



# City of Palo Alto

## City Council Staff Report

(ID # 10864)

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**Report Type: Consent Calendar**

**Meeting Date: 12/16/2019**

**Summary Title: Approval to Extend Term of Contract with Midpen Media Center**

**Title: Approval of Amendment Number 4 to Contract Number C12142180 Between the City of Palo Alto (on Behalf of the Joint Powers) and Midpeninsula Community Media Center, Inc., for Public, Education and Government (PEG) Access Channel Support Services to Extend the Term to June 30, 2020**

**From: City Manager**

**Lead Department: Administrative Services**

### **Recommendation**

Staff recommends that the City Council approve Amendment No. 4 (Attachment A) to Contract No. C12142180 between the City of Palo Alto, representing the Cable Joint Powers communities, and Midpeninsula Community Media Center, Inc., to extend the existing public, education, and government (PEG) access support services agreement for 6-months to June 30, 2020, to allow time to complete the new arrangement for the use of PEG fees.

### **Background**

In 1983 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. Midpeninsula Community Media Center, Inc. (Midpen Media Center) 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 has been forwarding PEG fee revenues from franchise holders (currently AT&T and Comcast) to Midpen Media Center in

support of these services. PEG revenue, for all the Joint Powers collectively, totals approximately \$300,000 in 2019 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. On January 28, 2019, staff recommended the option of using PEG fees to purchase Midpen Media Center's video production and training facility at 900 San Antonio Road in Palo Alto. The Council directed staff to proceed with the necessary agreements for the purchase of the facility ([CMR 9804](#)).

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 negotiate a new agreement that must be approved by the legislative bodies of each member agency. This would be a lengthy process to finalize.

Second, the Joint Powers has heightened concerns about the stability of PEG fees. PEG fees continue to decline, from a high of \$347,000 per year in calendar year 2014 to about \$300,000 in 2019. This trend is expected to accelerate as more and more subscribers "cut the cord" and move away from traditional cable to Internet delivered service. The Joint Powers considers it risky to commit to a long-term (15 to 20 year) facility purchase with uncertainty surrounding the future of PEG revenue.

Finally, there have been recent legal changes that could impact cable franchise revenue, PEG channel capacity and facilities. On August 2, 2019, the FCC released new rules that rewrite and expand the Cable Act's "franchise fee" definition to include non-monetary franchise obligations. Pending FCC actions could force the Joint Powers to pick between continuing to receive franchise revenue and preserving access to PEG channel programming. Palo Alto has joined a coalition of local governments to oppose the FCC's proposals and appeal its recent ruling.

Given these concerns, staff informed Council that it would be considering alternatives to the facility purchase in June 2019 ([CMR 10396](#)).

## **Discussion**

Staff is in the process of finalizing an alternative proposal that does not involve the purchase and sale of the Midpen Media Center facility. Under the proposed alternative, PEG revenue would be used to pay for the PEG-related capital projects of individual Joint Powers members, such as a Council chambers renovation project. The member agencies that utilize the PEG

funds would then provide a grant to Midpen Media Center in the amount of its total PEG-related capital project expenditures. The grant funds would be unrestricted and could be used by Midpen Media Center for both its operating and capital needs.

Staff plans to return to Council in early 2020 to provide more detail about this arrangement and to seek approval of the necessary agreements. In the meantime, staff recommends that the Council approve a 6-month extension to the existing PEG access support services agreement with Midpen Media Center, to June 30, 2020, to allow time to finalize the new arrangement for use of PEG fees.

### **Stakeholder Engagement**

In June 2019, staff met with JPA Working Group members and their attorneys to reach consensus on the alternative option. In July 2019, staff reviewed the alternative option with Midpen Media Center's Board of Directors and obtained its support. Since that time, staff has been working with both parties to finalize the details of the arrangement and to develop the necessary agreements and obtain any needed board approvals.

### **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 \$300,000 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.

### **Environmental Review**

This is not a project for purposes of the California Environmental Quality Act (CEQA).

### **Attachments:**

- Attachment A: Amendment No. 4 to Contract No. C12142180

**AMENDMENT NO. 4 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. 4 to Contract No. C12142180 ("Contract") is entered into December , 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 entered into between the parties for the provision of public, education and government access channel support services.
- B. CITY intends to extend the term to June 30, 2020.
- 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 June 30, 2020 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.

**CITY OF PALO ALTO**

**MIDPENINSULA COMMUNITY MEDIA CENTER,  
INC.**

APPROVED AS TO FORM: