



# City of Palo Alto

## City Council Staff Report

(ID # 11006)

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**Report Type: Action Items**

**Meeting Date: 1/27/2020**

**Summary Title: Approval of Agreements with Midpen Media Center and Cable Joint Powers & Budget Amendment**

**Title: Approval of: 1) Agreement Between the City of Palo Alto Representing the Cable Joint Powers and Midpeninsula Community Media Center, Inc. for Public, Education, and Government Access (PEG) Channel Support Services; 2) Memorandum of Understanding (MOU) Between the Cable Joint Powers Covering the use of PEG Fees; 3) Contribution Agreement With Midpeninsula Community Media Center, Inc. in the Amount of \$511,536, Equivalent to PEG Fees Used for Council Chambers Upgrade Project; and 4) Amendment to the Fiscal Year 2020 Budget Appropriation in the Technology Fund**

**From: City Manager**

**Lead Department: Administrative Services**

### **Recommendation**

Staff recommends that the City Council:

- 1) Approve a five-year agreement between the City of Palo Alto, representing the Cable Joint Powers (cities of Palo Alto, East Palo Alto, and Menlo Park, the Town of Atherton and portions of San Mateo and Santa Clara counties), and Midpeninsula Community Media Center, Inc., for public, education, and government (PEG) access channel support services (Attachment A).
- 2) Approve and authorize the City Manager to execute a Memorandum of Understanding (MOU) between the Cable Joint Powers covering the use of PEG support fees paid by Comcast, AT&T, and any other State Franchisee (Attachment B).
- 3) Approve and authorize the City Manager to execute a contribution agreement between the City of Palo Alto and the Midpeninsula Community Media Center, Inc., in the amount of \$511,536, equivalent to the amount in PEG support fees to be expended by the City on the Council Chambers Upgrade project (Attachment C).

- 4) Amend the Fiscal Year 2020 Budget Appropriation Ordinance (by a 2/3 vote of approval) for the Technology Fund by:
  - a. Recognizing \$511,536 in Revenue from Other Agency for the City Council Chambers Upgrade (TE-19001) capital project; and
  - b. Appropriating \$511,536 for Inter-Agency Expenses for Media Center operations.

### **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 the City of Palo Alto (the City) the sole authority to act on behalf of the Joint Powers communities and describes the scope of that authority. Cable franchise holders provide various forms of compensation (franchise and PEG fees) for the use of the Joint Powers' public rights-of-way.

The City of Palo Alto's Cable Television Ordinance provides that the City may designate a nonprofit entity to administer the Joint Powers' PEG channels and provide PEG access support services. Midpeninsula Community Media Center, Inc. (Midpen Media) has served in this capacity since the early 1990's. In this role, Midpen Media 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 revenue from franchise holders (currently AT&T and Comcast) to Midpen Media in support of these services. PEG revenue, for all the Joint Powers collectively, will be approximately \$300,000 in calendar year 2019. The existing agreement with Midpen Media Center expires on June 30, 2020.

A Cable Franchise and PEG Fee Audit (issued in May 2016) identified that Midpen Media had been using PEG revenue 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 to correct this practice, preferably in a way that enables Midpen Media to continue operations. On January 28, 2019, staff recommended the option of using PEG fees to purchase Midpen Media'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, using PEG fees ([CMR 9804](#)).

While working through this process, staff identified several concerns related to the potential facility purchase: First, 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 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 complex and a lengthy process to finalize.

Second, the Joint Powers have 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. Under the new rules, the value of non-monetary cable franchise obligations is considered franchise fees and counts against the 5 percent franchise fee cap. The FCC deferred action on determining whether or not PEG channel capacity can be deducted from franchise fees under this ruling. 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 ([CMR 10396](#)).

### **Discussion**

Staff recommends that the City Council consider proceeding with the proposed alternative instead of the facility purchase at this time. Under this alternative, the Joint Powers would use PEG revenue to pay for the PEG-related capital projects of individual members, such as a Council chambers renovation project. The member agency would provide a grant to Midpen Media in the amount of its total PEG-related expenditures for the project. The granted funds would be unrestricted and could be used by the Midpen Media for both its operating and capital needs.

At the present time, two members have budgeted PEG-related capital projects: 1) City of Palo Alto Council Chambers Upgrade (TE-19001) project (\$1.7 million budget); and 2) Town of Atherton Council Chambers Building Construction project (\$2.9 million budget). The City of Palo Alto plans to issue a design/build solicitation for its project in 2020. PEG funds can be used for the portion of these projects that enable the Joint Powers to provide for, or upgrade to enhance, the cablecasting of government meetings on the government channels (i.e., broadcast systems including cameras, switchers, captioning and supporting equipment; audio visual systems including speakers, microphones, and supporting infrastructure; broadcast lighting; glare reduction film at windows; blackout shades, etc.). The Town of Atherton Council Chambers Building project is currently underway and will allow the Town to televise its City Council meetings on the government channels. Staff is in the process of determining the total value of the qualifying PEG-related expenditures for both the Palo Alto and Atherton projects.

The City of East Palo Alto may also have a qualifying project in 2021. PEG funds could also be used for Midpen Media PEG capital project needs, if available and not needed for Joint Powers projects.

It is expected that the grants to Midpen Media would be sufficient to address its budget gap for up to 5 years (in an amount of approximately \$300,000 per year). However, this is expected to be a short-term solution since there are a limited number of qualifying Joint Powers' projects. As the PEG-related projects begin to dwindle, the Joint Powers could revisit the Midpen Media facility purchase, as long as PEG fees stay strong and the FCC actions do not significantly impact local PEG channels.

Another option involves using Cable Fund reserves to defray a portion of the Midpen Media's operating costs for several years. However, this is another short-term solution since Cable Fund resources are limited (available balance of \$684,471 as of December 31, 2018) and there is no ongoing source of revenue to replenish Cable Fund reserves.

**Staff recommends that Council approve a new PEG access support services agreement with Midpen Media, on behalf of the Joint Powers, that incorporates this new grant arrangement.** The key terms are discussed below.

#### PEG Services Agreement

*Term:* The new agreement is for a five-year time period.

*Public Channel Administration:* Operate and manage public access channel numbers 27, 28, and 30 for local community programming purposes. Create an inclusive and transparent environment for video programming by the public that fosters free speech and celebrates local achievements, education, cultural exchange, arts appreciation, science and technology, and civic engagement.

*Government Channel Administration:* Operate and manage government access channel numbers 26 and 29 to inform residents about their local government and to provide live unedited coverage of government meetings. These duties include coordinating Joint Powers' member requests for use of the channels, program scheduling, program acquisition, replays of local agency meetings, channel publicity and maintenance of scrolling text.

*Educational Channel Administration:* The two educational access channels numbers 75 and 76 are operated by Stanford University and the Bay Voice Regional Channel consortium. Midpen Media would be called upon to manage these channels on an as needed basis.

*Classes, Facilities, and Equipment:* Manage and maintain production studios, facilities, and equipment to facilitate the dissemination of non-commercial programming on the public channels, the Internet, social media and other platforms. Provide training, workshops, internship opportunities, and technical advice in the creation and executions of productions,

emphasizing the use of new media platforms. Certify students to become community producers to create non-commercial programs for distribution on the local public channels and other appropriate platforms.

*Standard Rates:* The new agreement implements a new set of standard hourly rates that will be used by Joint Powers' communities, schools, non-profits, and small businesses when contracting with Midpen Media for the creation and production of custom videos or for cablecasting government meetings.

*Funding:* Joint Powers' communities will provide individual grants to Midpen Media anytime a member uses PEG fee revenue for its own PEG capital project needs. The grant will be in the same amount as the member's PEG capital expenditures. Joint Powers' members may agree to grant money to Midpen Media Center in advance of the receipt of PEG fee revenue. PEG funds can also be used to reimburse Midpen Media for its PEG capital requirements, when not needed for Joint Powers' PEG-related projects.

*PEG fees:* The Joint Powers receives PEG fees of 88 cents per subscriber per month, or approximately \$300,000 in 2019. The member share of 2019 PEG revenue is: City of Palo Alto \$144,000; City of Menlo Park \$81,000; City of East Palo Alto \$30,000; Town of Atherton \$24,000; County of Santa Clara \$15,000; and County of San Mateo \$6,000. Following the 2016 Cable Franchise and PEG Fee Audit, PEG revenue has been placed in a restricted account managed by Midpen Media. These funds have been accumulating and total \$1,065,701 as of November 7, 2019. The member share of the restricted account is: City of Palo Alto \$511,536; City of Menlo Park \$287,739; City of East Palo Alto \$106,570; Town of Atherton \$85,257; County of Santa Clara \$53,285; and County of San Mateo \$21,314. Midpen Media will continue to hold the PEG restricted account and it will be used (drawn down) to fund Joint Powers' communities PEG-related capital projects. All subsequent PEG fee revenue will be held in the City of Palo Alto Cable Fund, on behalf of the Joint Powers, and will be used after the money in the PEG restricted account is exhausted.

#### Memorandum of Understanding

Staff recommends that the Council approve a Memorandum of Understanding (MOU) between the Cable Joint Powers communities covering the new arrangement for the use of PEG fees. Under this arrangement, individual Joint Powers members will use PEG fee revenue for the acquisition or improvement of their own PEG access equipment and facilities. When this happens, the member agency agrees to provide a grant to Midpen Media in the same amount as the PEG-related capital expenditures. The MOU includes an "Authorization Form" that will be approved by the City of Palo Alto, as administrator of the Cable JPA, and the member agency. This form will document the member request for use PEG fees and the agreement to contribute a matching sum to Midpen Media. Although Comcast and AT&T are required to remit all Joint Powers' PEG fee payments directly to the City of Palo Alto, each jurisdiction has a share of the revenue (based on each member's pro rata share of total JPA area cable subscribers). The Joint Powers members have agreed to pool the PEG revenue to support qualifying projects that may

exceed an individual member's share of the revenue. Palo Alto will maintain an accounting of each member's share of the funds to facilitate the prioritization and availability of funds for all jurisdictions with qualifying PEG-capital projects. The City of Menlo Park City and the Town of Atherton approved the MOU in December 2019. The remaining members will bring the MOU to their governing bodies for approval following Palo Alto City Council approval.

#### City of Palo Alto Grant Agreement

Staff recommends that the Council authorize the City Manager to execute a Contribution Agreement to provide Midpen Media grant funding in the amount of \$511,536. The proposed grant amount represents the City's share of the restricted PEG account. Although it is expected that the City's qualifying PEG-related expenditures for the Council Chambers Audio/Video Upgrade Capital Improvement (CIP) Project will exceed this amount, the grant allows the City to provide some amount of funding to Midpen Media in advance of obtaining MOU approval from all Joint Powers' jurisdictions (anticipated to be about a 3-month process). In order to support Midpen Media's 2020 operating budget and its cash flow requirements, staff proposes issuing the grant prior to receipt of the PEG fee payment.

#### **Stakeholder Engagement**

In June 2019, staff met with JPA Working Group members and their attorneys to reach consensus on an alternative to the Midpen Media building acquisition by the JPA, which resulted in the approach reflected in the proposed MOU. In July 2019, staff reviewed this option with Midpen Media's Board of Directors and obtained its support. Following Palo Alto City Council approval of the proposed MOU, it will be forwarded to each Joint Powers' jurisdiction for approval. The City of Menlo Park City and the Town of Atherton approved the MOU in December 2019. The remaining members will bring the MOU to their governing bodies for approval following Palo Alto City Council approval.

#### **Resource Impact**

The JPA receives PEG fee revenue of approximately \$300,000 annually. The new arrangement for the use of PEG fees would not have any resource impact on the City. The qualifying portions of the City's budgeted Council Chambers Upgrade (TE-19001) capital project would be paid for with PEG fees and funding from the Technology Fund currently appropriated to the project would be used to fund the grant to Midpen Media to use for operating expenses. The current amount recommended for this transaction is \$511,536. Staff will continue to evaluate the expenses for TE-19001 to determine the full amount eligible to be funded with PEG funds. Staff plans return to Council with another grant request in late 2020 or early 2021. Appropriation of these funds requires a 2/3 super-majority vote, or 5 affirmative votes for the appropriation of these additional funds to be approved.

#### **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 - PEG Services Agreement
- Attachment B - MOU between Cable JPA Members
- Attachment C - Contribution Agreement to Media Center

Attachment A

CONTRACT NO. \_\_\_\_\_

**AGREEMENT 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 AGREEMENT is entered into on \_\_\_\_\_, 2020 (“Effective Date”) by and between the CITY OF PALO ALTO, a California municipal corporation, ON BEHALF OF THE JOINT POWERS (“City”), and the MIDPENINSULA COMMUNITY MEDIA CENTER, INC., a California nonprofit corporation (“Midpen Media”), in reference to the following facts and circumstances:

**RECITALS:**

1. The City is a party to the Amended and Restated Joint Exercise of Powers Agreement, dated June 9, 2009, and as hereinafter may be amended (“JPA Agreement”), by and between the Cities of Palo Alto, East Palo Alto and Menlo Park, the Town of Atherton and the Counties of San Mateo and Santa Clara (collectively, “Joint Powers” or “JPA”), and is authorized to act on behalf of the JPA members.

2. The City desires to provide support for the use of cable television public, educational, and government (“PEG”) access channels provided pursuant to federal, state and City law.

3. Pursuant to the Digital Infrastructure and Video Competition Act of 2006, *codified at* Cal. Util. Code §§ 5800 *et seq.* (“DIVCA”), the California Public Utilities Commission (“CPUC”) has granted separate video franchises to AT&T and Comcast to serve areas that include the jurisdictions of the JPA members. (AT&T, Comcast and any other entity franchised by the CPUC as a video service provider to provide video service within the jurisdictional area of any JPA member is hereinafter referred to individually as “Cable Company” and collectively as “Cable Companies”.)

4. DIVCA permits, and the City’s Cable Television Ordinance No. 4636, adopted May 8, 2000, provides that (A) the City may designate a nonprofit access management entity (“Access Corporation”) to operate and administer PEG access facilities, equipment and channels (“PEG Facilities” or “PEG Facilities and Channels,” as appropriate), (B) certain channel capacity shall be provided for PEG access, and (C) certain ongoing payments shall be made by Cable Companies for PEG Facilities.

5. The City, by City Council Resolution No. 8100, adopted October 22, 2001, has designated the Midpen Media as the Access Corporation to operate and manage the PEG Facilities and Channels.

6. Midpen Media agreed to serve as the Access Corporation designated by the City and to serve the JPA community by providing PEG Facilities, programming and services.

7. Midpen Media has served in such capacity since 2001, through a series of agreements. The term of the current agreement with Midpen Media commenced on July 1, 2011 and will terminate and be superseded by this Agreement upon the execution of this Agreement.

8. The parties desire that Midpen Media continue to serve as the Access Corporation to serve the JPA community by providing PEG Facilities, programming and services.

NOW, THEREFORE, in consideration of the recitals and the following mutual covenants, terms and conditions, the parties agree:

**SECTION 1. TERM OF AGREEMENT; TERMINATION**

1.1 The term of this Agreement is five (5) years, commencing on the Effective Date, unless terminated earlier, as provided in this Agreement.

1.2 A party may terminate this Agreement for convenience, provided that party serves the other party with not less than one hundred eighty (180) days' prior written notice.

**SECTION 2. SCOPE OF SERVICES**

2.1 In exchange for agreeing to designate Midpen Media as the Access Corporation and for the funding provided to Midpen Media pursuant to this Agreement, Midpen Media shall provide the services set forth in Sections 2.2-2.5.

2.2 With respect to the JPA's seven Public, Education and Government (PEG) access channels, Midpen Media shall:

(A) Manage production studios, facilities and equipment to facilitate the dissemination of non-commercial programming for the public benefit within the JPA-area communities. Programming distribution shall primarily occur on the PEG channels, and shall include the Internet, social media and other platforms to be determined.

(B) Establish, post, and maintain reasonable operating times and dates to ensure access to studios, facilities, and equipment by the public.

(C) Develop policies, procedures, and cost-recovery fees for the use and operation of PEG Facilities and channels that are consistent with the lawful purpose of PEG access, and file such policies and procedures with the City.

(D) Operate and administer the PEG Facilities and Channels in compliance with all applicable federal, state and City laws, rules, and regulations, and in compliance with the California Public Utility Commission (CPUC) video service franchise agreements.

(E) Provide training, internship opportunities, and technical advice to JPA-area residents in video production and programming.

(F) Provide, upon special request and mutually agreed upon costs, additional video production services.

(G) Create an inclusive and transparent environment for video programming by the public that fosters free speech and celebrates local achievements, education, cultural exchange, arts appreciation, science and technology, and civic engagement.

(H) Provide video production and programming opportunities for youth that emphasize new media platforms.

(I) Provide for the playback/cablecasting of programs on the PEG access channel(s). Midpen Media shall cablecast, at a minimum, an average of fifty-six (56) hours per week on each channel of local original, replayed, and outside video-produced programming.

(J) Provide regular maintenance and repair of all video equipment purchased with monies received pursuant to this Agreement or received pursuant to City law and the CPUC video service franchises.

(K) Support special needs groups, including but not limited to the hearing impaired, in program production through training and other means.

(L) Actively promote the use and benefit of the PEG Facilities and Channels to cable subscribers, the general public, and PEG access users in the JPA-area communities.

(M) Undertake other PEG access programming activities and services as may be deemed appropriate by the City or Midpen Media and consistent with the obligation to facilitate and promote access programming and to provide non-discriminatory access.

2.3 With respect to the public access (free speech) channel(s), Midpen Media shall:

(A) Operate and manage three public access cable channel(s) for the non-commercial benefit of the community.

(B) Provide training and/or certification in the use of equipment, channels, and services for members of the JPA communities for non-commercial programming purposes on a non-discriminatory basis pursuant to the operating rules of Midpen Media.

(C) Provide access to facilities, equipment, channels and services to all who satisfactorily complete training classes taught by Midpen Media on a cost recovery basis.

2.4 With regard to the two educational access channel(s):

(A) One educational access channel is currently managed and operated by Stanford University, and the other is currently managed and operated under the Bay Voice Regional Channel consortium. The parties intend that these entities shall continue to operate their respective channels, until or unless the City otherwise directs Midpen Media to operate and manage those channels.

2.5 With regard to the governmental access channel(s), Midpen Media shall:

(A) Operate and manage two governmental access channel(s) to inform residents about their local government activities and to encourage civic engagement. Services shall include, but are not limited to, administrating, coordinating, scheduling, and assisting JPA members' requests for use of those channel(s).

(B) Be responsible for program scheduling, the selection and acquisition of outside source programming, channel digital signage, replays of local agency meetings, channel publicity, and publication and distribution of a governmental access channel(s) schedules.

(C) In consultation with the JPA members, develop guidelines for the scheduling and prioritization of governmental access programming requests.

(D) Midpen Media shall charge JPA members for cablecasting of local agency meetings and other program production services, in accordance with the schedule of rates attached hereto as Exhibit "A", which may be updated by Midpen Media on an annual basis in consultation with the JPA members.

