ITEM NO. 15

STAFF REPORT

CITY OF OCEANSIDE

DATE: August 25, 2010

TO: Honorable Mayor and City Councilmembers

FROM: City Manager's Office
City Attorney's Office

SUBJECT: **APPROVAL OF THE SECOND AMENDED AGREEMENT BETWEEN THE CITY OF OCEANSIDE AND THE OCEANSIDE COMMUNITY SERVICE TELEVISION CORPORATION**

SYNOPSIS

Staff recommends that the City Council approve the Second Amended Agreement between the City of Oceanside and the Oceanside Community Service Television Corporation (KOCT) which continues to designate KOCT as the access management organization responsible for public, educational and governmental (PEG) cable television activities for the City. This Second Amended Agreement reduces the annual amount paid by the City to KOCT by $110,000, pursuant to Council direction from both June 2 and June 23, 2010, Council meetings. The annual amount of this revised agreement is approximately $734,203. The termination date of the agreement remains June 30, 2017. Staff requests authorization for the City Manager to execute the agreement.

BACKGROUND

On March 19, 2003, the City Council approved the current 14.5-year agreement with KOCT which designated KOCT as the access management organization responsible for public, educational and government (PEG) cable television activities for the City (agreement to terminate on June 30, 2017).

In March 2009, staff triggered the "re-opener" clause (Section 26.C) of the agreement, thus creating this First Amended Agreement which was approved by Council on August 12, 2009. The re-opener was triggered by:

- The City Council's action of March 25, 2009, which reduced General Fund support by $54,100 (Section 17.D.1).
- On June 17, 2009 the Council adopted new City Council Policy 200-09, which mandates additional reporting requirements for nonprofit organizations. Those requirements were included in the First Amended Agreement for KOCT (August 12, 2009).

- Legislative changes necessitated by the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). The necessary new language was also included in the First Amended Agreement (August 12, 2009).
- At the Council's June 2, 2010, Budget Workshop and confirmed by the Council's adoption of its FY 2010-11 budget on June 23, 2010, the Council directed staff to reduce the General Fund payment to KOCT (Section 17.D.1) by $110,000. This action triggered a re-opener to the Agreement (Section 26.C) and, consequently, created a need for this Second Amended Agreement. Furthermore, the Council directed that all General Fund contributions (Section 17.D.1) be reduced to zero ($0) effective June 30, 2011. Future General Fund allocations, if any, are subject to the approval of the City Council. This Second Amended Agreement reflects both of the Council actions and further identifies where services will be reduced (Section 3.K) for FY 2010-11 to achieve the $110,000 reduction.

ANALYSIS

Due to the fact that the City Council reduced the General Fund contribution to KOCT in the amount of $110,000 (Section 17.D.1) for FY 2010-11 and directed that all General Fund support terminate as of June 30, 2011 (Section 17.D.1), it became necessary for staff to re-open the First Amended Agreement with KOCT pursuant to Section 26.C, and create the Second Amended Agreement. The changes that are provided in this Second Amended Agreement concern a reduction in the General Fund contribution (Section 17.D.1) in the amount of $110,000 and the corresponding reduction of services provided to the City by KOCT (Section 3.K).

To summarize (Section 3.K):

- *Living Legacies* programming will be reduced by twelve programs (from 20 to 8);
- *Journalist* Roundtable programming will be reduced by two programs (from 12 to 10);
- *Oceanside Spectrum* programming will be reduced by five programs (from 11 to 6)
- Special events programming will be reduced by six events (from 10 to 4);
- *Voice of Oceanside* programming will be reduced by nine programs (from 20 to 11)
- *High school basketball and football* coverage will be completely eliminated
- *Bulletin Boards* will be eliminated
- *Climate TV* programming will be completely eliminated
- *State of the City* coverage will be completely eliminated
- *Fourth of July Parade* coverage will be completely eliminated

The estimated cost of these programming reductions is $110,000.

KOCT requested in its July 29, 2010, letter to the Council that the City and KOCT discuss, during the 2010-2011 contract period, the possibility of accelerating the Telecommunications Technology Grant funding. Any change in the disbursement pattern of this funding source would require an amendment to the Seconded Amended Agreement. Furthermore, KOCT has asked the City to look into the feasibility and potential PEG monetary benefit of abrogating the current Franchise Agreement with Cox and move towards a State Franchise. The City has agreed to inquire into this issue. KOCT has also agreed to hosting one public forum which will be noticed and open to the public. KOCT will also meet annually with the Telecommunications Committee at a meeting noticed and open to the public (Section 27).

FISCAL IMPACT

KOCT has essentially three funding categories as outlined in the Second Amended Agreement:

1. Section 17.D.1, which contains the reduction of $110,000, will provide a General Fund amount of $377,203 for FY 2010-11. Funds are budgeted in 170178101.5395. Future General Fund allocations beyond Fiscal Year 2010-2011, if any, are at the sole and absolute discretion of the City Council.
2. Section 17.D.3 is the $0.35-per-subscriber PEG pass-through charged by the cable companies and passed directly on to KOCT; the estimated amount for FY 2010-11 is $207,000. Funds are budgeted in 170178101.5395.0002.
3. Section 17.D.2, Telecommunications Grant, in the estimated amount of $150,000 for FY 2010-11. Funds are budgeted in 170178101.5395.0003.

The total estimated contract amount for FY 2010-11 is $734,203.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will continue to be met.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The Second Amended Agreement has been reviewed by the City Attorney and approved as to form. The City Attorney's Office also participated in the negotiations regarding the re-opening of the agreement.

RECOMMENDATION

Staff recommends that the City Council approve the Second Amended Agreement between the City of Oceanside and the Oceanside Community Service Television Corporation (KOCT) which continues to designate KOCT as the access management organization responsible for public, educational and governmental (PEG) cable television activities for the City. This Second Amended Agreement reduces the annual amount paid by the City to KOCT by $110,000, pursuant to Council direction from both June 2 and June 23, 2010. The annual amount of this revised agreement is approximately $734,203. The termination date of the agreement remains June 30, 2017. Staff requests authorization for the City Manager to execute the agreement.

PREPARED BY:

Michelle Skaggs Lawrence
Deputy City Manager

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

John Mullen, City Attorney

Michele Lund, Treasury Manager

ATTACHMENTS:

2nd Amended Agreement
July 1, 2010, Memo to Council
July 29, 2010, Memo from KOCT to Council

SECOND AMENDED AGREEMENT BETWEEN THE CITY OF OCEANSIDE AND OCEANSIDE COMMUNITY SERVICE TELEVISION CORPORATION

THIS SECOND AMENDED AGREEMENT (hereafter "Agreement")is made this 25th day of August, 2010, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "City", and Oceanside Community Service Television Corporation, a California nonprofit corporation, hereinafter designated as "KOCT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

RECITALS

WHEREAS, the City desires to provide support for the use of cable television through public, educational, and government ("PEG") access channels provided pursuant to federal law;

WHEREAS, the City passed and adopted Ordinance No. 01-OR056-1, codified as Chapter 9A of the Oceanside City Code entitled "Cable Systems, and Open Video Systems," hereinafter the "Ordinance," that sets forth the standards for and regulation of Cable Systems in the City;

WHEREAS, the City has granted a franchise to COXCOM, Inc., hereinafter the "Franchisee," pursuant to Ordinance No. 02-OR500-1, to operate a cable television system in the City, hereinafter the "Franchise;"

WHEREAS, the Ordinance and the Franchise indicate that the City may designate a non-profit access management entity to operate and administer the PEG access facilities, services and programming;

WHEREAS, the Franchise provides that certain channel capacity be provided for PEG access;

WHEREAS, the Franchise provides that certain initial and ongoing payments shall be made by the Franchisee for PEG access capital equipment and facilities;

WHEREAS, the Franchise provides that certain payments and in-kind services shall be provided by the Franchisee to support the operations of the PEG access facilities, equipment and channels;

WHEREAS, on January 1, 2007, the state of California implemented the Digital Infrastructure and Video Competition Act (DIVCA) which reserved to the state the exclusive right to issue franchises for video service providers, and allowed cable providers with local franchises to unilaterally "opt-out" of those franchises at any time prior to the expiration of the franchise if a state video franchisee enters the local market;

WHEREAS, for the remainder of the Franchisee's original Franchise term any state video franchise holders operating in the City must comply with the same PEG funding as the incumbent Franchisee;

WHEREAS, to date, Franchisee has not "opted-out" of its franchise, although one state video franchisee, AT&T, (hereafter "State Franchisee") has entered the local market;

WHEREAS, in response to the new requirements of DIVCA, the City enacted Ordinance # 07-OR0053-1, codified as Chapter 9B of the Oceanside City Code entitled "Regulation of State Video Franchise Holders" that sets forth the standards for and regulation of state franchisees operating in the City;

WHEREAS, at the time the Franchisee "opts out" of the franchise, or at the expiration of the term of the existing franchise, whichever comes first, then all state video franchise holders operating in the City will become subject to the regulation of Chapter 9B, including the funding and PEG support provisions;

WHEREAS, the mission of KOCT is to serve the community by providing PEG access programming and services;

WHEREAS, due to significant reductions to the City's General Fund, there is a financial need to establish this Second Amended Agreement; and

WHEREAS, for the term of this Agreement, the City has designated KOCT as the access management entity to provide the residents and community of the City with PEG access programming and services.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

SECTION 1. CABLE ACCESS RESPONSIBILITIES.

The City and KOCT agree that the responsibility for the management of PEG access for the City shall be pursuant to the terms of this Agreement, the Enabling Ordinances and the Franchise.

A. The City designates KOCT as the access management organization responsible for PEG cable television activities for the City.

B. KOCT is hereby granted access to and use of the public access and educational channels as described in the Enabling Ordinances and the Franchise. KOCT shall be responsible for production and programming promoting and in support of public, educational and government access channels. KOCT shall be responsible for scheduling PEG programming. With respect to programming on the government access channel, such programming is subject to the advice and consent of the City.

C. The City's representative with respect to this Agreement and the services provided herein shall be the City Manager and his or her designee. Such designation shall be in writing for the purpose set forth therein. The City and KOCT shall, within thirty (30) days of execution of this agreement, and annually thereafter, establish a schedule of quarterly meetings for the purpose of establishing preliminary broadcast dates, programming, production schedules, content outlines, and allocation of production responsibilities, including timing issues. The City and KOCT agree to cooperate to insure the timely completion of production responsibilities within the established timeframes. KOCT shall make reasonable efforts to accommodate City requests for services that arise outside the context of the aforementioned procedure.

SECTION 2. REPRESENTATIONS AND WARRANTIES.

KOCT represents and warrants that:

A. All information, reports and data furnished to the City by KOCT are complete and accurate as of the date furnished to the City, and KOCT shall promptly notify the City in the event of any material change affecting the accuracy or completeness.

B. All financial statements and information furnished to the City are complete, accurately reflect the financial condition of KOCT on the date shown on the report, accurately show the results of the operation for the period covered by the report, and that since said date, there has been no material change, adverse or otherwise, in the financial condition of KOCT.

C. KOCT has notified the City of any and all pending or threatened legal proceedings against KOCT.

D. KOCT shall undertake all reasonable measures to ensure that the equipment

and facilities provided pursuant to this agreement will not be used for commercial purposes.

E. KOCT has the power to enter into this Agreement and accept payments hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this Agreement.

F. None of the assets of KOCT are subject to any lien or encumbrance of any character except for current taxes, except as shown in the current financial statements furnished by KOCT to the City.

SECTION 3. SCOPE OF SERVICES.

In exchange for the funding provided by the City to KOCT, pursuant to this Agreement, KOCT shall provide the following services:

A. OPERATE PUBLIC ACCESS CABLE CHANNEL(S). Operate the public access cable channel(s) for public/community access programming purposes in a manner which is consistent with the principles set forth in the Enabling Ordinance and the Franchise with the primary purpose being to provide and produce programs for Oceanside's PEG channels and to train and assist students, volunteers and residents in program production on a nondiscriminatory basis. KOCT shall conduct outreach to insure that the public is aware of the availability of these training services.

B. OPERATE THE GOVERNMENT ACCESS CHANNEL(S). Operate the government access channel(s)for community access programming purposes in a manner that is consistent with the principles set forth in the Enabling Ordinance and the Franchise with the primary purpose being to administer, coordinate and assist the City in the production of government access programming.

C. OPERATE THE EDUCATIONAL ACCESS CHANNEL(S). Upon the mutual agreement of KOCT and the City, operate an educational access channel for community access programming purposes in a manner that is consistent with the principles set forth in the Enabling Ordinance and the Franchise, with the primary purpose being to administer, coordinate and interface with local educational institutions regarding programming content on the educational channel.

D. COMMUNITY TRAINING. Train residents, volunteers, students and employees of the City in the techniques of video production and instruction in the execution of PEG programs. Develop an educational component

utilizing the KOCT cable television resources. KOCT shall include in its Annual Workplan a plan for community outreach to increase the number of students, volunteers and residents participating in the training and utilization component, as well as a core curriculum. The training component shall include a minimum number of individuals trained per year as set forth in the Annual Workplan. The training goals for each year shall be included in the Annual Workplan. Additionally, KOCT will provide up to three (3) training sessions annually for City employees about the operation of the City Council Chamber television related, audio-video systems and the operation of the City's video camcorder.

E. PROVIDE EQUAL ACCESS. Provide access to the use of the equipment, facilities, public access channels, and services provided hereunder on a non-discriminatory basis to all members of the community for non-commercial programming purposes, whether individuals, groups, or organizations, on a first-come, first served non-discriminatory basis, pursuant to operating rules promulgated by KOCT, with review and comment by the City, and consistent with the principles set forth in the Enabling Ordinance and the Franchise.

F. DEVELOP OPERATING POLICIES AND PROCEDURES. Develop policies and procedures for use and operation of the PEG access equipment, facilities, and channel(s) and file such policies and procedures with the City. Such policies and procedure shall be subject to the review and comment by the City. The City shall be consulted for input in the creation of such policies and procedures.

