

RESOLUTION NO. 2022-51

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING AN UPDATED AGREEMENT, WORK PLAN AND BUDGET FOR ACCESS MONTEREY PENINSULA (AMP) FOR PUBLIC, EDUCATION AND GOVERNMENT (PEG) BROADCASTING SERVICES FOR FY 2022-2023, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY, AND AUTHORIZING FINANCE DIRECTOR TO MAKE THE NECESSARY BUDGETARY AND ACCOUNTING ENTRIES AND APPROPRIATE PAYMENTS TO AMP, AND PROVIDE STAFF WITH FURTHER DIRECTION IN THE MATTER

WHEREAS, at the regular meeting of September 21, 2010, the City Council adopted Resolution No. 2010-158 approving an Agreement between the City of Marina and Access Monterey Peninsula (AMP), and;

WHEREAS, pursuant to the Agreement, AMP operates three Public, Education and Government (PEG) broadcasting channels and provides related broadcasting services to the City of Marina. The channels feature content from the public, educational and government segments of the Marina community as well as on-screen listings of community events, and;

WHEREAS, currently, City Council and some City Commission meetings are presented live with repeat broadcasts over the Marina City channel, and;

WHEREAS, live Internet streaming of the Marina City channel is available as a parallel broadcast service with a Windows Media web stream generated from AMP's servers and on-demand playback of all meetings televised on the Marina City channel is available on the Internet as streaming video as well, and;

WHEREAS, at the regular meeting of October 19, 2010, the City Council adopted Ordinance No. 2010-05, adding Chapter 5.56 to the Marina Municipal Code, implementing provisions of the Digital Infrastructure and Video Competition Act (DIVCA), and;

WHEREAS, effective with the expiration on October 20, 2012 of the existing franchise with the incumbent cable provider, currently Comcast, all state franchise holders operating within the City shall pay to the City a PEG Support Fee in the amount of 2.8% of gross revenues, and;

WHEREAS, the PEG Support Fee shall be used for PEG purposes, in a manner that is consistent with federal and state law, and;

WHEREAS, the Agreement with AMP to provide PEG services to the City of Marina has expired and the services have continued to be provided under the terms of the 2010 Agreement. It is now necessary to update the Agreement to ensure that it is up to date. City staff and AMP representatives have drafted the updated Agreement found in **Exhibit "A"**.

WHEREAS, AMP has submitted its proposed Work Plan and Budget for FY 2022-23 which contains the required information (“**Exhibit B**”), and;

WHEREAS, there is approximately \$47,000 in fund balance in this PEG Fund 210 (28-291) that may be used in addition to the services outlined in the attached work plan, and;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Approve the updated agreement, work plan and budget for Access Monterey Peninsula (AMP) for public, education and government (PEG) broadcasting services for FY 2022-23; and,
2. Authorizing the City Manager to execute the agreement on behalf of the City; and,
3. Authorizing the Finance Director to make the necessary budgetary and accounting entries and appropriate payments to Access Monterey Peninsula.

PASSED AND ADOPTED by the City of Marina City Council at a regular meeting duly held on the 19th day of May 2022, by the following vote:

AYES: COUNCIL MEMBERS: Burnett, Berkley, Biala, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Medina Dirksen

ABSTAIN: COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

**CONTRACT BETWEEN THE CITY OF MARINA, CALIFORNIA
AND
ACCESS MONTEREY PENINSULA, INC.**

AGREEMENT

This Agreement is made this _____ day of _____, 2022, by and between the City of Marina, a municipal corporation ("City"), and Access Monterey Peninsula, Inc. ("AMP"), a 501(c) (3) non-profit corporation, who agree as follows:

RECITALS:

1. The City desires to provide continuing support for public, educational, and government ("PEG") cable access channels pursuant to state law.
2. The California Public Utilities Commission has granted franchises to Comcast and AT&T (hereafter Franchisees) to provide video services in the City pursuant to the Digital Infrastructure and Video Competition Act ("DIVCA") of 2006.
3. The City has codified its rights pursuant to the DIVCA in Chapter 5.56 of the Marina City Code. Pursuant to those rights, video service providers granted franchises pursuant to DIVCA must provide certain PEG access channels, funding, and resources to the City.
4. AMP, a PEG management entity serving cities on the Monterey Peninsula, has indicated its interest in serving the City by proving PEG access programming and services.
5. The City wishes to utilize AMP to serve as the access management organization to operate and manage PEG access, and be the recipient of those PEG access channels, funding, and resources provided by video service providers pursuant to DIVCA and the City Code.
6. AMP has agreed to serve the City, and the community, by managing the Community Media Center and providing PEG access programming, and services in a manner consistent with applicable law and best practices.

