



City of Palo Alto

City Council Staff Report

(ID # 10396)

Report Type: Consent Calendar

Meeting Date: 6/24/2019

Summary Title: Approval to Extend the Term of Contract with Midpen Media Center for PEG Access Support Services

Title: Approval of Amendment Number 3 to Contract Number C12142180 Between the City of Palo Alto (on Behalf of the Joint Powers Board) and Midpen Media Center for Public, Education and Government (PEG) Access Channel Support Services to Extend the Term to December 31, 2019

From: City Manager

Lead Department: Administrative Services

Recommendation

Staff recommends that the City Council approve Amendment No. 3 (Attachment A) to Contract No. C12142180 between the City of Palo Alto, representing the Cable Joint Powers communities, and Midpen Media Center to extend the existing public, education and government (PEG) access support services agreement for 6-months to December 31, 2019, to allow time to complete the new arrangement for the use of PEG fees.

Background

A Joint Powers Agreement (JPA agreement) was entered into by the cities of Palo Alto, East Palo Alto, and Menlo Park, the Town of Atherton, and San Mateo and Santa Clara counties for the purpose of obtaining cable television services within these jurisdictions (only portions of the counties are covered). The JPA agreement gives Palo Alto the sole authority to act on behalf of the Joint Powers members and describes the scope of that authority.

The City of Palo Alto's Cable Television Ordinance provides that the City may designate a nonprofit entity to operate the Joint Powers' PEG channels and provide PEG access support services. Midpen Media Center (formerly Mid-Peninsula Access Corporation) has served in this capacity since the early 1990's. In this role, Midpen Media Center administers the Joint Powers' seven PEG channels, broadcasts local community programs, provides gavel-to-gavel coverage of local government meetings, offers video production classes and workshops to community members, and provides local election coverage. Palo Alto forwards PEG fee revenues from franchise holders (currently AT&T and Comcast) to Midpen Media Center in support of these services. PEG revenue, for all of the Joint Powers collectively, totals approximately \$325,000 annually or 88 cents per subscriber per month.

A Cable Franchise and PEG Fee Audit (issued in May 2016) identified that Midpen Media Center had been using PEG fees for operating expenses, rather than solely for capital expenses, which is the only use permitted by federal law. The Council directed staff to work with Midpen Media Center to correct this practice, preferably in a way that enables Midpen Media Center to continue operations. Staff identified as a viable option the use of PEG fees to purchase Midpen Media Center's video production and training facility at 900 San Antonio Road in Palo Alto.

On January 28, 2019, the Council directed staff to proceed to negotiate the necessary agreements for the purchase of Midpen Media Center's facility, using PEG fees ([CMR 9804](#)). The Council also directed staff to negotiate a new agreement between the City of Palo Alto, on behalf of the Joint Powers, and Midpen Media Center for PEG access channel support services that will conform to the terms of the facility purchase.

Discussion

Following Council direction, the City retained outside legal counsel to assist in the preparation of the necessary agreements. While working through this process, staff identified several complexities to a potential purchase. Under the existing JPA agreement, the Joint Powers are a "joint action committee", not a separate legal entity. Neither the joint action committee nor Palo Alto as the administering agency is authorized under the current agreement to acquire real property on behalf of the Joint Powers. To allow for the joint acquisition of property, it would be necessary to form a new Joint Powers Authority, as a separate legal entity, with the power to acquire and hold title to real property. This would require the Joint Powers to develop and negotiate a new agreement that must be approved by the legislative bodies of each member agency. This approach would add formality and additional requirements to the Joint Powers entity under the authorizing state statute and could prove to be a lengthy process to finalize. Staff, working in conjunction with the City Attorney's Office, has initiated discussions with the Joint Powers members on this topic.

In lieu of the creation of a new Joint Powers Authority, staff is also exploring alternatives that may be less complex with the same core intent. One such alternative involves JPA member agencies using their PEG revenue to pay for their own PEG capital projects, such as a Council chambers renovation project. The member agency would then annually provide funds to Midpen Media Center as a grant, providing a stream of money to help close the gap in its operating budget without the same restrictions that apply to the use of PEG revenue. This alternative would not involve the purchase and sale of the Midpen Media Center building. Over the next several months staff will work with the Joint Powers to come to consensus on the most efficient path forward.

In the meantime, to be prepared to implement either approach, staff continues to work with the City Attorney's Office and outside counsel to prepare a Letter of Intent (LOI) outlining the material business terms that would serve as the basis for the preparation of the formal facility purchase and use agreements.

Staff recommends that the Council approve a 6-month extension to the existing PEG access support services agreement with Midpen Media Center, to December 31, 2019, to allow time to continue evaluating the most effective way to proceed and negotiate the associated agreements, make any necessary changes to the structure of the JPA, and prepare a new PEG access support services agreement that conforms to the terms of the new arrangement for the use of PEG fees.

Resource Impact

The extension of the Media Center agreement as recommended does not have a financial impact. The JPA receives PEG fee revenue of approximately \$325,000 annually and franchise fee revenue of approximately \$1.8 million annually from cable franchise holders. PEG fee revenue is being held in a separate account pending completion of the new arrangement for its use.

Policy Implications

The recommendations in this report are consistent with Council direction to restrict the use of PEG fees to capital costs while preserving the Media Center’s operational budget funding.

Attachments:

- Attachment A: Amendment No 3 Midpeninsula Community Media Center

Attachment A

**AMENDMENT NO. 3 TO CONTRACT NO. C12142180
BETWEEN THE CITY OF PALO ALTO ON BEHALF OF THE JOINT POWERS AND THE
MIDPENINSULA COMMUNITY MEDIA CENTER, INC.
FOR PUBLIC, EDUCATION AND GOVERNMENT ACCESS CHANNEL SUPPORT SERVICES**

This Amendment No. 3 to Contract No. C12142180 ("Contract") is entered into June 24th, 2019, by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and MIDPENINSULA COMMUNITY MEDIA CENTER, INC., a California nonprofit corporation, located at 900 San Antonio Rd, Palo Alto, CA 94303 ("CONSULTANT").

RECITALS

- A. The Contract was originally entered into between the parties on July 1st, 2011 for the provision of public, education and government access channel support services.
- B. On March 12, 2018 Amendment No. 1 was issued to extend the contract term to December 31, 2018
- C. On December 11, 2018 2018 Amendment No. 2 was issued to extend the term to June 30, 2019
- B. CITY intends to extend the term to December 31, 2019.
- C. The parties wish to amend the Contract.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Amendment, the parties agree:

SECTION 1. Section 2 TERM is hereby amended to read as follows:

"SECTION 2. TERM. The term of this Agreement shall be from the date of its full execution through December 31, 2019 unless terminated earlier pursuant to Section 19 of this Agreement."

SECTION 2. Except as herein modified, all other provisions of the Contract, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

(Signature block on Following Page)

CITY OF PALO ALTO

**MIDPENINSULA COMMUNITY MEDIA
CENTER, INC.**

DocuSigned by:
Susan Purdy Pelosi
247E365D839A44D
Susan Purdy Pelosi

President

APPROVED AS TO FORM: