



City of Seattle
Office of the Mayor

May 24, 2011

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that designates Seattle Community College District VI (SCC) as the new Designated Access Manager for public access television and authorizes the Chief Technology Officer to enter into a contract with SCC for the provision, management and operation of public access television services. It also authorizes an appropriation increase in the cable franchise fee for services to be provided by the public access television operator.

The City's cable franchise agreements with Comcast and Broadstripe provide for public access channels and allow the City to name an outside entity to act as the Designated Access Manager to operate the public access channels and to manage public access facilities and resources provided by the cable companies. SCC was selected through a competitive process and has agreed to provide public access services, training, outreach and programs on the public access channels on a city-wide basis.

The City has selected a qualified public access television provider who can provide a new model for delivering public access services that reflects a reduced level of public funding and supplements traditional television cablecasting by incorporating new media technologies. Thank you for your consideration of this legislation. Should you have questions, please contact Bill Schrier, Chief Technology Officer at bill.schrier@seattle.gov or 3-0633.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

1 WHEREAS, Ordinance 123461 increased the franchise fee chargeable to cable television
2 operators by 0.2 percent, from 4.2 percent to 4.4 percent of gross revenues, thereby
3 increasing revenue to the Cable Subfund by approximately \$320,000 per year, of which
4 only \$138,000 was designated for specific use in the 2011 Adopted Budget; and

4 WHEREAS, the Department of Information Technology and the Citizens Telecommunications
5 and Technology Advisory Board ("CTTAB") have recommended that \$87,000 of this
6 increased revenue to the Cable Subfund be used to pay for services to be provided by the
7 public access television operator; NOW, THEREFORE,

7 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

8 Section 1. Seattle Community College District VI is hereby designated as the new
9 Designated Access Manager for public access television superseding and terminating the
10 previous designation of SCAN provided under Ordinance 120214.

11
12 Section 2. The Chief Technology Officer ("CTO") is authorized to enter into an
13 agreement with Seattle Community College District VI, Attachment 1 to this ordinance. Pursuant
14 to the terms and conditions of that agreement Seattle Community College District VI,
15 hereinafter referred to as the "Designated Access Manager," shall manage and operate the City's
16 public access channels and the use of public access resources provided to it by the City. The
17 CTO is authorized to terminate the agreements with SCAN. Provided Seattle Community
18 College District VI fulfills the terms and conditions of the agreement, the CTO is authorized to
19 terminate or amend the Designated Access Manager's agreement.

20
21 Section 3. In order to pay for necessary costs and expenses incurred or to be incurred,
22 but for which insufficient appropriations were made due to causes that could not reasonably have
23 been foreseen at the time the 2011 Budget was adopted, the appropriation for the following item
24 in the 2011 Budget is increased from the funds shown, as follows:
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26
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Item	Fund	Department	Budget Control Level	Amount
3.1	Cable Television Franchise Subfund (00160)	Information Technology	Cable Fee Support to Information Technology Fund (D160B)	\$87,000
3.2	Information Technology Fund (50410)	Information Technology	Office of Electronic Communications (D4400)	\$87,000
Total				\$174,000

Section 4. This ordinance shall take effect and be in force 30 days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Section 5. Any act consistent with the authority of this ordinance taken prior to its effective date is hereby ratified and confirmed.

1 Passed by a 3/4 vote of all the members of the City Council the ____ day of
2 _____, 2011, and signed by me in open session in authentication of its
3 passage this
4 ____ day of _____, 2011.

5
6 _____
7 President _____ of the City Council

8
9 Approved by me this ____ day of _____, 2011.

10
11 _____
12 Michael McGinn, Mayor

13
14 Filed by me this ____ day of _____, 2011.

15
16 _____
17 Monica Martinez Simmons, City Clerk

18 (Seal)

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22
23 Attachment 1: Agreement for Public Access Cable Television Channel Manager

The City of Seattle
Department of Information Technology

And

Seattle Community College District VI

AGREEMENT FOR

Public Access Cable Television Channel Manager

DPO DIT 110031

THIS AGREEMENT is made effective June 1, 2011 (the "Effective Date"), and entered into by and between The City of Seattle ("City"), a first class city of the State of Washington, through its Department of Information Technology, and Seattle Community College District VI ("Public Access Manager"), an agency of the State of Washington and authorized to do business in the State of Washington.

WHEREAS, The City of Seattle has entered into or will enter into franchise agreements with Cable Operators, including Comcast of Washington I, Inc. and Comcast of Washington IV, Inc. (collectively "Comcast"), and Broadstripe, LLC ("Broadstripe"), which require such Cable Operators to provide certain channels and resources dedicated for use by the public;

WHEREAS, the franchise agreements between The City of Seattle and its Cable Operators provide for public access channels and allow the City to appoint an outside entity to act as the Designated Public Access Manager and to manage and operate the Public Access Channel;

WHEREAS, the City of Seattle, through the Department of Information Technology, initiated a Request for Proposal on March 21, 2011 to seek a Public Access Manager to operate and provide related community digital media production services;

WHEREAS, the Request for Proposals was consistent with the guidelines provided by the Seattle City Council through its Statement of Legislative Intent 37-1-A-1;

WHEREAS, as a result of the Request for Proposals process, the Seattle Community Colleges was selected as the Public Access Manager;

WHEREAS, under this Agreement, the Seattle Community Colleges will utilize an online software platform designed specifically for public access stations to streamline functions, increase and simplify access for producers, increase access to produced programming, and encourage connection with others in the public access community locally and nationally through other online services including social media;