### **SECTION 3. OPEN ACCESS TO CHANNELS**

3.1 Midpen Media shall provide access to the PEG access channel(s) to eligible users regardless of their viewpoint, subject to FCC rules and regulations and other applicable laws. Neither the City, the Cable Companies, nor Midpen Media shall have the authority to control the content of programming placed on the public access channel(s) so long as such programming is lawful. Nothing in this Agreement shall be interpreted or construed to prevent Midpen Media, the City, or a Cable Company from producing or sponsoring programming, underwriting programming, or engaging in activities designed to promote the production of certain types of programming or use by targeted groups, consistent with applicable laws and rules governing the use of PEG channels. Midpen Media may promulgate and enforce policies and procedures that are designed to promote the local use of the channel(s) and make the programming accessible to the viewing public, consistent with such appropriate time, manner, and place regulations that provide for and promote the use of PEG Facilities and Channels.

### **SECTION 4. INDEMNITY; LIMITATION OF LIABILITY**

4.1 Midpen Media shall indemnify and defend the City, the JPA members, and their elected and appointed officers and employees (an "Indemnified Party" or collectively "Indemnified Parties"), against any third-party claim (a) arising or resulting from or out of the

failure to comply with any applicable laws, rules, regulations or other requirements of local, state or federal authorities, or (b) of libel, slander, invasions of privacy, or infringement of common law or statutory copyright, which claim, directly or indirectly, results from Midpen Media's use, or Midpen Media's supervision of use by others, of channels, funds, equipment, facilities or staff granted under this Agreement, City law or the Cable Companies' CPUC video service franchises. Midpen Media shall pay any costs or damages finally awarded by a court of competent jurisdiction or agreed upon in settlement. Midpen Media's obligations under this Section are contingent on Midpen Media receiving prompt notice of any claim from the applicable Indemnified Party, sole control of the defense and settlement of any dispute (provided that an Indemnified Party may participate in such defense with counsel of its own choice at its own cost), and reasonable cooperation, at Midpen Media's sole expense, from the Indemnified Parties.

4.2 IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MIDPEN MEDIA'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED \$1,000,000. THIS SECTION DOES NOT LIMIT EITHER PARTY'S LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE.

## **SECTION 5. COPYRIGHTS**

5.1 Before Midpen Media cablecasts video transmissions, Midpen Media shall require each person submitting, or responsible for submitting, material for cablecasting (a "Producer") to agree, in writing, as follows:

(A) Each Producer shall obtain the rights to all materials that are cablecast and all clearances from broadcast stations, networks, sponsors, music licensing organizations, and without limiting the foregoing, any and all other persons as may be necessary to transmit the Producer's program material over the PEG access channels that are operated and managed by Midpen Media; and

(B) Each Producer shall indemnify and hold harmless Midpen Media and the City, and their officers, agents, employees and volunteers from and against any and all claims, demands, or causes of action, including, without limitation, all liabilities, losses and damages, arising out of or resulting from the use or cablecasting of the Producer's materials over the PEG access channel(s).

5.2 Midpen Media shall maintain for the term of the applicable statute of limitations copies of all Producer agreements required by Section 5.1 hereof, and shall make such Producer agreements available for City inspection on reasonable notice from the City.

5.3 Midpen Media 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 such person(s) who produces said programming.

#### **SECTION 6. DISTRIBUTION RIGHTS**

6.1 Midpen Media shall require that all programs produced with funds, equipment, facilities, or staff granted under this Agreement shall be distributed on the channels whose use is authorized by this Agreement. This paragraph shall not be interpreted to restrict other distribution (beyond distribution on channels authorized by this Agreement), so long as such other distribution is consistent with any pertinent guidelines established in the PEG access operating policies and procedures and with applicable law.

#### **SECTION 7. EQUIPMENT AND FACILITIES**

7.1 Midpen Media shall be responsible for maintenance of all equipment and facilities owned, leased or loaned to it under this Agreement or purchased with funds provided pursuant to this Agreement, City law or the Cable Companies' CPUC video service franchises.

7.2 Midpen Media shall own all equipment and facilities acquired by it and purchased with funds received pursuant to this Agreement, City law or the Cable Companies' CPUC video service franchises. Upon the termination of this Agreement, any such equipment or facilities purchased with funds received pursuant to this Agreement, City law or the Cable Companies' CPUC video service franchises shall become the property of the City.

7.3 Midpen Media shall, upon its dissolution and subject to the approval of the City, transfer all of its assets consisting of City-funded or Cable Company-funded equipment and facilities and the proceeds, if any, to the City, or at the City's option, to such entity or entities designated by the City to manage access, provided that any such entity or entities shall at the time of transfer qualify as a tax exempt organization(s) under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue Law).

#### **SECTION 8. INSURANCE**

8.1 Midpen Media, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "B", attached hereto and made a part hereof, and as follows in 8.1(A). Midpen Media and its contractors, if any, shall obtain a policy endorsement naming CITY as additional insured under any general liability or automobile policy or policies.

(A) Cablecasters' Errors and Omissions Insurance in an amount not less than \$1,000,000, each occurrence and aggregate covering the content of productions which are cablecast on the access channel(s) in, at a minimum, the following areas: libel and slander;

copyright or trademark infringement; infliction of emotional distress; invasion of privacy; plagiarism; and the misuse of musical or literary materials.

8.2 All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A-VII or higher which are authorized to transact insurance business in the State of California. Any and all contractors of Midpen Media retained to perform services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming the CITY as additional insured under such policies as required above.

8.3 Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this agreement. The certificates will be subject to the approval of the City's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification. Midpen Media shall provide the Purchasing Manager written notice of the cancellation or modification within two (2) business days of Midpen Media's receipt of such notice. Midpen Media shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Chief Procurement Officer during the entire term of this Agreement.

8.4 The procuring of such required policy or policies of insurance will not be construed to limit Midpen Media's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, Midpen Media will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

## **SECTION 9. NONDISCRIMINATION**

9.1 Midpen Media shall not discriminate against any person, employee or applicant for employment or subcontractor on the basis of race, skin color, gender, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, housing status, marital status, familial status, weight or height of such person.

9.2 Midpen Media shall not discriminate in the delivery of services on the basis race, skin color, gender, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, housing status, marital status, familial status, weight or height of such person.

## **SECTION 10. INDEPENDENT CONTRACTOR**

10.1 It is understood and agreed that Midpen Media is an independent contractor and that no relationship of principal and agent or employer and employee exists between the City and Midpen Media. If in the performance of this Agreement any third persons are employed by

Midpen Media, such persons shall be entirely and exclusively under the control, direction and supervision of Midpen Media. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment shall be determined by Midpen Media, and the City shall have no right or authority over such persons or terms of employment.

**SECTION 11. ASSIGNMENT**

11.1 Neither this Agreement, nor any interest herein, nor control of Midpen Media shall be assigned, encumbered or transferred by Midpen Media or its current board or members to any other person, either directly or indirectly, except as may be expressly authorized in writing by the City prior to any such assignment, encumbrance or transfer.