G. COMPLIANCE WITH LAWS RULES, AND REGULATIONS. Administer the PEG access channel(s) and facilities in compliance with federal, state and local laws, rules, regulations, and including compliance with the Enabling Ordinance and the Franchise.

H. PLAYBACK/CABLECAST. Provide for the playback/cablecasting of programs on the PEG access channel(s). KOCT shall use its best efforts to maximize the availability of programming on the government channel and the Public Access channel.

I SPECIAL NEEDS GROUPS. Support special needs groups, including, but not limited to, the hearing impaired, in program production through training and other means. Accommodations will be made where possible and within the scope of the KOCT budget.

J. PROMOTION. Promote the use and benefit of the PEG access channel(s)

and facilities to cable subscribers, the public, and PEG access users.

K. PRODUCTION AND PROGRAMMING SERVICES. Cable television production and programming services to the City shall be provided consistent with the standards set forth in the Enabling Ordinance and the Franchise, and at the discretion of KOCT, except as set forth herein. KOCT recognizes that the City is its primary client and shall have priority with regard to programming schedules. KOCT shall provide the following minimum programming services to the City each year during the term of this Agreement:

1. Complete, live, gavel-to-gavel coverage of each regular meeting of the Oceanside City Council (including joint meetings of the City Council, Community Development Commission and the Harbor Board of Directors), including the Community Development Commission, and a minimum of two (2) gavel-to-gavel rebroadcasts within one week of the original broadcast of the meeting. KOCT shall also provide coverage of certain special meetings of the City Council upon request from the City Manager, subject to the availability of sufficient KOCT staff. The City Manager will endeavor to provide thirty (30) days notice, or at least the maximum achievable level of notice to KOCT.

2. Complete coverage of four (4) additional "Special Events" as designated by the City. The "Special Events" coverage provided under this paragraph shall be requested by the City in connection with the quarterly meeting process. In the event the City desires to change the "Special Event" programming selection, it may do so upon written notice to KOCT. The City shall endeavor to provide thirty (30) days notice of such changes or additions. The City and KOCT agree to use their best efforts to discuss the services provided under this paragraph during the quarterly meetings described in Section 1, paragraph C. In instances where KOCT has been provided less than thirty (30) day notice, KOCT will endeavor to produce the requested programs subject to the availability of sufficient KOCT resources and staff.

3. Election programming to include:

   a. Live election results coverage if requested by the City at least 10 days before the Election.

   b. Forum coverage broadcast live and/or tape-delayed of the

candidates for Mayor, City Council, City Clerk, City Treasurer, Oceanside and Vista School Boards, and Tri-City Medical Board.

c. Forum coverage for other elective positions and ballot measures affecting voters of the City upon request of the City, subject to the availability of sufficient KOCT staff and resources.

4. Provide program listing for the electronic program guide pursuant to the provisions of the Franchise.

5. Incorporate new satellite services programming such as, NASA, Annenberg, Democracy Now, and U.S. Department of Education cable programming. This shall include a minimum of sixty (60) such programs each year.

6. Develop implementation (and execute) plan for the use of public access origination sites as set forth in the Franchise.

7. Tape a minimum of twelve (12) individual City sponsored, staff-oriented training sessions in the City Council Chambers with attendant robotics under the direction and supervision of the City Manager's office to include training of City staff to assume responsibility for said taping. Any assumption by the City for taping of the City training programs shall be subject to written authorization of the City Manager and may be subject to later revocation of said authorization. Scheduling of training sessions will be determined at quarterly meetings, and where possible, City will provide KOCT with thirty (30) days prior notice.

8. Produce and cablecast the program, Inside Oceanside, or its equivalent, a minimum of four (4) new programs per year.

9. Produce and cablecast a minimum of three (3) public safety programs on the "Voice of Oceanside."

10. Produce and cablecast Emergency Programming Information as needed and upon request by the City of Oceanside. Participate, at the request of the City, in EOC emergency drills with the City of Oceanside. KOCT will refine, update, and implement its Emergency Programming Plan on an ongoing basis.

11. Produce and cablecast a minimum of eleven (11) "Voice of Oceanside" programs. Three of these programs will focus on public safety guests or topics.

12. Produce and cablecast a minimum of six (6) "Oceanside Spectrum" programs.

13. Produce and cablecast a minimum of twelve (12) "Oceanside Update" programs. City staff will schedule guests and record in the Council Chambers. KOCT will edit and cablecast "Oceanside Update."

14. Produce and cablecast a minimum of eight (8) "Living Legacies" programs or equivalent programs.

15. Produce and broadcast a minimum of ten (10) "Journalist Roundtable" or equivalent programs.

16. Produce a minimum of two (2) "The Arts in Oceanside".

17. Cablecast a minimum of one hundred (100) public service announcements.

18. Cablecast one (1) City Concert Series concert performance.

19. Produce, under the direction of the City Manager's office, one (1) public relations or public services video promoting the City and/or its services. Videos will be eight (8) minutes or less, and will also be provided in an abbreviated one (1) or two (2) minute version. The script will be provided by the City with input from KOCT. KOCT shall have approval authority only as it relates to production costs incurred by KOCT.

KOCT shall submit, as part of its Annual Workplan, a schedule of programming to be provided consistent with the goals established herein, as well as those goals established during the quarterly and annual programming meetings with the City.

In the event the volunteers and hosts associated with the "Living Legacies" and "Journalist Roundtable" programs become unavailable, KOCT and the City, during their quarterly meetings, will discuss an acceptable successor program.

L. OTHER ACTIVITIES. Undertake other PEG access programming activities and services as deemed appropriate by KOCT, with review and

comment by the City, and consistent with the obligation to facilitate and promote access programming and provide nondiscriminatory access with regard to public access channel(s).

SECTION 4. CHANNELS OPEN TO PUBLIC.

KOCT agrees to keep the public access channel(s) open to all potential users regardless of their viewpoint, subject to FCC regulations and other relevant laws. Neither the City, nor the cable company(s), nor KOCT shall have the authority to control the content of programming placed on the public access channel(s) so long as such programming is lawful. Notwithstanding the foregoing, nothing herein shall prevent KOCT, the City, or Franchisee from producing or sponsoring programming, prevent the City or the Franchisee from underwriting programming, or prevent the City, Franchisee, or KOCT from engaging in activities designed to promote production of certain types of programming or use by targeted groups as consistent with applicable law and rules for use of channels. KOCT may develop and enforce policies and procedures that are designed to promote local use of the channel(s) and make programming accessible to the viewing public, consistent with such time, manner, and place regulations as are appropriate to provide for and promote use of PEG access channels, equipment and facilities.

SECTION 5. INDEMNIFICATION.

KOCT shall indemnify, defend, and hold harmless the City, its officials, agents, and employees and volunteers from and against any and all claims, suits, actions, causes of action, losses, damage, or liabilities of any kind, nature or description, including, payment of litigation costs and attorneys' fees, brought by any person or persons for or on account of any loss, damage or injury to person, property or any other interest, tangible or intangible, sustained by or accruing to any person or persons, howsoever the same may be caused, directly or indirectly related to, arising or resulting from, any alleged acts or omission of the KOCT, its officers, employees, agents or subcontractors related to, arising out of or resulting from, the operation of KOCT including, but not limited to, programming provided pursuant to the performance of this Agreement. KOCT shall indemnify and hold harmless City, its officers, agents, employees and volunteers, as well as Franchisee, from and against any and all claims or other injury, including costs of litigation and attorney's fees, arising from or in connection with claims or loss or damage to person or property arising out of the failure to comply with any applicable laws, rules, regulations or other requirements of local, state or federal authorities, for claims of libel, slander, invasions of privacy, or infringement of common law or statutory copyright, for breach of contract of other injury or damage in law or at equity which claims, directly or indirectly, result from KOCT's use of channels, funds, equipment, facilities or staff granted under this Agreement or the Franchise.

SECTION 6. COPYRIGHT CLEARANCE.

Before cablecasting video transmissions, KOCT shall require all users to agree in writing that they shall make all appropriate arrangements to obtain all rights to all material cablecast and clearances from broadcast stations, networks, sponsors, music licensing organizations' representatives, and without limitation from the foregoing, any and all other persons as may be necessary to transmit its or their program material over the PEG access channels that are operated and managed by KOCT. KOCT shall require each to indemnify and hold harmless KOCT and the City from any actions, lawsuits arising out of the programming. KOCT shall maintain for the applicable statute of limitations for City's inspection, upon reasonable notice by City and for the term of the applicable statute of limitations, copies of all such user agreements.

SECTION 7. COPYRIGHT AND OWNERSHIP.

KOCT may copyright, on behalf of the City, documents, materials and/or audio/video productions or items produced by KOCT pursuant this agreement during the term of this agreement. City reserves the right to use, duplicate, and disclose the reports, programs, documents, or other materials in any manner, in whole or in part, for any purpose whatsoever. Further, the City reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such materials, in whole or in part and to authorize others to do so. Copyright ownership reverts to the City upon termination of this agreement. Any revenue from such materials shall be used in accordance with the mission and purpose of KOCT as set forth in this Agreement. Such revenue shall be reported to the City as part of the Annual Financial Report.

SECTION 8. DISTRIBUTION RIGHTS.

A. KOCT 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 subparagraph shall not be interpreted to restrict other distribution (beyond distribution on channels authorized by this Agreement), and consistent with any pertinent guidelines established in the PEG access operating policies and procedures.

B. At a minimum, during each hour of each day that video programming is cablecast on the PEG access channels whose use is authorized by this Agreement, KOCT shall display a credit stating "Partial funding for the operation of this channel is provided by the City of Oceanside. "Such credit shall also state that the content of programs and the opinions expressed in PEG access programs are the sole responsibility of the program producers.

SECTION 9. EQUIPMENT AND FACILITIES.

A. KOCT shall be responsible for maintenance and safekeeping of all equipment and facilities owned, leased or loaned to it under this Agreement or purchased with funds provided pursuant to this Agreement. Such equipment shall be maintained in good working order in accordance with industry standards.

B. KOCT shall own all equipment and facilities acquired by it and purchased with funds received pursuant to this Agreement, except that upon termination or non-renewal of this Agreement all such equipment or facilities purchased with funds received pursuant to this Agreement shall become the property of the City.

C. KOCT shall maintain an inventory of all equipment purchased under this Agreement and make best efforts to do so as to all prior agreements. Such inventory shall contain, at a minimum, the following: description of equipment, date of purchase or acquisition, serial number, and inventory control number assigned by KOCT.

D. KOCT shall keep a record of the status, location, and disposition of all equipment, and shall not dispose of equipment that had a purchase price of Five Hundred Dollars ($500) or more, for any purpose without first notifying the City. Any such disposal of equipment shall be subject to City approval. KOCT shall report any theft, loss or destruction of equipment to the City.

E. Upon the termination of this agreement or the dissolution of the KOCT, it shall, subject to the approval of the City, transfer all assets of KOCT representing City-funded equipment and facilities, and/or the proceeds of either to the City, or at the City's option, to such organization or organizations designated by the City to manage access which shall at the time qualify as a tax exempt organization(s) under Section 501(C)(3) of the Internal Revenue Code (or the corresponding provisions of any future United States Internal Revenue Law).

SECTION 10. RELOCATION.

KOCT maintains its offices and facilities at 3038 Industry Way, Suite 101, Oceanside, California. Any relocation to another site shall be at the sole cost and expense of KOCT. However, KOCT must maintain all of its offices and facilities within the jurisdictional boundaries of the City of Oceanside. Any relocation outside of the City, without the express approval of the City, via majority vote of the City Council, shall

be a material default of this Agreement, subject to immediate termination by the City.

SECTION 11. INSURANCE.

KOCT shall maintain in full force and effect at all times during the term of this Agreement insurance as required by this Section. The cost of such insurance shall be borne by KOCT and may be included in KOCT's annual budget.

A. WORKERS' COMPENSATION. Pursuant to Labor Code section 1861, the KOCT hereby certifies that the KOCT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the KOCT will comply with such provisions and provide certification of such compliance as a part of these Award Documents. The certification shall be in accordance with Subsections 11.C through 11.D of this Agreement.

B. LIABILITY INSURANCE.

1. KOCT shall, throughout the duration of this Agreement, maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of KOCT, its agents and employees, performed in connection with this Agreement including, but not limited to, premises and automobile.

2. KOCT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance (bodily injury and property damage)	
Combined Single Limit Per Occurrence	$ 1,000,000
General Aggregate	$ 2,000,000*
Commercial General Liability Insurance (bodily injury and property damage)	
General limit per occurrence	$ 1,000,000
General limit project specific	$ 2,000,000
Automobile Liability Insurance	$ 1,000,000
Crime Insurance	

Crime limit of Insurance per occurrence Money and Securities Employee Dishonesty Forgery and Alteration	$50,000.00
Erisa Employee Dishonesty per occurrence	$50,000.00

*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of KOCT under this Agreement.

3. If coverage is provided through a Commercial General Liability Insurance policy, a minimum of fifty per cent (50%) of each of the aggregate limits shall remain available at all times. If over fifty per cent (50%) of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by KOCT to restore the required limits. KOCT shall also notify the City Manager or his/her designee promptly of all losses or claims over Twenty-five Thousand Dollars ($25,000) resulting from work performed under this contract, or any loss or claim against KOCT resulting from any of KOCT's work.

4. All insurance companies affording coverage to KOCT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this Agreement. Insurance coverage provided to the CITY as additional insured shall be primary insurance and other insurance maintained by the CITY, its officers, agents and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

5. All insurance companies affording coverage to KOCT pursuant to this Agreement shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.

6. All insurance companies affording coverage shall provide thirty (30) day written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

C. KOCT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance, in a form

satisfactory to the City Attorney, concurrently with the submittal of this Agreement. The City Manager, subject to review by the City Attorney, may revise the insurance requirements herein upon a request by KOCT that includes adequate assurances that the protection is otherwise covered or unnecessary. The City reserves the right to revise the insurance requirements upon sixty (60) days notice to KOCT upon a finding of good cause. Such finding shall be made by the City Manager with concurrence by the City Attorney.

D. KOCT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by KOCT to provide such a substitution and extend the policy expiration date shall be considered a default by KOCT and may subject KOCT to a suspension or termination of work under the Agreement.

E. Maintenance of insurance by KOCT as specified in this Agreement shall in no way be interpreted as relieving KOCT of any responsibility whatsoever and KOCT may carry, at its own expense, such additional insurance as it deems necessary.

F. EQUIPMENT INSURANCE. KOCT shall maintain replacement value casualty and loss insurance on all equipment and facilities, including fixtures, funded in whole or in part under this Agreement to replacement cost. The insurance shall include, at a minimum, insurance against loss or damage beyond the user's control, theft, fire and/or natural catastrophe.

G. CABLECASTER'S ERRORS AND OMISSIONS INSURANCE. During the term of this agreement and for a minimum of four (4) years thereafter, KOCT insurance shall be maintained in the minimum amount of Five Hundred Thousand Dollars ($500,000) to cover the content of productions which are cablecast on the access channel in, at minimum, the following areas: libel and slander; copyright or trademark infringement; infliction of emotional distress, invasion of privacy; plagiarism; misuse of musical or literary materials. This policy shall not be required to cover individual access producers, but shall name the City and Franchisee as additional insureds. The City, by and through the City Manager, upon request of KOCT, and upon presentation by KOCT of adequate assurances with respect to the matters referenced in this paragraph, may, at its sole discretion, waive the requirement for Cablecaster's Errors and Omissions Insurance.

SECTION 12. NON-DISCRIMINATION IN EMPLOYMENT AND SERVICE.

KOCT shall not discriminate against any person, employee or applicant for employment or subcontractor on the basis of race, color, creed, religion, sex, sexual preference, marital status, ancestry, national origin or physical or mental disability in compliance with all federal, state, and local laws and statutes.

SECTION 13. INDEPENDENT CONTRACTOR.

It is understood and agreed that KOCT is an independent contractor and that no relationship of principal/agent or employer/employee exists between the City and KOCT. If in the performance of this Agreement any third persons are employed by KOCT, such persons shall be entirely and exclusively under the control, direction and supervision of KOCT. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment shall be determined by KOCT and the City shall have no right or authority over such persons or terms of employment.

SECTION 14. ASSIGNMENT AND DELEGATION.

This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of KOCT's duties be delegated, without the express written consent of the City. Any attempt to assign or delegate this Agreement without the express written consent of the City shall be void and of no force and effect. This section does not preclude KOCT from subcontracting with others for the provision of services. However, KOCT shall retain responsibility for, and remain responsible for the provision of all services contemplated by this Agreement. A consent to one assignment by the City shall not be deemed to be a consent to a subsequent assignment.

This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

SECTION 15. REPORTS.

On or before October 15th of each year, KOCT shall submit to the City an annual report for the preceding fiscal year (July 1 – June 30). This report shall contain, at a minimum, the following information:

A. Statistics on programming and services provided in a format approved by the City;

B. Current and complete listing of KOCT's Officers and Board of Directors;

C. Year-end financial statements audited by an independent Certified Public Accountant prepared according to generally accepted accounting principles (Will be due on or before December 31st of each year); and

D. Single audit conducted by an independent CPA prepared according to generally accepted accounting principles pursuant to City Council Policy 200-09.

E. Notification of change in corporate status, including state and federal non-profit status (I.R.C. Sec. 501(c)(3)).

F. No later than thirty (30) days after the end of each quarter, KOCT shall submit a quarterly report of its activities and expenditures outlining activities and expenditures for that quarter in a format acceptable to the City.

SECTION 16. RECORDS.

A. KOCT shall maintain all necessary books and records, in accordance with generally accepted accounting principles. Additionally, KOCT shall retain financial records for a minimum period of five (5) years. KOCT shall retain records of programming and services provided pursuant to this Agreement including, but not limited to, production costs, names and addresses of participants and citizens receiving training, complaints and/or comments received, etc. for a period of two (2) years.

B. Upon forty-eight (48) hours advance request from City, KOCT shall, at any time during normal business hours, make available all of its records with respect to all matters covered by this Agreement, including, but not limited to, financial reports, records of public access use, and corporate documents.

SECTION 17. FUNDING AND OTHER RESOURCES.

The City agrees to make the following funds and resources available to KOCT during the term of the Agreement:

A. Franchisee has dedicated certain channel capacity (spectrum on the cable system) for PEG access use. The City agrees to permit KOCT to manage that channel capacity for PEG access programming purposes.

B. The Franchise requires Franchisee to provide certain funds to the City in the form of Franchise fees in lieu of rent for the use of the City's rights of way, and certain funds entitled Telecommunications/Technology Grant, as

set forth in Section 7.13.D. of the Franchise.

C. Funding from Franchisee for PEG Access Services, Facilities and Equipment.

1. In accordance with the Franchise and current state and federal law, Franchisee is required to pay to the City franchise fees in the amount of five (5) percent of gross revenues derived from its cable operations in the City in lieu of rent for the use of the public right of way. The Franchise Fee funds are placed in the City's General Fund accounts for the purpose of funding City services, including services provided pursuant to this Agreement. State Video Franchise Holders are likewise required to provide five (5) percent of gross revenues pursuant to the provisions of DIVCA.

2. In accordance with the Franchise, Franchisee shall provide to the City, Four Million, One Hundred Thousand Dollars ($4,100,000.), to purchase and/or install telecommunications capital improvements, equipment and services, including institutional network services, or to address cable-related needs of the City, so long as such use to which the City puts such funds does not constitute a "franchise fee" within the meaning of Section 622(g) of the Cable Act.

   a. One Million, Four Hundred Thousand Dollars ($1,400,000) on the effective date of the Franchise;

   b. One Million, Three Hundred Fifty Thousand Dollars ($1,350,000)on the first anniversary of the effective date of the Franchise; and

   c. One Million, Three Hundred Fifty Thousand Dollars ($1,350,000) on the second anniversary of the effective date of the Franchise.

3. In accordance with the Franchise, Franchisee shall also collect and pay to the City Thirty-five cents ($0.35) per subscriber per month (the "pass-thru"), for ongoing PEG capital equipment and facilities support consistent with the provisions of Section 622(g)(2)(C) of the Cable Act. Until such time as Franchisee "opts out" or the Franchise otherwise expires of its own terms, any state video franchise holders are likewise required to provide the same $0.35 pass-thru funds. These funds shall be disbursed to KOCT on a quarterly basis. The actual amount shall vary based upon the number of cable subscribers

during any given quarter.

4. It is also acknowledged and understood that if and when the incumbent Franchisee "opts out" of the current franchise, or at such time as the franchise expires on its own terms, then the funding requirements will be only those required by DIVCA.

D. Funding Provided by the City to KOCT for PEG Access Services, Facilities and Equipment.

1. Funding from the City's General Fund.

Funds shall be disbursed to KOCT on a quarterly basis, in accordance with the disbursement policy and timeline specified in Section 25 of this Agreement.

The parties recognize that the amount of funds ultimately available to the City's general fund are subject to the finalization of the annual budget from the State and other City resources. Thus, notwithstanding the preceding paragraph, the amount of funds available pursuant to this section may vary or be subject to reduction as set forth in Section 26 of this Agreement.

Effective July 1, 2010, the City's General Fund payment is $377,203. Future General Fund allocations beyond Fiscal Year 2010-2011, if any, are at the sole and absolute discretion of the City Council.

2. Telecommunications/Technology Grant.

Pursuant to Section 7.13D of the Franchise, Franchisee has agreed to pay to the City certain funds to "purchase and/or install telecommunications capital improvements, equipment and services, including . . . to address cable related needs of the City, so long as such use to which the City puts such funds does not constitute a "franchise fee" within the meaning of Section 622 (g) of the Cable act." A portion of those funds shall be provided to KOCT as set forth herein.

Year One (2003)	$ 1,200,000
Year Two (2004)	$ 850,000
Years Three through Fifteen (2005-2017)	$ 149,428/year

The amount stated are approximate, based on an estimated return of three and one half per cent (3.5%) on the investment of the fund balance. The actual amount may vary and may be less than the estimated amount. The funds will be invested in accordance with the City's investment policy. Interest earned on these funds shall be credited to the PEG Access Services, Facilities and Equipment Fund. During the period of August 2010–June 2011, KOCT and City staff agree to discuss the acceleration of the payment of the balance of the Telecommunications/Technology Grant. Any change to the disbursement schedule outlined above will necessitate an amendment to this Second Amended Agreement, subject to City Council approval.

3. Pass-Thru Funds.

Pursuant to Section 7.13.D.4 of the Franchise, Franchisee has agreed to collect and pay to the City Thirty-five Cents (35¢) per subscriber per month (the "pass-thru"), for ongoing PEG capital equipment and facilities support consistent with the provisions of Section 622(g)(2)(C) of the Cable Act. Likewise, pursuant to DIVCA, any state video franchise holders providing video services within the City will be required to meet the same pass-thru obligation. These funds shall be disbursed to KOCT on a quarterly basis, in accordance with the disbursement policy and timeline set forth in Section 25. The actual amount of funding under this section shall vary based upon the number of cable subscribers during any given quarter.

SECTION 18. ANNUAL PLAN AND BUDGET.

A. Each year, as part of the City budget process, City shall provide KOCT with an estimate of the funds that will be available to KOCT for the upcoming fiscal year. As used herein, the fiscal year begins on July1 and ends on June 30.

B. On or before June 30th of each year in which this Agreement is in effect, KOCT shall provide to the City an Annual Plan and Budget outlining activities and programs planned for the following fiscal year with funds and channel(s) received from the City. Such plan shall contain:

1. A statement of anticipated number of hours of local original PEG access programming;

2. Training classes to be offered and frequency of classes;

3. Other access activities planned by KOCT; and

4. A detailed (line item) operating budget following the procedures outlined in City Council Policy 200-09, including the attached Regulatory Forms.

5. Fundraising plan as set forth in Section 20 of the Agreement.

C. The City and KOCT may arrange meetings, as necessary, to discuss the Annual Plan and budget for the upcoming year, and the execution of the previous years plan. These meetings shall be in addition to the quarterly meetings, and shall not function as a substitute for the aforementioned reports.

SECTION 19. EXPENDITURE OF FUNDS.

KOCT shall spend funds received from City solely for the purposes listed in its Annual Plan and Budget and Section 3 (Scope of Services) of this Agreement. Funds not expended in the year covered by the Annual Budget and Activities Plan may be carried over by KOCT into succeeding years, subject to City review and comment to the budget allocations. Upon termination of this Agreement all funds of any kind received from City and not expended by KOCT shall be returned to City. KOCT shall provide for such fiscal control and accounting procedures as are necessary to assure proper disbursement and accounting for funds received from City.

SECTION 20. FUNDING FROM OTHER SOURCES.

KOCT is encouraged to, and may, during the course of this Agreement, receive supplemental funds from other sources, including, but not limited to fundraising activities and contracts with other public agencies. KOCT shall, within ninety (90) days of execution of this Agreement, present a long term (fifteen (15) year) Fundraising plan for review and comment by the City, to assist with, equipment and facility replacement and operational needs. The fundraising plan shall also include annual fundraising objectives, and targeted activities. The plan shall be updated on an annual basis. The update shall include a report on fundraising activities and results of the prior year. Such funds shall be used in furtherance of the objectives set forth in this Agreement.

SECTION 21. SPONSORSHIP/UNDERWRITING GUIDELINES.

KOCT shall comply with the underwriting/sponsorship guidelines as set forth in Exhibit A to the Franchise. Such guidelines are attached hereto and incorporated herein

by this reference as Exhibit A of the Agreement.

SECTION 22. CITY BUSINESS LICENSE.

Prior to the commencement of any work under this Agreement, KOCT shall obtain and present a copy of an Oceanside City Business License to the City Manager.

SECTION 23. CONFLICT OF INTEREST.

The parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and KOCT further agrees not to hire or contract for services any employee or officer of the City that would be in violation of any federal, state or local law or regulation. KOCT shall not offer gratuities in the form of entertainment, gifts, or otherwise give to any agent, representative, employee or City official with a view toward securing favorable treatment with respect to the performance of this Agreement.

SECTION 24. MEDIATION

Any controversy or claim arising out of or relating to this Agreement, or concerning the breach or interpretation thereof, shall be first submitted to mediation, the cost of which shall be equally borne by the parties.

SECTION 25. FUND DISBURSEMENT POLICY AND PROCEDURE.

The funds provided pursuant to the terms of this Agreement shall be disbursed in accordance with the procedure set forth herein, or as may be amended from time to time by the City consistent with Council Policy 200-09. Additionally, funds received pursuant to this agreement shall be maintained in a separate account(s) and shall not be commingled with other funds. Funds received by KOCT from the City shall be deposited in a federally insured bank or savings institution, e.g., FDIC. Disbursements over Two Hundred Fifty Dollars ($250) from said accounts shall require not less than two (2) authorized signatures.

A. Operating Funds (General Fund Disbursements)

Within thirty (30) days of execution of this Agreement, and upon presentation to the City of a properly executed Authorization for Expenditure ("AFE"), the City shall advance operating funds, pursuant to the approved budget, sufficient for one (1) calendar quarter (three (3) months) of operations. Such AFE shall correspond with the budgeted expenses as set forth in the approved budget. Thereafter, operating funds shall be disbursed on a quarterly basis, pursuant to the schedule set forth

herein. KOCT shall maintain supporting documentation for all expenditures, including, but not limited to, invoices, cancelled checks, receipts, etc. Furthermore, such expenditures shall be supported in the annual audit as well as in the Non-profit Organization Financial Report Form (Council Policy 200-09). Such documentation shall be made available for City review upon request. The submittals and documentation requirements set forth in this section apply to all funds disbursed pursuant to this Agreement. The last quarterly payment will occur in April 2011.

B. Telecommunications/Technology Grant.

Prior to disbursement of funds from the Telecommunications/Technology Grant, KOCT shall submit an AFE containing a listing of the expenditures contemplated by the request, pursuant to the annual budget. All expenditures shall be in accordance with this Agreement and the Franchise. Such funds shall be disbursed on an annual basis pursuant to the requirements set forth herein, including City Council Policy 200-09 regarding non-profit financial reporting. Such amounts shall be paid by the City within thirty (30) days of receipt and approval of the AFE.

C. Pass-Thru

Upon the approval of this Agreement and execution by the City, and receipt of a properly completed and executed AFE from KOCT, the City shall, as soon as reasonably possible, disburse to KOCT pass-thru amounts collected from the Franchisee. Each quarter thereafter, KOCT shall submit to the City a properly completed AFE for payment of the amount collected from the Franchisee during the previous quarter. Such amounts shall be paid by the City within thirty (30) days of receipt and approval of the AFE. All expenditures shall be in accordance with the guidelines and requirements set forth in this Agreement and the Franchise, including City Council Policy 200-09 regarding non-profit financial reporting.

SECTION 26. REOPENER.

This Agreement shall be subject to re-opener by the City as set forth herein.

A. At the end of five (5) years from the execution of this agreement.
B. This Agreement shall also be subject to a re-opener based upon changes in federal or state law, impacting the City's continued ability to provide the funds set forth in this Agreement.

C. This Agreement shall be subject to a re-opener reduction upon the

happening of an event that subjects the City to a "significant reduction" in the funding available to its general fund. A significant reduction in General Fund revenues is defined as any loss of revenue sufficient to require a reduction in City services including total loss of General Fund support not replaced elsewhere.

D. This Agreement shall be subject to re-opener upon the City's issuance of a new franchise to another cable company (other than Franchisee) or upon transfer of the current Franchise to another cable company.

E. This Agreement shall be subject to re-opener upon the incumbent franchisee "opting-out" of its current franchise pursuant to the provisions of DIVCA.

F. The City will not re-open the contract more than once per year for the purposes set forth in Subsection C above. Should this Agreement be re-opened by the City, not less than one hundred twenty (120) days notice shall be provided to KOCT advising them that the City has or expects to suffer a significant revenue loss and indicating how much the City Manager proposes to reduce payments to KOCT from the general fund portion of the financial support. During the one hundred twenty (120) days prior to the implementation of the decrease in payments of general fund money to KOCT, the parties shall negotiate in good faith to arrive at a new agreement regarding the particular services that may be reduced in accordance with the proposed reduction. The parties agree that any reduction in funding to KOCT may result in a commensurate reduction in KOCT's obligation to produce programming.

G. The City Manager shall have the non-delegable authority, on behalf of the City, to re-open this Agreement for the purposes set forth in this Section 26, and to effectuate any funding reductions or changes required in accordance with the terms of this Agreement.

SECTION 27. MANAGEMENT CHANGES.

KOCT shall notify the City annually of any change in its Board of Directors and of any change of KOCT's Executive Director within ten (10) working days of its occurrence. KOCT shall notify City of any change in KOCT's corporate structure within ten (10) working days of its occurrence. KOCT will host one annual public forum, which will be noticed and open to the public. KOCT will also meet annually with the Telecommunications Committee at a meeting noticed and open to the public to discuss issues of interest to community members.

SECTION 28. NOTIFICATION OF ACTIONS BROUGHT.

In the event that any claim, demand, suit or other legal action, including without limitations, any communications concerning copyright infringement or criminal indictment is brought by any person(s) or entity against KOCT, or brought by KOCT, KOCT shall deliver copies to the City within fifteen (15) days of receipt or filing, whichever is applicable.

SECTION 29. NO THIRD PARTY BENEFICIARIES.

This Agreement does not confer any enforceable rights to any person or entity that is not a party to this Agreement.

SECTION 30. NON-WAIVER OF PERFORMANCE.

In no event shall any payment, act or omission in any manner impair or prejudice any right, power, privilege or remedy available to the City to enforce its rights hereunder, which rights, powers, privileges or remedies are always specifically reserved. No waiver by the City of any one or more of KOCT's defaults shall operate as an express or implied waiver of any other existing or future default. Waiver by the City shall not be deemed a practice or course of dealing between the parties contrary to the express terms of the Agreement.

In no event shall any payment, act or omission in any manner impair or prejudice any right, power, privilege or remedy available to KOCT to enforce its rights hereunder, which rights, powers, privileges or remedies are always specifically reserved. No waiver by the City of any one or more of City's defaults shall operate as an express or implied waiver of any other existing or future default. Waiver by KOCT shall not be deemed a practice or course of dealing between the parties contrary to the express terms of the Agreement.

SECTION 31. VENUE.

The obligations and undertakings of each of the parties to this Agreement shall be performed in Oceanside, California. The venue for any court action shall be the Superior Court of California, San Diego County, North County Division.

SECTION 32. TERM OF AGREEMENT.

This Agreement shall be for a period of approximately fourteen and one-half (14.5) years commencing on April 1, 2003, and ending on June 30, 2017, unless terminated earlier, as provided in this Agreement. This Agreement shall be subject to annual performance reviews, and may be subject to earlier termination, as set forth

elsewhere herein.

SECTION 33. TERMINATION OF AGREEMENT: TRANSFER OF ASSETS.

A. The City shall have the right upon one hundred twenty (120) days written notice to KOCT to terminate this Agreement for:

1. Breach of any material provision of this Agreement by KOCT;

2. Malfeasance, misfeasance, misappropriation of funds; or

3. Loss of 501(c)(3) status by KOCT.

B. KOCT may avoid termination by curing any such breach to the satisfaction of the City within thirty (30) days of notification or within a time frame agreed to by the City and KOCT. The City may also terminate this Agreement at the expiration of its term, or any extension thereof.

C. In addition to the foregoing, the City may terminate this agreement upon ninety (90) days written notice to KOCT upon termination of any of the funding sources set forth in this agreement, including, but not limited to, the City's ability to collect franchise fees pursuant to federal, state, or local law.

D. Upon termination of this Agreement, KOCT shall immediately transfer to the City, or a City designated non-profit organization with I.R.C. 501(c)(3) all equipment, real property, fixtures, contracts, leases, deposit accounts or other assets received by or purchased by KOCT with funds received pursuant to this Agreement.

SECTION 34. EXTENSION OF AGREEMENT.

This Agreement may not be renewed or extended beyond the original term, except that extensions may be granted at the option of the City as necessary to coincide with the Franchise renewal process.

SECTION 35. TIME.

Time is of the essence in this Agreement and for the performance of all covenants and conditions of this Agreement.

SECTION 36. COOPERATION.

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

SECTION 37. APPLICABLE LAW.

This Agreement shall be interpreted and enforced under the laws of the State of California.

SECTION 38. NOTICES.

All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

TO CITY:	**TO KOCT:**
City of Oceanside City Manager 300 North Coast Highway Oceanside, CA 92054	KOCT Executive Director 3038 Industry Way, Suite 101 Oceanside, CA

(with a copy to the City Attorney)

Either party may change its address by notice to the other party as provided herein.

Communications shall be deemed to have been given and received on the first to occur:

a. Actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or

b. Three (3) working days following the deposit in the United States mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

SECTION 39. INTERPRETATION OF THE AGREEMENT.

The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit

any other rights or remedies available to City or KOCT.