WHEREAS, under this Agreement, the Seattle Community Colleges will seek to ensure that all communities, including youth, people of color, immigrant, refugee, and disadvantaged, understand that public access is available for them to give voice to their issues and causes, and,

WHEREAS, funds for this purpose will be subject to annual appropriation by the Seattle City Council in the City's budget process,

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance of the scope of services contained herein The City of Seattle and the Seattle Community Colleges mutually agree as follows:

1. **Entire Agreement:** This Agreement, including all exhibits, attachments, addenda, and subsequently issued amendments addenda, comprises the entire agreement between the City and the Public Access Manager. The Request for Proposal ("RFP"), its Addenda, and the Public Access Manager's Proposal are explicitly included as Attachments. Where there are conflicts between these documents, the controlling document will first be this Agreement as amended, then the Public Access Manager's proposal, and then the RFP and its Addenda.
2. **Designation as Public Access Manager:** The Seattle Community Colleges shall serve as the City's Public Access Manager and shall have sole responsibility for operating and managing the Public Access Channel and for providing and managing all Public Access services pursuant to the terms and conditions of this Agreement.
3. **City's Right to designate Public Access Manager:** The City reserves the right to remove Seattle Community Colleges as the Public Access Manager and appoint any other Person or entity to be the designated Public Access Manager upon the termination of this Agreement pursuant to the termination procedures set forth herein.
4. **Term:** The term of this Agreement shall commence as of the effective date and shall terminate on June 30, 2014 unless extended by mutual agreement of the parties or terminated earlier as provided herein.
5. **Scope of Services**
 - 5.1 **Management of Public Access Channels:** The Public Access Manager shall manage access to and use of the public access channels, Comcast channel 77 and Broadstripe channel 23 (hereinafter collectively the "Public Access Channel"), facilities and equipment so that members of the public have an opportunity to create, produce and distribute programming on the Public Access Channel. Access to and management of these resources shall be consistent with the terms of this Agreement.
 - 5.2 **Transition and Commencement of Services:** During the initial transition period from June 1 to June 30, 2011, the Public Access Manager will work cooperatively with the City and the Interim Public Access Cable Provider ("SCAN") to ensure that the Public Access Manager is prepared

and equipped to commence cable-casting on July 1, 2011. Initial transition services will include but not be limited to:

- Work with the City and the Cable Operator to originate a second channel from North Seattle Community College facilities for the cable-casting of public access programming beginning July 1, 2011.
- Meet with SCAN representatives and the City to ensure a smooth and orderly transition of Public Access management responsibility from SCAN to the Public Access Manager.
- On or approximately July 1, 2011 obtain the Tighrope Cablecast broadcast server from SCAN.
- Identify and maintain a secure location for storage of City-owned equipment (e.g. cameras, computers, etc).
- Implement Open Media to allow for upload of content, check out equipment, schedule programming, coordinating crews and other activities.
- Contact current producers and obtain permission to continue cable-casting their programs. Ensure proper controls are in place so that no copyrighted material is cable-cast.
- Develop preliminary schedule for public access programming.

5.3 Transition Services between July 1 and September 30, 2011, the Public Access Manager shall:

- Determine what City-owned equipment it needs and take possession of any City-owned equipment. Maintain a complete record of City-owned equipment.
- Initiate training for Producers in the use of the new Open Media platform
- Provide a management plan for the City's review to ensure efficient and sustainable operations, including but not limited to: program scheduling; automated playback and encoding; channel operations and administrative policies and procedures.
- Develop and conduct revenue-generating activities. Provide a 3-year revenue generation plan for the City's review.
- Provide policies to the City for channel administration, oversight and governance, including:
 - Channel policies, including policies for acceptable use of facilities and channel
 - Handling obscene and illegal content
 - Enforcement and remedies for violations of policies
 - Appeal of enforcement decisions
 - Complaint procedures

The Public Access Manager shall use SCAN current policies as a model for policies until such time as it formulates and adopts its own or by September 30, 2011 whichever is sooner.

5.4 Cable-Casting: On July 1, 2011 at 12:01 a.m., the Public Access Manager will commence cable-casting non-commercial programming over the Public Access Channel. Cable-casting will be twenty-four (24) hours per day.

5.5 Programming: The Public Access Manager will cable-cast programming.

- 5.6 Outreach: The Public Access Manager will promote the use and benefit of the Public Access Channel. Outreach efforts should target participation in the production of programming from:
- A. individuals and groups who are currently using, or have recently used, SCAN facilities or equipment to produce public access television programs, and
 - B. youth, people of color, immigrant and refugee, and disadvantaged communities.
- 5.7 Training: The Public Access Manager will provide training in media production and in the use of its equipment and facilities. Training shall also cover use of new media and social networking techniques. Training opportunities should target participation by:
- A. individuals and groups who are currently using, or have recently used, facilities or equipment of SCAN to produce public access television programs, and
 - B. youth, people of color, immigrant and refugee, and disadvantaged communities.
- 5.8 Facility Space and Location: The Public Access Manager shall provide secure premises that enable the Public Access Manager to provide the services required under this Agreement and to house the equipment provided under this Agreement. The facilities shall be located within the City limits throughout the term of this Agreement.
- 5.9 Equipment: The Public Access Manager will have equipment necessary for and used in connection with the creation, production, storage, and archiving of video programming. The equipment will include cameras, lights, control boards, video recording decks, mixers, etc. The Public Access Manager will make equipment available for producers to use at the facility or to borrow/check out for use outside of the facility.
- 5.10 Website
- A. Basic information: The Public Access Manager will maintain a website containing information about the Public Access Channel, its policies and procedures, fees, and training schedules.
 - B. Video Upload and Storage: The website will accept digital media and support simultaneous streaming of content and on-line archiving of current and recent programs.
- 5.11 Policies and Procedures: The Public Access Manager will develop and implement policies and procedures to ensure that public access to facilities, equipment and training are available to all Seattle residents on a non-discriminatory basis. By September 30, 2011, the Public Access Manager shall adopt and make available to the public written policies and procedures including:
- a) handling obscene and illegal content;
 - b) production standards for public access television and web programming, and,
 - c) acceptable use of equipment, facilities and services.
- 5.12 Warranty By Producers: The Public Access Manager shall require all persons who produce and submit programming ("Producer") to execute an agreement holding the Public Access Manager and the City, its officers, departments, agents, boards and employees harmless for program

content, and a written representation and warranty that the program they are submitting does not contain:

- A. Any material, which promotes the sale of commercial products or services, or any material which in whole or in part depicts, demonstrates, or discusses products, services, or businesses with the intent or effect of benefiting or enhancing profit making enterprises.
- B. Any advertisement or other information concerning any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme;
- C. Any violation of any City, state or federal law relating to obscenity or indecency;
- D. Any material that is libelous, slanderous or an unlawful invasion of privacy;
- E. Any use of material, which violates copyright law;
- F. Any material, which would otherwise violate any City, federal or state statute, law, or regulation
- G. Any direct or indirect solicitation of political support by or on behalf of any candidate for public office.

The Public Access Manager shall have the right to limit, terminate, or suspend the use of production facilities by any Person, who uses such production facilities to produce programming of a nature prohibited under this Section, or who fails to abide by reasonable rules of the Public Access Manager.

The Public Access Manager shall retain for the applicable statute of limitations copies of such Producers agreements and such other relevant records and shall make them available for the City's inspection, upon reasonable notice by the City.

- 5.13 Programming Obligations: The Public Access Manager may not prohibit access to the Public Access Channel by non-commercial programmers and non-revenue producing programming except to the extent authorized by 47 U.S.C. 532(h), as it may from time to time be amended, or to the extent otherwise provided by law, regulations or administrative rulings promulgated thereunder. The Public Access Manager shall schedule all programming for the Public Access Channel and provide equal opportunity for use of the facilities and equipment, except residents of the City and other franchise areas that participate in public access funding in the City shall be given preference over non-residents. Notwithstanding the foregoing provision, nothing in this Agreement shall require the Public Access Manager to act, or to refrain from acting, in violation of any federal, state, or local law or regulation.
- 5.14 Non-revenue Producing Programming. Nothing in this Agreement shall prohibit the use of the Public Access Channel and equipment for the creation or production or distribution of noncommercial programming that may be used by nonprofit organizations to solicit contributions or subscriptions to support the goals and purposes of such nonprofit organization; provided, however, that any programming which is created or produced using the equipment shall first be cablecast on the Public Access Channel before it may be redistributed or used by such nonprofit

organization for purposes of soliciting contributions or subscriptions.

- 5.15. User Fees. If user fees are charged, the Public Access Manager shall publish the schedule of user fees on its website. Such user fees schedules shall be submitted to the City for review. User fees shall be reasonable and if applied to Seattle residents, such fees shall not substantially impede such resident's ability to use the Public Access Channel. The Public Access Manager shall provide discounts or free use to individuals who qualify for reduced rates for City utilities. The City will provide income guidelines for determining eligibility. Any user fees shall be limited to fees for membership, the use of studio space, editing space and editing equipment, and for training. Nothing herein shall be construed to allow the Public Access Manager to charge for channel time on the Public Access Network.
- 5.16. Underwriting and Sponsorship of Public Access Programming. The programming obligations in Section 5.13 shall not prevent limited use of the Public Access Channel by the Public Access Manager to solicit sponsorship of Public Access, prevent the Public Access Manager from producing or sponsoring Programming, and shall not prevent any person, including the Public Access Manager, the City or Cable Operators, from underwriting Programming.
- 5.17. Obscenity. Pursuant to 47 U.S.C. § 532(h), the Public Access Manager shall not transmit, or permit to be transmitted, over the Public Access Channel any programming which is obscene in the sense that the programming is not protected speech under the Constitution of the United States. The Public Access Manager shall adopt a written policy and rules prohibiting obscene programming. The Public Access Manager acknowledges that the City's Cable Operators are subject to this prohibition and that transmission of such Programming over any Channel is a breach of Cable Operator's Franchise Agreement(s) with the City.
- 5.18. No City Control over Decisions Concerning Programming Content. The City shall have no right under this Agreement to exercise control over the decisions of the Access Manager regarding any programming content, except as otherwise provided in this Agreement or by law.
- 5.19. Programming Content Decisions and Review. The Public Access Manager shall adopt a formal process to respond to complaints regarding content decisions made by the Public Access Manager, including but not limited to decisions concerning obscenity, commercial/non-commercial programming and time-channeling of programming, pursuant to Sections 5.11 and 5.12.
6. **Performance Standards:** Under Normal Operating Conditions, the Public Access Manager shall meet the performance standards of this Section. Normal Operating Conditions means service conditions within the control of the Public Access Manager. Those conditions that are not within the control of the Public Access Manager include but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions.
 - 6.1 Cable-cast twenty-four (24) hours a day;
 - 6.2 Cable-cast a minimum of 420 hours of programming per month that are produced by local producers or submitted by local producers;
 - 6.3 Make studio times available that are convenient and practical for users for a minimum of 32 hours per month;

- 6.4 Make editing suite times available that are convenient and practical for users for a minimum of 32 hours per month;
- 6.5 Provide a minimum of 24 hours of training per month;
- 6.6 Conduct a minimum of 4 outreach events (e.g., program, meeting, etc.) per month, and
- 6.7 Make check-out and return of equipment available at least 32 hours per month.

7. **Additional Services:** During the term of the Agreement, the City may request the Public Access Manager to perform additional deliverables related to Public Access and outside of the deliverables stated in Section 6. If the parties mutually agree to the additional deliverables, the additional deliverables and associated compensation shall be incorporated into this Agreement by amendment.

8. **Non-Monetary Resources to be Provided by the City**

- 8.1 The City shall coordinate provision of the Public Access Channel connectivity between the Cable Operator and the Public Access Manager, including the return path to send television signal to the Cable Operator's head-end for downstream distribution to cable subscribers.
- 8.2 Within 30 days after execution of this Agreement, the City shall transfer to the Public Access Manager equipment purchased with City funds, which equipment is listed in Attachment A attached to this Agreement and incorporated by reference. The equipment shall be lent by the City to the Public Access Manager during the term of this Agreement. The Public Access Manager shall provide regular maintenance and repair of the equipment. Within 90 days after the execution of this Agreement, the Public Access Manager will provide the City with a list of the equipment from Attachment A that it will not use during the term of the Agreement. The Public Access Manager shall return any or all loaned equipment to the City a) at the end of the equipment's useful life, b) at any time upon demand by the City or c) upon the termination of this Agreement for whatever reason.

9. **Compensation, Invoicing and Payment**

- 9.1 **Total Annual Compensation:** Total compensation under this agreement shall not exceed \$654,500 pursuant to the following annual increments:

For the period June 1, 2011 through December 31, 2011	\$187,000.00
For the period January 1, 2012 through December 31, 2012	\$187,000.00
For the period January 1, 2013 through December 31, 2013	\$187,000.00
For the period January 1, 2014 through June 30, 2014	\$93,500.00

The compensation is payable as follows:

- A. **Compensation for Transition Services:** The City will compensate the Public Access Manager for transition services performed during the period of June 1 to September 30, 2011:

June 1 to June 30, 2011	\$50,000.00
July 1 to July 31, 2011	\$20,000.00

August 1 to August 31, 2011	\$11,750.00
September 1 to September 30, 2011	\$11,750.00

B. Monthly Compensation: The City will compensate the Public Access Manager in the amount of \$15,583.33 per month for cable-casting services during the period of July 1, 2011 and June 30, 2014. The City shall compensate the Public Access Manager for cable-casting only when the Public Access Manager satisfactorily meets the performance standards in Section 6.

9.2 Invoicing: The Public Access Manager shall submit an invoice for cable-casting and related services after the end of each month of service. A performance report shall accompany the invoice. The performance report shall describe the Public Access Manager's activities for the month and the achievement of the performance standards contained in Section 6. The Public Access Manager may note efforts toward securing non-city funds for the supporting of its public access efforts and any results thereof.

Other Reporting: The City from time to time may request additional information from the Public Access Manager if it deems such information useful in determining the progress of the Public Access Manager in relation to Public Access services. Examples of such additional information include but are not limited to: annual equipment inventory and maintenance records; any surveys conducted about the use of the equipment and facilities; number of visitors to website etc. The Public Access Manager shall make good faith efforts to assist the City in obtaining such information.

The Public Access Manager shall submit invoices and performance reports to:

Department of Information Technology
Accounts Payable Unit
PO Box 94709
Seattle, WA 98124-4709
Nitaya Kambhiranond
206-684-0482
nitaya.kambhiranon@seattle.gov

9.3 Payment: The City will remit payment within 30 days of receipt of a properly executed invoice and performance report. In the event the City determines that the Public Access Manager is not in compliance with an obligation of this Agreement, the City may exercise among other remedies, the right to withhold funds payable for those services not performed or not properly performed. The City may also exercise its right to terminate the Agreement pursuant to the Termination Section of this Agreement and appoint another entity to serve as the Public Access Manager. In addition, the City may exercise any other remedies available to it under law or in equity.

10. **Distribution Rights**

10.1. First Distribution. The Public Access Manager shall require that all programs produced with funds paid or equipment lent under this Agreement shall be distributed first on the Public Access Channel whose use is authorized by this Agreement. Subsequent distribution must be consistent with any pertinent guidelines established in the Public Access Manager's operating policies and procedures.

10.2 **Disclaimers.** No less than four times each day approximately six hours apart, the Public Access Manager shall display a message stating that the opinions expressed in Public Access programs are the sole responsibility of the program producers and not those of the Public Access Manager, the City of Seattle or the Cable Operator.

11. **Representations:** The Public Access Manager represents and warrants that it has the requisite training, skill and experience necessary to provide Services and is appropriately accredited and licensed by all applicable agencies and governmental entities and shall remain so throughout the term of this Agreement.

