mediate any remaining dispute;

27-1.4 If unresolved, then the matter may be appealed to a court of law in

Ventura County.

27-2 Pending a final resolution of any dispute, CAPS will continue to diligently perform its obligations under this Agreement.

27-3 The Parties' rights and remedies under this Agreement are in addition to any other rights and remedies provided by law.

28. AUDIT AND ACCESS TO RECORDS. CAPS will maintain records and other evidence of all expenses incurred in the performance of this Agreement for a period of three (3) years after completion. CITY or any of its duly authorized representatives will, for the purpose of audit and examination, have access to and be permitted to inspect such records. For purposes of audit, the date of completion of the Agreement will be the date this Agreement terminates.

29. INDEPENDENT CONTRACTOR. CAPS its employees, agents, and representatives, will act as independent contractors while performing the SCOPE OF SERVICES and will have control of its work and the manner in which it is performed, except as is otherwise provided herein. CAPS will be free to contract for other services performed during the term of this Agreement. CAPS is not an agent or employee of CITY and is not entitled to participate in any pension plan, insurance, bonus or similar benefits CITY provides for its employees.

30. ASSIGNABILITY. CAPS will not assign this Agreement without CITY's prior written approval.

31. SUCCESSORS. All the terms, conditions and covenants of this Agreement will inure to the benefit of and be binding upon the Parties' successors and assigns. The provisions of this paragraph will not be deemed as a waiver of any of the conditions against assignment as set forth in paragraph 30.

32. ENTIRE AGREEMENT. This Agreement, and its Attachments, sets forth the Parties'

entire understanding. There are no other understandings, terms or other agreements expressed or implied, oral or written.

33. **MODIFICATION.** No alteration, change or modification of the terms of the Agreement will be valid unless made in writing and signed by both Parties hereto and approved by appropriate action of CITY. The City Council may exercise this authority on behalf of CITY.

34. **ACCEPTANCE OF FACSIMILE SIGNATURES.** The Parties agree that agreements ancillary to this Agreement and related documents to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission. Such facsimile signature will be treated in all respects as having the same effect as an original signature.

35. **TAXPAYER IDENTIFICATION NUMBER.** CAPS will provide CITY with its Taxpayer Identification Number.

36. **WAIVER.** A waiver by any party of any breach of any term, covenant, or condition contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement whether of the same or different character. The payment or acceptance of fees for any period after a default will not be deemed a waiver of any right or acceptance of defective performance.

37. **SEVERABILITY.** If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect.

38. LAWS AND REGULATIONS. CAPS is responsible for complying with any and all applicable Federal, State, County, and Municipal laws and regulations and the conditions of any required licenses and permits before entering into this Agreement. Such compliance will be at CAPS's sole cost.

39. RULES OF CONSTRUCTION. The Parties acknowledge and agree that they have negotiated this Agreement at arm's length over a considerable period of time and that each Party had the opportunity to independently review this Agreement with legal counsel. Accordingly, this Agreement will be construed simply, as a whole, and in accordance with its fair meaning; it will not be interpreted strictly for or against either Party.

40. HEADINGS. The headings in this Agreement are included principally for convenience and will not by themselves affect the construction or interpretation of any provision in this Agreement, nor affect any of the rights or obligations of the parties to this Agreement.

41. TIME IS OF ESSENCE. Time is of the essence for each and every provision of this Agreement.

42. INTERPRETATION; VENUE. This Agreement and its performance will be governed, interpreted, construed and regulated by the laws of the State of California. Exclusive venue for any action involving this Agreement will be in Ventura County.


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IN WITNESS WHEREOF the Parties hereto have executed this Agreement the day and year first hereinabove written.

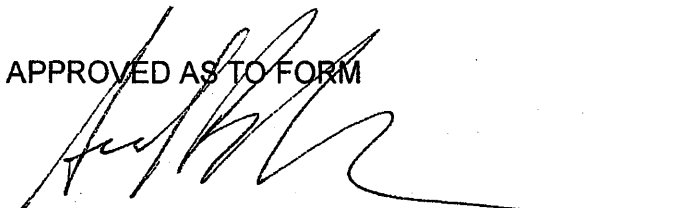
CITY OF SAN BUENAVENTURA, a
chartered city and municipal corporation


Bill Fulton, Mayor


COMMUNITY ACCESS PARTNERS OF
SAN BUENAVENTURA, INC., a California
non-profit corporation


Todd Thayer, Executive Director

Secretary

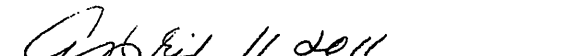
APPROVED AS TO FORM


Ariel Pierre Calonne, City Attorney

ATTEST:


Elaine Preston, Acting City Clerk

Authority:


Council Minute Order Date