KOCT shall be responsible for complying with all local, state and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

SECTION 40. ENTIRE AGREEMENT.

This Agreement is the entire agreement of the parties and supersedes all prior negotiations and agreements whether written or oral. This Agreement may be amended only by written agreement signed by the parties, and no purported oral amendment to this Agreement shall be valid.

SECTION 41. SIGNATURES.

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the KOCT and the City.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed by setting hereunto their signatures:

OCEANSIDE COMMUNITY SERVICE TELEVISION CORP.

By: _____
GWEN PRICE
Chairman of the Board of Directors

33-0088959
Employer ID No.

CITY OF OCEANSIDE

By: _____
PETER WEISS
City Manager

APPROVED AS TO FORM:

_____
City Attorney

NOTARY ACKNOWLEDGMENTS OF KOCT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Diego

On August 12, 2010 (Date) before me, Elizabeth S. Hedrick Notary Public (Here Insert Name and Title of the Officer),

personally appeared Gwen Price (Name(s) of Signer(s)),

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

ELIZABETH S. HEDRICK
Commission # 1852087
Notary Public -- California
San Diego County
My Comm. Expires Jul 1, 2013

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Elizabeth S. Hedrick (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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City of Oceanside

Office of the City Manager

Memorandum

To: Mayor and Councilmembers

From: Michelle Lawrence, Deputy City Manager

Through: Peter Weiss, City Manager

Date: July 1, 2010

Subject: **KOCT Agreement**

Pursuant to the City Council's action of June 2, 2010, staff has met with KOCT to discuss the reduction in the contract obligation of $110,000. The following is a list of the recommended reductions that will need to be included in the Amended Agreement between the City and KOCT which Council will consider at its August 25 meeting. These numbers do not include overhead figures as provided by KOCT in their May 12, 2010, *Program Cost Basis Recap* because KOCT's overhead would not go down significantly unless half of the programing were to be eliminated.

Eliminate		
High School Basketball		$7,408.00
High School Football		5,413.00
Bulletin Boards (18 &19)		13,465.00
Climate TV!		14,710.00
State of the City		1,936.00
4th of July Parade		2,058.00
	Subtotal	44,990.00
Reduce		
Living Legacies	Reduce from 20 to 8	8,256.00
Journalist Roundtable	Reduce from 12 to 10	3,810.00
Special Events	Reduce from 10 to 4	31,026.00
Oceanside Spectrum	Reduce from 11 to 6	9,095.00
Voice of Oceanside	Reduce from 20 to 11	12,942.00
	Subtotal	65,129.00
Total savings		**$110,119.00**

Please let me know if you have any questions or concerns; thank you.

CC: John Mullen, City Attorney
Leslie Gallagher, Deputy City Attorney
Tom Reeser, Executive Director - KOCT

...shining light on our city!
KOCT
The Oceanside Channel

CH 18 – The Community Channel
CH 19 – The Government Channel

BOARD OF DIRECTORS
GWEN PRICE | CHAIR
KAY PARKER | VICE CHAIR
ROBERT NEAL | IMMEDIATE PAST CHAIR
DEBBIE ALLEN |TREASURER
HENRY HOLLOWAY | SECRETARY
MICHELLE BRAY DAVIS | DIRECTOR
ANN HADEN FRASER | DIRECTOR
BARBARA MANNINO | DIRECTOR
TOM MISSETT | DIRECTOR
DIANE PAL | DIRECTOR
ELIZABETH RHEA | DIRECTOR
DR. RICHARD ROBERTSON | DIRECTOR
JEFF SEGALL | DIRECTOR

STAFF
TOM REESER | EXECUTIVE DIRECTOR
JACOB RUSH | STATION MANAGER

July 29, 2010

Honorable Mayor Jim Wood
Councilmember Jack Feller
Councilmember Jerry Kern
Councilmember Chuck Lowery
Councilmember Esther Sanchez
300 North Coast Highway
Oceanside CA 92054

Honorable Mayor and Councilmembers,

More than 25 years ago, the City of Oceanside encouraged KOCT to become an independent 501 (c) (3) nonprofit with a goal of providing programming for, by and about Oceanside. As partners over these many years, we have created award-winning programs and kept Oceanside citizens well-informed about their City government. Oceanside Community Television is now widely recognized as a community television leader in all of San Diego County.

I have grappled with how, working together, we can maintain the community's television station while eliminating the need to fund KOCT from the City's General Fund. I think I've arrived at a win-win contract proposal that will move us closer to this mutual goal.

I propose a one-year contract with an amendment in which we agree to explore the viability of "bridge" funding for fiscal years 2011-2013 from monies already dedicated to KOCT and long term funding from fiscal year 2013 into the future. Not one dime of general fund monies will be required for our bridge and long-term funding proposals.

KOCT currently receives (and will until 2017) approximately $150,000 annually from the Telecommunications Technology Grant Fund—funding that is part of the current franchise and that can only be used by KOCT. KOCT proposes that we investigate during our one-year contract the viability of accelerating this funding for the two following years (2011-2013) to provide "bridge funding" so that KOCT can operate without general fund dollars (similar to the time frame Council provided for MainStreet Oceanside and the Oceanside Chamber of Commerce).

During the next year we also explore the viability of long term funding for KOCT—also without use of monies from the general fund. We believe that a State Franchise with television providers Cox Communications and AT&T could provide long-term funding without affecting any of the funds the City of Oceanside currently receives from Cox Communications and AT&T. In a state franchise KOCT would receive 1% of the cable providers' gross revenue; not from City funds. This 1% would equal the amount we received from the City in 2009. This would relieve the City of any funding burden *while retaining and protecting the City's investment in KOCT.*

Of course during this three-year period that I've discussed KOCT will also generate additional income through a variety of efforts including grants, Friends of KOCT membership program, production income and fund raising.

The beauty of this contract proposal is that your citizens will continue to receive high quality community programming, valuable emergency information, and job training and opportunities for young people. And a viable KOCT is a valuable resource for the City of Oceanside.

Finally, in this year's contract, KOCT proposes that at the beginning of each year, we invite the public to attend an annual public forum and open house at the KOCT studios. KOCT staff and our Board of Directors can detail how we've spent our funding in the past and hear comments from the public. We believe this will provide an opportunity for meaningful, responsive interaction with the public. The annual open forum proposal was discussed at our last Board meeting and is acceptable to my volunteer Board of Directors, which represents a wide spectrum from the Oceanside community.

Another way to receive public input and to provide the public access would be through a venue that already exists in the City of Oceanside—Oceanside Telecommunications Committee. Every June the committee could also host a forum in Council Chambers for the public to hear about KOCT activities, comment upon and learn about KOCT. The Commissioners and KOCT Board Members could be available to receive comments and answer questions from the public. This would allow for two annual opportunities for formal public participation.

I would like to sit down with you to discuss this proposal and will call you next week to set up an appointment. Thank you for your ongoing support and belief in the value of KOCT for our community.

Sincerely,

Tom Reeser
Executive Director

cc: Peter Weiss, City Manager
✓Michelle Skaggs-Lawrence, Deputy City Manager
John Mullen, City Attorney