12. **Independent Contractor:** It is the intention and understanding of the parties that the Public Access Manager is an independent contractor. This Agreement is not intended for the Public Access Manager to act in any way, in the capacity of a City employee. The parties agree that the City has neither direct nor immediate control over the Public Access Manager or the right to control the manner or means by which the Public Access Manager performs the Services. The Public Access Manager agrees that neither the Public Access Manager nor any of its employees shall be deemed to be an employee of the City for any purpose. This Agreement does not authorize the Public Access Manager to act as the agent or legal representative of the City for any purpose whatsoever. The Public Access Manager is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever. The City shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. The Public Access Manager shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of the Public Access Manager shall not be deemed to convert this Agreement to an employment contract. It is recognized that the Public Access Manager is permitted to perform work during the term of this Agreement for other parties and that the City is not the exclusive user of the services that the Public Access Manager provides.

13. **No Partnership or Joint Venture:** The City shall in no event be construed to be a partner, associate or joint venture of the Public Access Manager or its subcontractors, officers or employees as a consequence of this Agreement.

14. **Not an Agency:** The Public Access Manager is not, nor shall it be deemed to be, or hold itself out to be, a department or operating agency of the City.

15. **No Responsibility for Obligations of Public Access Manager:** The City shall not be liable for any obligation incurred by the Public Access Manager. The Public Access Manager shall not represent to any Person that the City is liable for The Public Access Manager's obligations.

16. **No Third Party Rights:** Nothing in this agreement shall be construed to permit anyone other than the parties hereto and their successors and assigns to rely upon the covenants and agreements herein nor to give any such third party a cause of action whether as a third party beneficiary or otherwise on account of any non-performance hereunder.

17. **Non-Discrimination in Employee Benefits**

- 17.1 Compliance with SMC Ch. 20.45: The Public Access Manager shall comply with the requirements of SMC Ch.20.45 and Equal Benefits Program Rules implementing such requirements, under which the Public Access Manager is obligated to provide the same or equivalent benefits (“equal benefits”) to its employees with domestic partners as the Public Access Manager provides to its employees with spouses. At the City’s request, the Public Access Manager shall provide complete information and verification of the Public Access Manager’s compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Agreement.
- 17.2 Remedies for Violations of SMC Ch. 20.45: Any violation of this Section shall be a material breach of Contract for which the City may:
- A. Require the Public Access Manager to pay liquidated damages for each day that the Public Access Manager is in violation of SMC Ch. 20.45 during the term of the Agreement; or
 - B. Terminate the Agreement; or
 - C. Disqualify the Public Access Manager from bidding on or being awarded a City contract for a period of up to five (5) years; or
 - D. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated thereunder, or as provided in this Agreement.
18. **Women and Minority Business Inclusion, Equal Employment Opportunity**
- 18.1 The Public Access Manager shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identify, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The public Access Manager shall make affirmative efforts to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion ancestry, national origin, or the presence of any sensory, mental or physical handicap. Such efforts shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training.
- 18.2 The Public Access Manager shall promote and seek inclusion of women and minority businesses on subcontracting opportunities within the Agreement scope of work. The Public Access Manager agrees to make such efforts a condition of the Agreement. A women or minority business is one that self-identifies to be at least 51% owned. Such firms may also be, but do not have to be, certified by the State of Washington.
- 18.3 Inclusion efforts may include the use of solicitation lists, advertisements in publications directed to minority communities, breaking down total requirements into smaller tasks or quantities where economically feasible, making other useful schedule or requirements modifications that are likely to assist small or WMBE businesses to compete, targeted recruitment efforts, and using the

services of available minority community and public organizations to perform outreach, and selection strategies that result in great subcontractor diversity.

18.4 **Record-Keeping:** The Public Access Manager shall maintain, for at least 24 months after the expiration or earlier termination of this Agreement, relevant records and information necessary to document Public Access Manager affirmative efforts to solicit to women and minority business participation, including solicitations to subcontractors and suppliers, all subcontractors and supplier proposals received, and all subcontractors and suppliers actually utilized under this Agreement. The City shall have the right to monitor the affirmative efforts of the Public Access Manager and to inspect and copy such records of the Public Access Manager as are necessary to ensure compliance with the requirements of this Section.

18.5 **Sanctions for Violation:** Any violation of this Section, or a violation of SMC Ch. 14.04 (Fair Employment), SMC Ch. 14.10 (Fair Contracting), SMC Ch. 20.42 (Equality in Contracting), SMC Ch. 20.45 (Nondiscrimination in Benefits), or other local, state or federal non-discrimination laws shall be a material breach of contract for which the Public Access Manager may be subject to damages and sanctions provided for by the Agreement and by applicable law. Contractors found to be in violation of the requirements may be subject to debarment from City contracting activities in accordance with SMC Ch. 20.70.

19. **Assignment and Subcontracting:** The Public Access Manager shall not assign or subcontract any of its obligations under this Agreement without City's written consent, which may be granted or withheld in City's sole discretion. Any subcontract made by the Public Access Manager shall incorporate by reference all the terms of this Agreement. The Public Access Manager shall ensure that all subcontractors comply with the obligations and requirements of the subcontract. The City's consent to any assignment or subcontract shall not release the Public Access Manager from liability under this Agreement, or from any obligation to be performed under this Agreement, whether occurring before or after such consent, assignment, or subcontract.

20. **Involvement of Former City Employees:** Throughout the term of the Agreement, the Public Access Manager shall provide prompt written notice to the City of any current or former City employee, officer, or volunteer who is working on or assisting the Public Access Manager with solicitation or performance of City business. In addition to the foregoing notice, except as provided by law, the Public Access Manager shall not permit any former City officer or employee, for a period of two years after leaving City office or employment, to assist the Public Access Manager on a matter in which the former City officer or employee participated while with the City. The Public Access Manager shall comply with all applicable requirements of the City's Code of Ethics, Chapter 4.16, Seattle Municipal Code, and shall advise its officers, employees, and subcontractors, as necessary.

21. **No Conflict of Interest:** The Public Access Manager confirms that it does not have a business interest or close family or domestic partner relationship with any City officer or employee who was, is, or will be involved in the Public Access Manager's selection, negotiation, drafting, signing, administration, or evaluating the Public Access Manager's performance.

22. **Proprietary and Confidential Information**

- 22.1 The Public Access Manager understands that any records (including but not limited to bid or proposal submittals, the Agreement, and any other Agreement materials) it submits to the City, or that are used by the City even if the Public Access Manager possesses the records, are public records under Washington State law, RCW Chapter 42.56. Public records must be promptly disclosed upon request unless a statute exempts them from disclosure. The Public Access Manager also understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.
- 22.2 If the City receives a public disclosure request made pursuant to RCW 42.56, the City will not assert an exemption from disclosure on behalf of the Public Access Manager. The City may notify the Public Access Manager of the request and postpone disclosure for ten business days to allow the Public Access Manager to file a lawsuit seeking an injunction preventing the release of documents pursuant to RCW 42.56.540. Any notification is provided as a courtesy and is not an obligation on behalf of the City. Unless the Public Access Manager obtains and serves an injunction upon the City before the close of business on the tenth business day after the date of the notification, the City may release the documents. It is the Public Access Manager's discretionary decision whether to file the lawsuit.
- 22.3 If the Public Access Manager does not obtain and serve an injunction upon the City within 10 business days of the date of the City's notification of the request, the Public Access Manager is deemed to have authorized releasing the record.
- 22.4 Notwithstanding the above, the Public Access Manager must not take any action that would affect (a) the City's ability to use goods and services provided under this Agreement or (b) the Public Access Manager's obligations under this Agreement.
- 22.5 The Public Access Manager will fully cooperate with the City in identifying and assembling records in case of any public disclosure request.
23. **Indemnification:** To the extent permitted by law, the Public Access Manager shall protect, defend, indemnify and hold the City, its officers, departments, agents, boards and employees, harmless from and against all losses, claims, demands, damages, costs, actions and causes of actions, liabilities, fines, penalties, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or suits brought against the City for content decisions by the Public Access Manager, or the infringement of any patent, copyright, trademark or trade secret, arising out of the work and Services performed or goods provided under this Agreement, or the Public Access Manager's violation of any law, ordinance or regulation, Agreement provision or term, or condition of regulatory authorization or permit, except for damages resulting from the sole negligence of the City. As to the City of Seattle, the Public Access Manager waives any immunity it may have under RCW Title 51 or any other Worker's Compensation statute. The parties acknowledge that this waiver has been negotiated by them, and that the Agreement price reflects this negotiation.
24. **Notification of Action Brought:** In the event that any claim, demand, suit or legal action is made or brought by any Person(s), firm, corporation, or other entity against the Public Access Manager relating to or arising out of this Agreement, the Public Access Manager shall give written notice thereof to the City within five (5) working days after being notified of such claim, demand, suit or other action.

D'Anne Mount
DoIT Public Access Television A1 1 1
May 18, 2011
Version # 2

25. **Insurance:** Seattle Community College District VI warrants that it is self-insured against liability claims in accordance with the risk management and tort claims statutes, including RCW 4.92 and RCW 43.41.280 et seq. The tort claims procedure, RCW 4.92.100 et seq., provides the fundamental remedy for all tort liability claims against the Agency and its officers, employees, and agents acting as such and all such claims must be filed and processed as provided therein. The Public Access Manager will provide a certificate of self-insurance from the Washington State Office of Financial Management upon request.

26. **Inspection of Records:** The City, and its designated agent, shall have access at all reasonable time, including the Public Access Manager's normal business hours, to all books and records of the Public Access Manager.

27. **Audit:** Upon request, the Public Access Manager shall permit City, and any other governmental agency involved in the funding of the Work ("Agency"), to inspect and audit all pertinent books and records of Public Access Manager, any subcontractor, or any other person or entity that performed work in connection with or related to the Work, at any and all times deemed necessary by City or Agency, including up to six years after the final payment or release of withheld amounts has been made under this Agreement. Such inspection and audit shall occur in King County, Washington or other such reasonable location as City or Agency selects. The Public Access Manager shall supply City with, or shall permit City to make, a copy of any books and records and any portion thereof. The Public Access Manager shall ensure that such inspection, audit and copying right of City and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Agreement.

28. **Compliance with Law, Rules, Regulations and Franchise Agreements.**

28.1 General Requirement: The Public Access Manager, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their respective administrative agencies and officers.

28.2 Licenses and Similar Authorizations: The Public Access Manager, at no expense to the City, shall secure and maintain in full force and effect during the term of this Agreement all required licenses, permits, and similar legal authorizations, and comply with all related requirements.

28.3 Taxes: The Public Access Manager shall pay, before delinquency, all taxes, import duties, levies, and assessments arising from its activities and undertakings under this Agreement; taxes levied on its property, equipment and improvements; and taxes on the Public Access Manager's interest in this Agreement.

28.4 Franchise Agreements: The Public Access Manager shall conduct all operations in a manner which is consistent with the requirements, conditions, obligations and principles set forth in the existing Franchise Agreements between the City and Cable Operators and any future Franchise Agreements that the City may grant to Cable Operators. Such Franchise Agreements are incorporated by reference into this Agreement.

29. **Americans with Disabilities Act:** The Public Access Manager shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Agreement. In particular, if the Public Access Manager is providing services, programs or activities to City employees or members of the public as part of this agreement, the Public Access Manager shall not deny participation or the benefits of such services, programs, or activities, to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and be grounds for the immediate termination of this Agreement.
30. **No Gifts or Gratuities:** The Public Access Manager shall not directly or indirectly offer anything of value (such as retainers, loans, entertainment, favors, gifts, tickets, trips, favors, bonuses, donations, special discounts, work or meals) to any City employee, volunteer or official, that is intended, or may appear to a reasonable person to be intended, to obtain or give special consideration to the Public Access Manager. Promotional items worth less than \$25 may be distributed by the Public Access Manager to City employees if the Public Access Manager uses the items as routine and standard promotions for business. Any violation of this provision may result in termination of this Agreement. Nothing in this Agreement prohibits donations to campaigns for election to City office, so long as the donation is disclosed as required by the election campaign disclosure laws of the City and of the State.
31. **Amendments:** No modification or amendment of the provisions hereof shall be effective unless in writing and signed by the Chief Technology Officer and the authorized representative of the Public Access Manager. The parties hereto expressly reserve the right to modify this Agreement, from time to time, by mutual agreement.
32. **Binding Effect:** The Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors, and assigns.
33. **Waiver:** No waiver of full performance by either party shall be construed or operate as a waiver of any subsequent default or breach of any of the terms, covenants or conditions of this Agreement. The payment of compensation to the Public Access Manager shall not be deemed a waiver of any right or the acceptance of defective performance.
34. **Applicable Law:** This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue for any action relating to this Agreement shall be in the Superior Court for King County, State of Washington.
35. **Remedies Cumulative:** Remedies under this Agreement are cumulative; the failure to exercise on any occasion any right shall not operate to forfeit such right on another occasion. The use of one remedy shall not be taken to exclude or waive the right to use another.
36. **Captions:** The titles of sections, or subsections, are for convenience only and do not define or limit the contents.

37. **Severability:** Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other of its provisions.
38. **No Personal Liability:** No officer, agent, or authorized employee of the City shall be personally responsible for any liability arising under this Agreement, whether expressed or implied nor for any statement or representation made herein or in any connection with the Agreement.
39. **Disputes:** The City and the Public Access Manager shall maintain business continuity to the extent practical while pursuing disputes. Any dispute or misunderstanding that may arise under this Agreement concerning the Public Access Manager's performance shall first be resolved, if mutually agreed to be appropriate, through negotiations between the Public Access Manager's Operations Manager and the City's Office for Cable Communications' Manager, or if mutually agreed, referred to the Chief Technology Officer and the Public Access Manager's senior executive(s). Either party may decline or discontinue such discussions and may then pursue other means to resolve such disputes, or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the Agreement in accordance with the termination provisions herein.
40. **Termination:**
- 40.1 Termination for Convenience. Either party may terminate this Agreement any time by written notice to the other party of such termination and specifying the effective date thereof, at least one-hundred twenty (120) days before the effective date of such termination.
- 40.2 Termination by City. This Agreement may be terminated by the City upon thirty (30) days written notice to the Public Access Manager if the Public Access Manager is in material breach of any of the terms of this Agreement, as determined in City's sole discretion, and such breach has not been corrected to the City's reasonable satisfaction in a timely manner.
- 40.3. Termination of Agreement by the Public Access Manager. This Agreement may be terminated by the Access Manager upon ninety (90) days written notice to the City if the City fails to materially perform in accordance with the terms of this Agreement through no fault of the Public Access Manager.
- 40.4 Non-Appropriation of Funds: The City may terminate this Agreement at any time without notice due to non-appropriation of funds, whether such funds are local, state or federal, and no such notice shall be required notwithstanding any notice requirement that may be agreed upon for other causes of termination.
- 40.5 Acts of Insolvency: This Agreement may be terminated by the City upon at any time upon written notice to the Public Access Manager if the Public Access Manager becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated, voluntarily or otherwise.

40.6 **Actions upon Termination:** In the event termination is not the fault of the Public Access Manager, the Public Access Manager shall be paid for the services properly performed prior to termination. The Public Access Manager agrees that this payment shall fully and adequately compensate the Public Access Manager and its subcontractors for all profits, costs, expenses, losses, liabilities, damages, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Agreement. Upon termination for any reason, the Public Access Manager shall provide the City with the most current design documents, contract documents, writing and other product it has completed to the date of the termination, along with copies of all project-related correspondence and similar items. The City shall have the same rights to use these materials as if termination had not occurred.