**SECTION 12. ANNUAL REPORTS**

12.1 Prior to June 30 of each fiscal year, Midpen Media shall submit to the City an annual report for the preceding fiscal year (January 1 – December 31), which shall contain, at a minimum, the following information:

- (A) Statistics on programming and services provided;
- (B) Current and complete listing of Midpen Media’s Board of Directors and officers;  
and
- (C) Year-end financial statements, including a balance sheet, and sources and uses of funds statement and an income statement.

**SECTION 13. RECORDS**

13.1 Midpen Media shall maintain all necessary books and records, in accordance with generally accepted accounting principles.

13.2 Midpen Media shall produce audited financial statements every three years.

13.3 Upon receipt of a reasonable request of the City, Midpen Media shall, at any time during its normal business hours, make available to the City or its agents or representatives all of its records with respect to all matters covered by this Agreement.

**SECTION 14. FUNDING AND OTHER RESOURCES**

14.1 Subject to, and consistent with, the terms and conditions of this Agreement, the City agrees to make the following funds and other resources available to Midpen Media:

(A) The City agrees to permit Midpen Media to manage that certain channel capacity that is dedicated for PEG access use by the Cable Companies for PEG access programming purposes.

(B) Funding. Background: In accordance with DIVCA, City law, and the federal Cable Communications Policy Act of 1984, as amended, 47 U.S.C. §§ 521 *et seq.* (“Cable Act”), AT&T, Comcast and any other Cable Company provide ongoing funding to the JPA members, equivalent to \$0.88 per residential subscriber per month (“PEG Fee”). Under the JPA Agreement, City collects and oversees expenditures of the PEG Fees on behalf of the JPA members. In past agreements, City forwarded all PEG Fees to Midpen Media for use in a manner consistent with federal law, which allows PEG Fees to be used only for capital costs associated with PEG access facilities and equipment. Since 2016, PEG Fee revenue has been placed in a restricted account managed by Midpen Media (the “PEG Fee Account”). Since that time, although Midpen Media has used the PEG Fees for some minor capital improvements, these funds have been accumulating and amounts to \$1,065,701 as of November 7, 2019. In order to make PEG Fees available for individual JPA members’ PEG capital projects, to provide Midpen Media with funding for its PEG programming, and to comply with federal requirements related to PEG Fees, the parties agree that:

1) Until the PEG Fee Account is exhausted as provided herein, Midpen Media will continue to hold the PEG Fee Account, which will be available to fund JPA members’ individual PEG-related capital projects on a draw-down basis. City shall authorize expenditure of funds from the PEG Fee Account for individual JPA members’ PEG-eligible capital projects. Upon being presented with City-authorization, Midpen Media shall, within forty-five (45) days, remit the authorized amount from the PEG Fee Account to the individual JPA member.

2) Anytime a JPA member receives a payment from the PEG Fee Account as described above, it in turn shall pay to Midpen Media an equivalent amount of money from its local funds (the source of which will be determined by the individual JPA member but must be unrestricted funds), no later than forty-five (45) days after it receives the PEG Fees from City, or, in the case of an advance, no later than 45 days after the final accounting for the project is completed, which money may be used without restriction to support PEG programming.

3) Midpen Media will continue to hold the PEG Fee Account until it has been depleted through the expenditure draw-down process described above. All PEG Fee revenue received after the execution date of this Agreement will be held in the City of Palo Alto Cable Fund, on behalf of the Joint Powers, and will be used for PEG-related capital expenditures by the JPA members or Midpen Media after the money in the PEG Fee Account is exhausted.

4) City may authorize reimbursement to Midpen Media for any approved actual and documented PEG-eligible capital expenditures it may incur, upon application for such by Midpen Media.

14.2 The provisions of this Agreement, including this Section 14, are subject to the fiscal provisions of the City Charter and the City Code.

**SECTION 15. ANNUAL PLAN AND BUDGET**

15.1 On or before December 15 of each fiscal year in which this Agreement is in effect, Midpen Media shall provide to the City an annual plan and budget, outlining the activities and programs that are planned for the following fiscal year with funds and channel(s) received from the City. Such plan shall contain budget assumptions, programmatic activities, funding sources, and expenses.

15.2 On or before December 31 of each fiscal year, the City may comment upon Midpen Media's annual plan and budget, and Midpen Media shall take the City's comments into account when it finalizes the annual plan and budget.

15.3 Midpen Media will consult with the City when considering any major changes in the direction of its programmatic activities.

**SECTION 16. RECEIPT AND EXPENDITURE OF FUNDS**

16.1 Midpen Media shall spend funds received from the City and the Cable Companies solely for the purposes listed in its annual plan and budget and in accordance with this Agreement and applicable law. Funds that are not expended in the year covered by the annual plan and budget may be carried over by Midpen Media into succeeding years. Upon the expiration or termination of this Agreement, all funds received from the City and the Cable Companies and not spent by Midpen Media shall be returned to the City within thirty (30) of the expiration date or termination date. Midpen Media shall establish all reasonably necessary fiscal control and accounting procedures to assure the proper disbursement and accounting of funds received from the City.

**SECTION 17. DEFAULT; REMEDIES FOR DEFAULT**

17.1 Midpen Media shall be in default of this Agreement if it fails to perform any of its material obligations under this Agreement. If Midpen Media fails to cure a default within forty-five (45) days, the City shall give written notice to Midpen Media that it has materially breached this Agreement, and the notice of termination shall become effective on the date specified in the notice by the City.

17.2 Section 17.1 notwithstanding, Midpen Media shall be in immediate default of this Agreement if any of its officers, employees, or agents misappropriates public funds provided to Midpen Media under this Agreement by the City or any Cable Company pursuant to City law or the Cable Company's CPUC video service franchise, or if it fails to obtain and maintain its tax exemption status under Section 501(c)(3) of the Internal Revenue Code of 1986.

17.3 Upon the termination of this Agreement, Midpen Media shall immediately transfer to the City all equipment, real property, fixtures, contracts, leases, deposit accounts or other assets received by or purchased by Midpen Media with funds received pursuant to this Agreement, City law or the Cable Companies' CPUC video service franchises.

**SECTION 18. NOTICES**

18.1 All notices and other communications to be given by either party may be given, in writing, by depositing the same in the United States mail, postage prepaid and addressed to the appropriate party, as follows:

To City: Office of the City Clerk  
City of Palo Alto  
Post Office Box 10250  
Palo Alto, CA 94303

To Midpen Media: Midpeninsula Community Media Center, Inc.  
900 San Antonio Road  
Palo Alto, CA 94303

18.2 Any party may change its address for notice by written notice to the other party at any time.

**SECTION 19. MISCELLANEOUS PROVISIONS**

19.1 Time is of the essence in this Agreement in the performance of all covenants, terms and conditions of this Agreement.

19.2 Each party agrees to execute all documents and do all things necessary and appropriate to carry out the provisions of this Agreement.

19.3 This Agreement shall be governed and interpreted in accordance with the laws of the State of California, without regard to its conflicts of law rules or principles.

19.4 This Agreement is the entire agreement of the parties and supersedes all prior negotiations and agreements whether written or oral, including that certain Contract No. C12142180 Between the City of Palo Alto (on Behalf of the Joint Powers) and Midpeninsula Community Media Center, Inc. dated July 1, 2011 which is terminated as of the Effective Date of this Agreement. This Agreement may be amended only by written agreement and no purported oral amendment to this Agreement shall be valid.

IN WITNESS WHEREOF, the parties by their duly appointed representatives have executed this Agreement as of the date written above.

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney or Designee

APPROVED:

\_\_\_\_\_  
Assistant City Manager

\_\_\_\_\_  
Director of Administrative Services

\_\_\_\_\_  
Risk Manager

CITY OF PALO ALTO

\_\_\_\_\_  
Mayor

MIDPENINSULA COMMUNITY MEDIA  
CENTER, INC.

By: DocuSigned by:  
*Susan Purdy Pelosi*

247E365D839A44D...  
Name: Susan Purdy Pelosi

Title: President

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Taxpayer Identification No.

\_\_\_\_\_

**EXHIBIT "A"**  
**SCHEDULE OF RATES**

Midpen Media shall charge JPA Members according to the following schedule of rates for performing the following services related to governmental access programming:

Meeting Coverage (three-hour minimum):	
City Hall Video Coverage:	\$112.00 per hour
Single Camera Coverage with City equipment at location:	\$112.00 per hour
Single Camera Coverage with Media Center equipment:	\$127.00 per hour
Remote video coverage with the studio in a box. Crew of 3 requires 4.0 hrs/set up, plus breakdown and transportation time (minimum of 2 hrs of meeting coverage)	\$287.00 per hour
Parking Permit Reimbursement for meetings starting before 3pm	Visitor Permit Fee
Cancellation fee (for a JPA member's cancellation of scheduled Midpen Media coverage without 24 hours' prior notice the Midpen Media):	\$287.00 flat fee
Additional Services:	
Web indexing and archiving:	\$203.00 per meeting
Server storage for archived meetings:	\$164.00 per month
Video clip preparation:	\$105.00 per hour
I-Net Services:	\$145.00 per hour
Program Development:	
Site visit and planning:	\$145.00 per hour
Videography with equipment:	\$120.00 per hour
Editing:	\$105.00 per hour
Hosting and preparation:	\$145.00 per hour
Studio crew per person:	\$65.00 per hour
Technical Consult/Troubleshooting	\$145.00 per hour
Duplication of videotapes/DVD's of meetings:	
Meetings under two hours	\$25.00 per dup
Meetings over two hours	\$35.00 per dup

The foregoing rates shall remain unchanged through December 31, 2020. Thereafter, the Midpen Media may increase these rates, no more often than once per calendar year, provided that, absent the prior consent of the City, any such increase in rates shall not exceed the amount of the increase in the Consumer Price Index – All Urban Consumers for the San Francisco-Oakland-San Jose MSA during the preceding calendar year.

**EXHIBIT "B"**  
**INSURANCE REQUIREMENTS**

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-:VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER'S COMPENSATION EMPLOYER'S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, CABLECASTER'S ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE, LIBEL AND SLANDER; COPYRIGHT OR TRADEMARK INFRINGEMENT; INFLECTION OF EMOTIONAL DISTRESS; INVASION OF PRIVACY; PLAGIARISM; AND THE MISUSE OF MUSICAL OR LITERARY MATERIALS	ALL DAMAGES		
				\$1,000,000
YES	<b>THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.</b>			

- I. INSURANCE COVERAGE MUST INCLUDE:
  - A. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.
- II. CONTACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE AT THE FOLLOWING URL:  
<https://www.planetbids.com/portal/portal.cfm?CompanyID=25569>.
- III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSURED"
  - A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSURED.

- B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSURED, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

- C. NOTICE OF CANCELLATION

- 1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
    - 2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

**VENDORS ARE REQUIRED TO FILE THEIR EVIDENCE OF INSURANCE AND ANY OTHER RELATED NOTICES WITH THE CITY OF PALO ALTO AT THE FOLLOWING URL:**

**<HTTPS://WWW.PLANETBIDS.COM/PORTAL/PORTAL.CFM?COMPANYID=25569>**

**OR**

**[HTTP://WWW.CITYOFPALOALTO.ORG/GOV/DEPTS/ASD/PLANET\\_BIDS\\_HOW\\_TO.ASP](HTTP://WWW.CITYOFPALOALTO.ORG/GOV/DEPTS/ASD/PLANET_BIDS_HOW_TO.ASP)**

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE MEMBERS OF THE AMENDED AND RESTATED JOINT POWERS  
AGREEMENT DATED JUNE 9, 2009, RELATING TO THE ADMINISTRATION  
OF CABLE TELEVISION AND VIDEO FRANCHISES**

This Memorandum of Understanding (“MOU”) between and amongst the members of the Amended and Restated Joint Powers Agreement dated June 9, 2009, relating to the administration of cable television and video franchises, outlines the general understanding of each member’s agreement with respect to the utilization of PEG Fees.

**BACKGROUND**

Under the terms of the Amended and Restated Joint Exercise of Powers Agreement, dated June 9, 2009, and as hereinafter may be amended (“JPA Agreement”), by and between the Cities of Palo Alto, East Palo Alto and Menlo Park, the Town of Atherton and the Counties of San Mateo and Santa Clara (collectively, “Joint Powers” or “JPA”), the City of Palo Alto (“CPA”) is authorized, on behalf of the JPA members, to administer and enforce the State Franchises awarded to Comcast and AT&T to provide cable and video services within the Franchise Area.

In accordance with California Digital Infrastructure and Video Competition Act of 2006 (“DIVCA”), and the federal Cable Communications Policy Act of 1984, as amended, 47 U.S.C. §§ 521 *et seq.* (“Cable Act”), AT&T and Comcast provide ongoing funding to the JPA members, equivalent to \$0.88 per residential subscriber per month, to support the operation of the public, educational and government (“PEG”) channels provided for by the Franchises (“PEG Fee”). Under the JPA Agreement, CPA collects and oversees expenditures of the PEG Fees on behalf of the JPA members.

The JPA designated the Midpeninsula Community Media Center (“Midpen Media”) to operate and administer the PEG channels, and CPA oversees Midpen Media’s PEG operations on behalf of the JPA members through a contract between CPA and Midpen Media. Pursuant to the JPA Agreement, CPA has been collecting and remitting all PEG Fees to Midpen Media for support of the PEG facilities and channels.

Under federal law, PEG Fees may only be used for capital costs associated with PEG access facilities and equipment. Since 2016, the PEG Fee revenue has been placed in a restricted account managed by Midpen Media (the “PEG Fee Account”). These funds have been accumulating and currently amount to \$1,065,701 as of November 7, 2019.

The JPA members desire to maintain Midpen Media as the PEG access-provider for the franchise territory. Midpen Media needs funding in order to continue providing PEG access facilities, programming and services. Midpen Media does not have sufficient capital needs at this time eligible for use of the PEG Fees. However, some of the individual JPA members do have capital projects planned that will be eligible for PEG Fee expenditure because they will entail updating and improving their individual capital facilities and equipment related to producing and cablecasting council and other public meetings on PEG channels. In order to make PEG Fees available for individual JPA

members' PEG capital projects, to provide Midpen Media with continued funding to operate and administer the PEG access facilities, equipment and channels, and to comply with federal requirements related to PEG Fees, the JPA members have agreed to utilize the PEG Fees and to contribute other funds to Midpen Media's operations, as follows.

### UNDERSTANDING

1) Although Comcast and AT&T are required to remit PEG Fee payments directly to CPA, each jurisdiction has a share of the PEG Fee revenue (based on each JPA member's pro rata share of total JPA area cable subscribers). JPA members have agreed to pool the PEG Fee revenue to support qualifying PEG capital projects that may exceed an individual member's share of PEG Fee revenue. CPA will maintain an accounting of each member's share of the PEG Fee funds to ensure money is available for all jurisdictions that have qualifying PEG-capital projects. However, because PEG Fee funds are limited, not all jurisdictions with qualifying projects may receive the requested amount; the distribution of the funds will depend on availability. Further, if at any time PEG Fees are no longer paid by cable subscribers or PEG Fee revenue is substantially diminished due to changes in federal law or for another reason, the jurisdictions that have utilized the pooled PEG Fee revenue are not required to reimburse the other jurisdictions that have not utilized their share of the PEG Fee funds provided the JPA member makes the payment required in Paragraph 3 of this MOU.

2) Midpen Media will continue to hold the existing PEG Fee Account, which will be available to fund JPA members' individual PEG-related capital projects on a draw-down basis. CPA shall authorize expenditure of PEG Fees for individual JPA members' PEG-eligible capital projects. Upon being presented with CPA authorization, Midpen Media shall, within forty-five (45) days, remit the authorized amount from the PEG Fee Account to the individual JPA Member.

3) Anytime a JPA member receives a payment from the PEG Fee Account as described above, it in turn shall pay to Midpen Media an equivalent amount of money from its local funds (the source of which will be determined by the individual JPA Member but shall not be restricted funds), no later than forty-five (45) days after it receives the PEG Fees from Midpen Media, which money may be used by Midpen Media without restriction to support PEG programming. In the interest of supplying Midpen Media with ongoing revenue, JPA members, in their sole discretion, may agree to provide the authorized expenditure amount to Midpen Media in advance of their receipt of the PEG Fee payment.

4) Midpen Media will continue to hold the existing PEG Fee Account until it has been depleted through the expenditure draw-down process described above. All PEG Fee revenue received after the execution date of this MOU will be held in the CPA Cable Fund, on behalf of the Joint Powers, and will be used for PEG-related capital expenditures by the JPA members or Midpen Media after the money in the PEG Fee Account is exhausted.

5) CPA may authorize reimbursement to Midpen Media for any approved actual and documented PEG-eligible capital expenditures it may incur, upon application for such by Midpen Media.

6) JPA members will use the form (or one substantially similar) attached hereto as Attachment 1 (“PEG Fee Use Authorization and Corresponding Contribution Obligation”) to memorialize their respective use of the PEG Fees and agreement to contribute an equivalent sum to Midpen Media. The JPA Working Group shall meet and review the PEG Fee process described in this MOU every 6 months to determine its efficacy, and is authorized to make any adjustments it deems necessary or desirable.

**NOW, THEREFORE,** the parties have executed this MOU as follows:

CITY OF PALO ALTO:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

CITY OF EAST PALO ALTO:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

CITY OF MENLO PARK:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

TOWN OF ATHERTON:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

COUNTY OF SANTA CLARA:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

COUNTY OF SAN MATEO:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

**ATTACHMENT 1**

**AUTHORIZATION TO UTILIZE CABLE JPA PEG FEES FOR CAPITAL PROJECT AND AGREEMENT TO CONTRIBUTE MATCHING SUM TO MEDIA MIDPENINSULA COMMUNITY MEDIA CENTER**

This Authorization to Utilize PEG Fees for Capital Project and Agreement to Contribute Matching Sum to Midpeninsula Community Media Center (“Midpen Media”), dated \_\_\_\_\_, is made by the City of Palo Alto, as administrator of the Cable JPA (“CPA”), and \_\_\_\_\_, as member of the Cable JPA (“Member”).

**RECITALS**

WHEREAS, pursuant to the Memorandum of Understanding (“MOU”) dated \_\_\_\_\_, between and amongst the members of the Amended and Restated Joint Powers Agreement, incorporated herein by reference, which outlines the process for utilizing PEG Fees, JPA members may use PEG Fees for their individual capital projects which qualify as PEG-eligible, and, in return, will contribute the same amount of money to Midpen Media to support PEG programming; and

WHEREAS, in order to use PEG Fees, Member must demonstrate to CPA that the funds it is seeking will be used only for capital costs associated with PEG access facilities and equipment; and

WHEREAS, Member has demonstrated that the amount it is seeking for its \_\_\_\_\_ Project is an eligible PEG Fee expenditure, and has agreed to contribute an equivalent amount of funding to Midpen Media in exchange for the use of PEG Fees.

**AUTHORIZATION**

1. Authorization. Member is hereby authorized to receive \$ \_\_\_\_\_ from the Restricted PEG Fee Account held by Midpen Media (or PEG funds held by CPA after the restricted Midpen Media Account is depleted) for its \_\_\_\_\_ Project (“PEG Fee Payment”).

2. PEG Fee Payment. The PEG Fee Payment to Member shall be made in the form of an advance (pre-funding of PEG capital costs) or a reimbursement of actual PEG capital expenditures.

A. Advance. In the case of an advance, Member shall submit a request for payment of the authorized amount, and Midpen Media (or CPA after the Restricted PEG Account is depleted) shall remit the PEG Fee Payment to Member within 45 days of

receiving Member's executed authorization. At the end of the project, Member shall provide CPA with an accounting of its actual PEG capital expenditures. If the amount of the advance is in excess of actual PEG capital expenditures, Member shall reimburse CPA for the difference within 45 days of completing the project or within 1 year of the remittance of the advance, whichever occurs earlier. CPA may extend the period for reimbursement upon request; any extension shall be in writing. If the PEG capital expenditures are in excess of the amount of the advance, Member may seek reimbursement from the PEG fund for the difference.

B. Reimbursement. For a reimbursement, upon receiving evidence of payment made by Member for authorized costs, Midpen Media (or CPA after the Restricted PEG Account is depleted) shall remit the PEG Fee Payment to Member within 45 days.

**CONTRIBUTION TO MIDPEN MEDIA**

3. Contribution. In return for its use of PEG Fees, Member agrees to contribute a like sum, or \$\_\_\_\_\_ ("Member Contribution") to Midpen Media. The source of funding for Member Contribution shall be in Member's sole discretion but shall be unrestricted funds, and Midpen Media may use the Member Contribution in any manner that supports PEG programming.

4. Timing of Contribution. The Member Contribution may be made any time following Member's authorization to use PEG Fees, as evidenced by this Agreement, but in no event later than 45 days following receipt of the PEG Fee Payment, or, in the case of an advance, no later than 45 days after the final accounting for the project is completed or within 1 year of the remittance of the advance, whichever occurs earlier. If CPA approves an extension of the period for reimbursement under Section 2.A above, CPA may also extend the timing of the contribution.

IN WITNESS WHEREOF, the parties by their duly appointed representatives have executed this Agreement as of the date written above.

CITY OF PALO ALTO:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

MEMBER ENTITY:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

Attachment C

**AGREEMENT BETWEEN THE CITY OF PALO ALTO  
AND MIDPENINSULA COMMUNITY MEDIA CENTER FOR  
CONTRIBUTION OF FUNDS MATCHING CABLE JPA PEG FEES ALLOCATED  
TO COUNCIL CHAMBERS UPGRADE PROJECT**

This Agreement (“Agreement”) is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020 (“Effective Date”), by and between Midpeninsula Community Media Center (“Midpen Media”), and the City of Palo Alto, a California chartered municipal corporation (“CITY”).

**RECITALS**

WHEREAS, under the Amended and Restated Joint Exercise of Powers Agreement, dated June 9, 2009, and as hereinafter may be amended (“JPA Agreement”), by and between the Cities of Palo Alto, East Palo Alto and Menlo Park, the Town of Atherton and the Counties of San Mateo and Santa Clara (collectively, “Joint Powers” or “JPA”), the City of Palo Alto (“CITY”) is both an individual JPA member and the entity authorized, on behalf of the JPA members, to administer and enforce the State Franchises awarded to Comcast and AT&T (“Franchises”) to provide cable and video services within the Franchise Area; and

WHEREAS, under state and federal law, the Franchises provide funding equivalent to \$0.88 per subscriber in the Franchise Area to the JPA members to support the operation of the public, educational and government (“PEG”) channels provided for by the Franchises (“PEG Fee”). Under the JPA Agreement, CITY collects and oversees expenditures of the PEG Fees on behalf of the JPA members; and

WHEREAS, the JPA designated the Midpeninsula Community Media Center (“Midpen Media”) to operate and administer the PEG channels, and CITY oversees Midpen Media’s PEG operations on behalf of the JPA members through a contract between CITY and Midpen Media. Pursuant to the JPA Agreement, CPA has been collecting and remitting all PEG Fees to Midpen Media for support of the PEG facilities and channels; and

WHEREAS, under federal law, PEG Fees may only be used for capital costs associated with PEG access facilities and equipment. Since 2016, the PEG Fee revenue has been placed in a restricted account managed by Midpen Media (the “PEG Fee Account”). These funds have been accumulating and currently amount to \$1,065,701 as of November 7, 2019; and

WHEREAS, the JPA members desire to maintain Midpen Media as the PEG access-provider for the Franchise Area. Midpen Media needs funding in order to continue providing PEG access facilities, programming and services. Midpen Media does not have sufficient capital needs at this time eligible for use of the PEG Fees. However, some of the individual JPA members, including CITY, do have capital projects planned that will be eligible for PEG Fee expenditure because they will entail updating and improving their individual capital facilities and equipment related to producing and cablecasting council

and other public meetings on PEG channels. In order to make PEG Fees available for individual JPA members' PEG capital projects, to provide Midpen Media with continued funding to operate and administer the PEG access facilities, equipment and channels, and to comply with federal requirements related to PEG Fees, the JPA members have agreed to utilize the PEG Fees and to contribute other funds to Midpen Media's operations, in accordance with the Memorandum of Understanding ("MOU") dated \_\_\_\_\_, between and amongst the members of the Amended and Restated Joint Powers Agreement; and

WHEREAS, pursuant to the MOU, which outlines the process for utilizing PEG Fees, JPA members may use PEG Fees for their individual capital projects which qualify as PEG-eligible, and, in return, will contribute the same amount of money to Media Center to support PEG programming; and

WHEREAS, CITY is authorized to and will receive \$511,536 in PEG Fees for the Council Chambers Upgrade Project, and in exchange for the use of PEG Fees, consistent with the MOU, grants an equivalent sum in advance in CITY funds to Midpen Media through this Agreement.

### **AGREEMENT**

1. Term. The term of this Agreement is from the Effective Date through June 30, 2020.

2. Contribution to Midpen Media. In return for its use of PEG Fees, CITY shall contribute a like sum, or \$511,536 ("Member Contribution") to Midpen Media. The source of funding for the Member Contribution shall be in CITY's sole discretion but shall be unrestricted funds, and Midpen Media may use the Member Contribution in any manner that supports PEG programming.

3. Timing of Contribution. CITY shall provide the Member Contribution to Midpen Media within thirty (30) days of the Effective Date.

4. Remittance of PEG Fees to CITY. Within forty-five (45) days of receipt of the Member Contribution, Midpen Media shall remit \$511,536 from the PEG Fee Account to CITY.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties by their duly appointed representatives have executed this Agreement as of the date written above.

**MIDPENINSULA COMMUNITY MEDIA CENTER:**

DocuSigned by:  
*Susan Purdy Pelosi*  
247E365D839A44D...

Name: Susan Purdy Pelosi

Title: President

**CITY OF PALO ALTO:**

\_\_\_\_\_  
Ed Shikada  
City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Assistant City Attorney