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

SECTION 1. INCORPORATION OF RECITALS. The foregoing Recitals are true and correct and are integrated into this Agreement as if each was set forth fully herein.

SECTION 2. SCOPE OF SERVICES. In exchange for the funding provided by the City to AMP pursuant to this Agreement, AMP shall provide the following services:

A. OPERATE PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS CABLE CHANNEL(S). Operate the public, educational, and governmental access cable channel(s) in accordance with the provisions of this Agreement and applicable state and federal law, with the primary purpose being to bring to the community local programming and information not otherwise readily available in commercial and national media.

B. OPERATE A COMMUNITY MEDIA CENTER. Manage a video production facility and equipment, available for public use at such hours and times that are convenient and accessible to the public as determined by AMP. Access to equipment and facilities shall be open to all those who satisfactorily complete training class(es) provided by AMP or who receive a certification from AMP, identifying said user(s) as having satisfied training requirements through means other than AMP training classes.

C. PRODUCTION OF VIDEO PROGRAMMING. Provide personnel required to assist the City in video recording, broadcasting, and streaming, either on premises or remotely, all regular and special City Council and other such meetings as requested by the City Manager's Office. Should the City desire to retain AMP to provide additional services (special city council meetings, live event coverage, content creation), AMP agrees to provide those services at the hourly rates to be billed separately.

D. MAINTENANCE OF EQUIPMENT. Provide regular maintenance and repair of all video equipment purchased with monies received pursuant to this Agreement and/or donated, loaned, or leased to AMP by the City.

E. PROVIDE AUDIO VISUAL & TECHNICAL SERVICES. Provide routine maintenance and repair of audio and video equipment located in the City Council Chambers, as needed or requested. In addition, provide the following special services:

1. Evaluate the audio and video equipment in the City Council Chambers and make recommendations for replacement or upgrade, including, by not limited to, preparing the City Council Chambers for hybrid meetings, allowing the City to combine a "live" in-person meeting or event with a "virtual" online component, streaming over one or several internet platforms.
2. Assist with or undertake the implementation of the video and audio equipment upgrades approved by the City.
3. Analyze any problems during the term of the agreement associated with the live transmission of City meetings or community events on the cable and signal streaming on the Internet, research potential solutions and their costs, and recommend preferred solutions.
4. Based on the City's choice from the options described in Item E.3 above and the City's approved budget for the implementation of the approved solutions, assist with and oversee, in coordination with the designated City staff, the implementation of the City's desired solution for the problems associated with the live signal transmission of City Council meetings on the cable system and signal streaming on the Internet.
5. On an ongoing basis, monitor best practices of the industry and recommend to the City those improvements in policies, practices, and equipment that could enhance the achievement of the City's goals.

F. PROVIDE EQUAL ACCESS. Provide access to the use of the equipment, facilities, channels, and services provided herein on a non-discriminatory basis to all members of the community for non-commercial programming purposes, whether individuals, groups, or organizations pursuant to operating rules promulgated by AMP.

G. *DEVELOP OPERATING POLICIES AND PROCEDURES*. Develop policies and procedures for use and operation of the PEG access equipment, facilities, and channel(s). AMP shall file such policies and procedures with the City.

H. *OPERATE USING BEST PRACTICES*. Operate the Community Media Center and the PEG access channels in a manner consistent with best practices for PEG access and other similar organizations.

I. *COMPLIANCE WITH LAWS, RULES, AND REGULATIONS*. Administer the PEG access channels and facilities in compliance with applicable federal, state, and local laws, rules, regulations, and in compliance the Marina City Code.

J. *TRAINING*. Train City residents and, when requested, City employees, school or college employees and students in the techniques of video production, and provide technical advice in the execution of productions.

K. *PLAYBACK/CABLECAST*. Provide for the playback/cablecasting of programs on the PEG access channels twenty-four (24) hours per day, three hundred sixty-five (365) days per year. The City may work with AMP to coordinate scheduling of programs on the Peninsula access channel. Additionally, AMP agrees to retain and archive two years (2) of the City's video meeting recordings. Video files in excess of the two-year period will be transferred to the City, for final archiving as required.

L. *SPECIAL NEEDS GROUPS*. Support special needs groups, including but not limited to the hearing impaired, in program production through training and other means.

M. *PROMOTION*. Actively promote the use and benefit of the PEG access channels and facilities to cable subscribers, the public, PEG access users, and Franchisees.

N. *OTHER ACTIVITIES*. Undertake other PEG access programming activities and services as deemed appropriate by AMP and consistent with the obligation to facilitate and promote PEG access programming and provide non-discriminatory access.

SECTION 3. CHANNELS OPEN TO PUBLIC: AMP shall keep the PEG access channels open to all potential users regardless of their viewpoint, subject to Federal Communications Commission regulations and other relevant laws. The parties agree neither the City, Franchisees, nor AMP 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 herein shall prevent AMP, the City, or the Franchisees from producing or sponsoring programming, prevent the City or the Franchisees from underwriting programming, or prevent the City, the Franchisees, or AMP 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 PEG channels. AMP shall promulgate and enforce policies and procedures that are designed to promote local use of the PEG access channels and make the 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 4. INDEMNIFICATION. AMP shall indemnify, defend, and hold harmless the City, its officers, 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 arising or resulting from any alleged acts or omission of the AMP, its officers, employees, agents or subcontractors arising out of or resulting from the performance of this Agreement.

AMP shall indemnify and hold harmless City, its officers, agents, employees and volunteers 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 or other injury or damage in law or at equity which claims, directly or indirectly, result from AMP use of channels, funds, equipment, facilities or staff granted under this Agreement or the franchise agreement.

The City shall indemnify, defend, and hold harmless AMP, its officers, agents and employees from and against any and all claims, losses, liabilities, or damage including payment of reasonable attorneys' fees arising out of or resulting from the performance of this Agreement, caused in whole or part by any act or omission of the City.

SECTION 5. COPYRIGHT CLEARANCE. Before cablecasting video transmissions AMP 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 AMP.

SECTION 6. COPYRIGHT AND OWNERSHIP. AMP shall own the copyright of any programs which it may produce. Copyright of programming produced by the public shall be held by such person(s) who produces said programming.

SECTION 7. DISTRIBUTION RIGHTS.

A. AMP shall require that all programs produced with funds, equipment, facilities, or staff granted under this Agreement be cablecast on the channels whose use is authorized by this Agreement. This subparagraph shall not be interpreted to restrict other distribution (beyond cablecasting 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.

B. At least at the beginning and end of each day that video programming is cablecast on the PEG access channels whose use is authorized by this Agreement, AMP shall display a credit stating "Partial funding for the operation of this channel is provided by the City of Marina." Such credit shall also state that opinions expressed in programming on the PEG access channels are the sole responsibility of the program producers.

SECTION 8. EQUIPMENT AND FACILITIES.

A. AMP 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.

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

C. Upon the dissolution of AMP, it shall, subject to the approval of the City, transfer all assets of AMP 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 9. INSURANCE. AMP shall maintain in full force and effect at all times during the term of this Agreement, or any extension thereof, insurance as required by this Section. The cost of such insurance shall be borne by AMP and may be included in AMP annual budget.

A. *COMPREHENSIVE LIABILITY INSURANCE.* Comprehensive liability insurance, including protective, completed operations and broad form contractual liability, property damage and personal injury coverage, and comprehensive automobile liability including owned, hired, and non-owned automobile coverage. All such coverage shall be carried in the minimum amounts of \$1,000,000 per occurrence, \$2,000,000 aggregate.

B. *EQUIPMENT INSURANCE.* Insurance shall be maintained 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 or natural catastrophe.

C. *WORKERS' COMPENSATION.* Full Workers' Compensation Insurance and Employer's Liability with limits as required by California law shall be maintained by AMP and shall include an endorsement waiving any subrogation rights against the City. The insurance carrier shall be approved by the City.

D. *CABLECASTER'S ERRORS AND OMISSIONS INSURANCE.* Insurance shall be maintained 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; and misuse of musical or literary materials. This policy shall not be required to cover individual access producers.

E. *CITY AS ADDITIONAL INSURED.* The aforementioned insurance policies shall be on a primary basis and shall list the City, via policy endorsement, as an additional insured. The policies shall provide that no cancellation, major change in coverage or expiration may be affected by the insurance company or AMP without first giving the City thirty (30) days written notice prior to the effective date of such cancellation or change in coverage. Any insurance or self-insurance maintained by the City, its officers, agents, employees, or volunteers shall be in excess of the AMP insurance and shall not contribute to it.

F. NOTIFICATION OF COVERAGE. AMP shall annually file with the City proof of insurance coverage as follows: (1) Comprehensive Liability and Workers' Compensation; (2) equipment insurance; (3) cablecaster's error and omission insurance prior to the commencement of cablecasting of programming on the designated PEG access channels. AMP shall immediately notify the City of any break or reduction in coverage.

SECTION 10. NON-DISCRIMINATION IN EMPLOYMENT AND SERVICE. AMP shall comply with Title VII of the Civil Rights Act of 1964 and no person shall, on the grounds of race, religion or religious creed, color, age (over 40), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), military service, or any other classification protected by federal, state, or local laws and ordinances be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.

SECTION 11. INDEPENDENT CONTRACTOR. It is understood and agreed that AMP is an independent contractor and that no relationship of principal/agent or employer/employee exists between the City and AMP. If in the performance of this Agreement any third persons are employed by AMP, such persons shall be entirely and exclusively under the control, direction and supervision of AMP. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment shall be determined by AMP and the City shall have no right or authority over such persons or terms of employment.

SECTION 12. ASSIGNMENT AND SUBLETTING. Neither this Agreement nor any interest herein shall be assigned or transferred by AMP, except as expressly authorized in writing by City.

SECTION 13. ANNUAL REPORTS. On or before December 31st of each year, AMP shall submit to 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, as available;
- B. Current and complete listing of AMP's Board of Directors; and
- C. Year-end financial statements audited or reviewed by an independent certified public accountant.

SECTION 14. RECORDS, FISCAL AUDIT.

- A. AMP shall maintain all necessary books and records, in accordance with generally accepted accounting principles.
- B. Upon reasonable request from City, AMP shall, at any time during normal business hours, make available all of its records with respect to all matters covered by this Agreement at:

Marina City Hall
Attn: City Manager
211 Hillcrest Avenue
Marina, CA 93933

C. AMP shall prepare (or have prepared) and submit to the City a fiscal audit by a certified public accountant, at least every three (3) years.

SECTION 15. FUNDING.

A. Pursuant to City Code Chapter 5.56, all Franchisees are obligated to provide certain PEG access channels, funding and resources to the City for PEG access purposes. The City does by this Agreement transfer those channels, funds, and resources as described below to AMP for the purposes described in this Agreement.

1. **PEG Channel Capacity:** There has been designated certain channel capacity (spectrum on franchised video broadband systems) for PEG access use. The City agrees to permit AMP to manage that channel capacity for PEG access programming.

2. **PEG Support:** The City agrees to provide AMP with all PEG support fees it receives from companies which have been granted franchises by the California Public Utilities Commissions. AMP shall utilize such funds for the purposes delineated in this agreement. Should the City desire to retain AMP to provide services in addition to those described in Section 2 of this Agreement, AMP agrees to provide those services at the hourly rates delineated in Exhibit A in this agreement.

3. **PEG Channel Carriage** All PEG channels shall be receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than that needed to receive the lowest cost tier of service. PEG access capacity provided by a state franchisee shall be of similar quality and functionality to that offered by commercial channels, shall be capable of carrying a National Television System Committee (NTSC) quality television signal, and shall be carried on the state franchisee's lowest cost tier of service.

4. **PEG Channel Interconnection.** A state franchisee shall make interconnection available to each PEG channel originator programming a channel in the City and shall provide the facilities necessary for the interconnection.

SECTION 16. ANNUAL PLAN AND BUDGET.

A. On or before March 1 of each year in which this Agreement is in effect, City shall provide AMP with an estimate of the funds (franchise fees and PEG fees) that will be available to AMP for the upcoming fiscal year. As used herein, the fiscal year begins on July 1 and ends on June 30.

B. On or before March 30, AMP shall meet and confer with City staff to seek input regarding the development of its annual plan and budget for the upcoming fiscal year. During that meeting the City shall share with AMP any matters that it would like AMP to consider as it prepares its annual plan and budget.

C. On or before March 30 of each year in which this Agreement is in effect, AMP shall provide to the City a proposed Annual Plan and Budget outlining activities and programs planned for the following fiscal year with funds and PEG access channels received from the City. The Annual Plan and Budget 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. Public meeting coverage;
4. Other access activities planned by AMP; and

5. A detailed operating and capital equipment and facilities budget.

SECTION 17. EXPENDITURE OF FUNDS. AMP shall spend funds received from City solely for the purposes listed in its Annual Plan and Budget and as described in Section 2 (Scope of Services) of this Agreement. Funds not expended in the year covered by the Annual Plan and Budget may be carried over by AMP into succeeding years. Upon termination of this Agreement all funds of any kind received from City and not expended by AMP shall be returned to City. AMP shall provide for such fiscal control and accounting procedures as are necessary to assure proper disbursement and accounting for funds received from City.

SECTION 18. RECEIPT OF APPROVED FUNDING. For each year in which AMP has submitted the Annual Plan and Budget to the City as required under Section 16 of this Agreement, the City shall make quarterly payments to AMP. Those payments shall be made on or before February 15, May 15, August 15, and November 15.

SECTION 19. FUNDING FROM OTHER SOURCES. AMP may, during the course of this Agreement, receive supplemental funds from other sources. These funds may include, but are not limited to, fundraising activities.

SECTION 20. TERM OF AGREEMENT. This Agreement shall be for a period of two (2) years commencing on ____ 2022 and ending on ____ 2024 unless terminated earlier, as provided in this Agreement. This Agreement may be extended, by mutual agreement of the City and AMP, in writing, for one additional period of one (1) year in accordance with Section 22 of this Agreement.

SECTION 21. TERMINATION OF AGREEMENT: TRANSFER OF ASSETS.

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

1. Breach of any provision of this Agreement by AMP;
2. Malfeasance, misfeasance, misappropriation of public funds; or
3. Loss of 501(c)(3) status by AMP.

B. AMP may avoid termination by curing any such breach to the satisfaction of the City within one hundred twenty (120) days of notification or within a time frame agreed to by the City and AMP. The City may also terminate this Agreement at the expiration of its term, or any extension thereof.

C. Upon termination of this Agreement, AMP shall immediately transfer to the City all equipment, real property, fixtures, contracts, leases, deposit accounts or other assets received by or purchased by AMP with funds received pursuant to this Agreement.

SECTION 22. EXTENSION OF AGREEMENT. This Agreement may be renewed or extended for an additional period of one (1) year, pursuant to the following process:

- A. If AMP seeks an extension of this Agreement, it shall, on or before ____, submit to City a letter of intent requesting extension.
- B. On or before ____, City shall respond to AMP's letter of intent to request extension. If City intends to refuse to extend the Agreement, it shall explain the reasons for this decision in its response to AMP. City may not refuse to extend the contract based upon a failure of AMP to comply with the terms of this Agreement

unless City has provided AMP a notice of its failure to comply with the terms and the opportunity to cure said noncompliance.

SECTION 23. TIME. Time is of the essence in this Agreement and for the performance of all covenants and conditions of this Agreement.

SECTION 24. COOPERATION. Each party agrees to execute all documents and do all things necessary and appropriate to carry out the provisions of this Agreement.

SECTION 25. APPLICABLE LAW. This Agreement shall be interpreted and enforced under the laws of the State of California.

SECTION 26. VENUE. The parties agree this Agreement is being entered into, and shall be performed, in Marina, Monterey County, California.

SECTION 27. NOTICES. All notices and other communications to be given by either party may be given in writing, depositing the same in the United States mail, postage prepaid and addressed to the appropriate party as follows:

To City of Marina:
City Manager's Office
211 Hillcrest Avenue
Marina, CA 93933

To Access Monterey Peninsula:
Executive Director
465 Tyler Street
Monterey, CA 93940

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

SECTION 28. SEVERABILITY. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, unenforceable, or contrary to public policy, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

SECTION 29. MUTUALITY. This Agreement is the product of negotiation and preparation by and among the parties represented by counsel. All sides and their counsel have reviewed and have had the opportunity to revise this Agreement. The Parties waive the provisions of Section 1654 of the Civil Code of California and any other rule of construction to the effect that ambiguities are to be resolved against the drafting party, and the parties warrant and agree that the language of this Agreement shall neither be construed against or in favor of any party.

SECTION 30. WAIVER. A party's failure to insist on the strict performance of any provision of this Agreement or to exercise any right, power, or remedy upon a breach of this Agreement shall not constitute a waiver of any provision of this Agreement. Neither shall such action or inaction limit the party's right to later enforce any provision or exercise any right to the fullest extent allowed under this Agreement. A waiver of any covenant, term or condition contained in this Agreement shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent, authorization

or approval by a party of any act shall not be deemed to waive or render unnecessary the consent, authorization or approval of any subsequent similar act. Any waiver of any terms or conditions must be in writing and signed by the parties.

SECTION 31. 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 and no purported oral amendment to this Agreement shall be valid.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

CITY OF MARINA, CALIFORNIA

A municipal corporation

By: _____

Date: _____

ACCESS MONTEREY PENINSULA, INC.

A nonprofit corporation

By: _____

Date: _____

EXHIBIT B

Proposed Budget FY 2022-2023

1. The following proposed budget requires AMP Media to operate a centralized media center and broadcast facility as defined in the above Operational Service Plan.
2. For FY 2022-2023, AMP Media requests a 100% pass-through of PEG funds accrued during the fiscal year, with the understanding that all funds received by AMP Media from the City are restricted to capital costs, per DIVCA requirements.
3. The proposed budget assumes approximately 280 hours of local, original PEG access programming specific to the City comprised of the following:
 - 180 hours of government and City related programming.
 - 100 hours of public access programming.
4. Based on forecasted receipts expected by the end of this fiscal year from the City, AMP Media anticipates receiving approximately \$120,000 in FY 2022-2023. With this assumption, the following table represents the expected allocations by account, prorating Marina's contribution to the overall AMP Media PEG budget:

INCOME

Marina PEG Fees	\$120,000
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EXPENSES

Production Equipment	(\$5,000)
Production Equipment Parts & Maintenance	(\$2,000)
Insurance	(\$2,000)
Payroll Expenses	(\$76,500)
Rent	(\$25,000)
Production Supplies	(\$3,000)
Utilities	(\$4,000)
Telecommunications Services	(\$2,500)

Thank you for your continued support of AMP Media and the community of Marina.

April 13, 2022

Item No: **8g(2)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of April 19, 2022

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
APPROVING AN UPDATED AGREEMENT, WORK PLAN AND BUDGET FOR
ACCESS MONTEREY PENINSULA (AMP) FOR PUBLIC, EDUCATION AND
GOVERNMENT (PEG) BROADCASTING SERVICES FOR FY 2022-2023, AND
AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON
BEHALF OF THE CITY, AND AUTHORIZING FINANCE DIRECTOR TO
MAKE THE NECESSARY BUDGETARY AND ACCOUNTING ENTRIES AND
APPROPRIATE PAYMENTS TO AMP, AND PROVIDE STAFF WITH
FURTHER DIRECTION IN THE MATTER**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2022-, approving the updated agreement, work plan and budget for Access Monterey Peninsula (AMP) for public, education and government (PEG) broadcasting services for FY 2022-23; and,
2. Authorizing the City Manager to execute the agreement on behalf of the City; and,
3. Authorizing the Finance Director to make the necessary budgetary and accounting entries and appropriate payments to Access Monterey Peninsula.

BACKGROUND:

At the regular meeting of September 21, 2010, the City Council adopted Resolution No. 2010-158 approving an Agreement between the City of Marina and Access Monterey Peninsula (AMP).

Pursuant to the Agreement, AMP operates three Public, Education and Government (PEG) broadcasting channels and provides related broadcasting services to the City of Marina. The channels feature content from the public, educational and government segments of the Marina community as well as on-screen listings of community events.

Currently, City Council and some City Commission meetings (prior to COVID) are presented live with repeat broadcasts over the Marina City channel. In addition, live Internet streaming of the Marina City channel is available as a parallel broadcast service with a Windows Media web stream generated from AMP's servers. On-demand playback of all meetings televised on the Marina City channel is available on the Internet as streaming video as well.

At the regular meeting of October 19, 2010, the City Council adopted Ordinance No. 2010--05, adding Chapter 5.56 to the Marina Municipal Code, implementing provisions of the Digital Infrastructure and Video Competition Act (DIVCA).

Effective with the expiration on October 20, 2012 of the existing franchise with the incumbent cable provider, currently Comcast, all state franchise holders operating within the City shall pay to the City a PEG Support Fee in the amount of 2.8% of gross revenues. The PEG Support Fee shall be used for PEG purposes, in a manner that is consistent with federal and state law

Per the prior Agreement, on or before April 30 of each year, AMP is required to provide to the City, for City Council consideration and approval, an Annual Plan and Budget outlining activities and programs planned for the next fiscal year. This agreement is expired and is in need of renewal.

ANALYSIS:

The City wishes to provide a Public Educational and Government (PEG) channel pursuant to Chapter 5.56 State Video Franchise. Since 2010, the City has contracted with Access Monterey Peninsula (AMP), a PEG management entity serving cities on the Monterey Peninsula, to provide PEG access programming and services. The City wishes to continue to utilize AMP to serve as the access management organization to operate and manage PEG access, and be the recipient of those PEG access channels, funding, and resources provided by video service providers pursuant to DIVCA and the City Code. AMP has agreed to serve the City, and the community, by managing the Community Media Center and providing PEG access programming, and services in a manner consistent with applicable law and best practices.

The Agreement with AMP to provide PEG services to the City of Marina has expired and the services have continued to be provided under the terms of the 2010 Agreement. It is now necessary to update the Agreement to ensure that it is up to date. City staff and AMP representatives have drafted the updated Agreement found in **EXHIBIT “A”**.

The updated Agreement calls for AMP to submit its proposed Work Plan and Budget Annually. This Work Plan shall contain the required information, as follows:

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. Public meeting coverage;
4. Other access activities planned by AMP; and
5. A detailed operating and capital equipment and facilities budget.

The Work Plan and Budget for FY 2022-23 included as **EXHIBIT “B”**. Under the Work Plan, AMP proposes to continue the current services. AMP will provide live coverage and replays on cable TV systems operating in Marina of all official meetings of the City Council, Planning Commission and other boards and commissions held in the Council Chambers. AMP will also continue to provide a streaming internet channel simulcast of the cable TV channel as well as on-demand delivery of replays of televised meetings. AMP estimates that it will provide 180 hours of government programming and 100 hours of public access programming. Classes and trainings will be organized for the City staff as requested/as needed. These may include: equipment/camera usage, social media best practices, use of hybrid technology, Zoom best practices, etc. Classes may also be organized for the public and may include a media training series for kids with a focus on ocean conservation.

PEG fees may only be used for capital expenditures pursuant to federal law, therefore, City PEG fees will not be used for operations. Instead, City PEG fees will be used by AMP solely for capital uses with operations relating to the City services paid from unrestricted funds, as explained in the Work Plan and Budget.

Once the City Council considers and approves the proposed Plan and Budget, the necessary funds will be provided to AMP on a quarterly basis (schedule coincides with PEG fee payments paid by the cable companies and received by the City).

Further, there is approximately \$47,000 in fund balance in the PEG Fund 210 (28-291) that may be used in addition to fund capital items such as Audio Video Upgrades in the City Council Chambers.

Proposed Budget FY 2022-2023

1. The proposed budget requires AMP Media to operate a centralized media center and broadcast facility as defined in the Operational Service Plan.
2. For FY 2022-2023, AMP Media is requesting a 100% pass-through of PEG funds accrued during the fiscal year, with the understanding that all funds received by AMP Media from the City are restricted to capital costs, per DIVCA requirements.
3. The proposed budget assumes approximately 280 hours of local, original PEG access programming specific to the City comprised of the following:
 - 180 hours of government and City related programming.
 - 100 hours of public access programming.
4. Based on forecasted receipts expected by the end of this fiscal year from the City, AMP Media anticipates receiving approximately \$120,000 in FY 2022-2023. With this assumption, the expenditure budget has been developed to ensure revenues meet expenses.

FISCAL IMPACT:

Should the City Council approve this request, the City will continue to receive PEG fees which must be used for to facilitate PEG access to the cable system. The adopted FY 2022-23 budget for PEG revenues and expenditures will be consistent with the approved Work Plan and Budget.

Based upon the AMP Work Plan and Budget, AMP will be using City PEG fees solely for capital expenditures.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Matt Mogensen
Assistant City Manager
City of Marina

REVIEWED/CONCUR:

Layne Long
City Manager
City of Marina