41. **City Debarment:** In accordance with SMC Ch. 20.70, the Director of Finance and Administrative Services or designee may debar a Public Access Manager from entering into a Agreement with the City or from acting as a subcontractor on any Agreement with the City for up to five years after determining that any of the following reasons exist:

- a) Public Access Manager has received overall performance evaluations of deficient, inadequate, or substandard performance on three or more City Agreements.
- b) Public Access Manager failed to comply with City ordinances or Agreement terms, including but not limited to, ordinance or Agreement terms relating to small business utilization, discrimination, prevailing wage requirements, equal benefits, or apprentice utilization.
- c) Public Access Manager abandoned, surrendered, or failed to complete or to perform work on or in connection with a City Agreement.
- d) Public Access Manager failed to comply with Agreement provisions, including but not limited to quality of workmanship, timeliness of performance, and safety standards.
- e) Public Access Manager submitted false or intentionally misleading documents, reports, invoices, or other statements to the City in connection with an Agreement.
- f) Public Access Manager colluded with another entity to restrain competition.
- g) Public Access Manager committed fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing an Agreement for the City or any other government entity.
- h) Public Access Manager failed to cooperate in a City debarment investigation.
- i) Public Access Manager failed to comply with SMC Ch. 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or SMC Ch. 20.45, or other local, State, or federal non-discrimination laws.

The Director may issue an Order of Debarment after adhering to the procedures specified in SMC 20.70.050. The rights and remedies of the City under these provisions are in addition to any other rights and remedies provided by law or under the Agreement.

42. **Negotiated Agreement:** The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

43. **Representatives:** The contacts for communications between the parties, other than official notices, are:

City: Tony Perez, Director, Office of Cable Communications
Department of Information Technology
PO Box 94703
Seattle, WA 98124-4709
206-386-0070
Tony.perez@seattle.gov

Public Access Manager: John Sharify, General Manager
Seattle Community Colleges Television
9600 College Way North
Seattle, WA 98103
206-934-3919
John.sharify@seattlecolleges.edu

44. **Addresses for Notices:** All notices provided under this Agreement shall be sufficient if made in writing and deposited in the United States mail, postage prepaid, certified mail, return receipt requested, and address as follows:

If to City: Office of Cable Communications
Department of Information Technology
PO Box 94703
Seattle, WA 98124-4709

If to the Public
Access Manager: John Sharify, General Manager
Seattle Community Colleges Television
9600 College Way North
Seattle, WA 98103
206-934-3919
John.sharify@seattlecolleges.edu

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Agreement by having their representatives affix their signatures below.

SEATTLE COMMUNITY COLLEGES

THE CITY OF SEATTLE

By _____

Signature

Date

Type or Print Name

Title

By _____

Signature

Date

William M. Schrier

Chief Technology Officer

City of Seattle Business License Number: **702719**

Washington State Unified Business Identifier Number (UBI): **578076239**

City of Seattle Vendor Number: **38718**

Attachments: Exhibit A: List of City-owned equipment



Attachment A
Equipment Inventory.

Authorized by Ordinance #: _____

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Department of Information Technology	D'Anne Mount/3-8736	Jennifer Devore/5-1328

Legislation Title:

AN ORDINANCE relating to cable television; designating Seattle Community College District VI as the Designated Access Manager for public access television; authorizing the Chief Technology Officer to enter into a contract with Seattle Community College District VI for the provision, management and operation of public access television services; authorizing the Chief Technology Officer to remove Seattle Community College District VI as Designated Access Manager and to terminate or amend the terms of the contract; increasing appropriation in connection thereto; authorizing the Chief Technology Officer to terminate the agreements with Seattle Community Access Network and terminate its designation as the Designated Access Manager; and ratifying and confirming certain prior acts; all by a three-fourths vote of the City Council.

Background:

This legislation designates a new provider for public access television and management of the City's Public Access television channel, which is provided through our cable franchises. We expect to provide a minimum of \$360,000 to the Designated Public Access Manager (Seattle Community College District VI) for 37 months from the Cable Fee Support to Information Technology Fund Budget.

Please check one of the following:

This legislation does not have any financial implications.
(Stop here and delete the remainder of this document prior to saving and printing.)

This legislation has financial implications. (Please complete all relevant sections that follow.)

Funding for this contract is included in DoIT's 2011 Adopted (\$100,000) and 2012 Endorsed Budget (\$100,000) budget. An additional appropriation of \$87,000 from the Cable Subfund (resulting from an increase in the franchise fee chargeable to cable television operators under Ordinance 123461) is necessary and will be used to pay for public access television services. Future appropriations will be handled through the 2012 budget process.

Appropriations:

Fund Name and Number	Department	Budget Control Level*	2011 Appropriation	2012 Anticipated Appropriation
Cable Television Franchise Subfund (00160)	Information Technology	Cable Fee Support to Information Technology Fund (D160B)	\$87,000	0
Information Technology Fund (50410)	Information Technology	Office of Electronic Communications (D4400)	\$87,000	0
TOTAL			\$174,000	0

Appropriations Notes: Funding for the public access television channel manager comes from Cable Franchise Fee revenues in the Cable Television Franchise Subfund (00160). All expenses related to the public access television channel manager are paid out of the Information Technology Fund (50410). The Cable Television Franchise Subfund requires an appropriation to put \$87,000 into the Information Technology Fund and the Information Technology Fund requires an appropriation to pay the public access television channel manager.

Anticipated Revenue/Reimbursement: Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2011 Revenue	2012 Revenue
Information Technology Fund (50410)	Information Technology	Cable Fund	\$87,000	0
TOTAL			\$87,000	

Revenue/Reimbursement Notes:

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact: N/A

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2011 Positions	2011 FTE	2012 Positions*	2012 FTE*
TOTAL							

* 2012 positions and FTE are total 2012 position changes resulting from this legislation, not incremental changes. Therefore, under 2012, please be sure to include any continuing positions from 2011.

Position Notes:

Do positions sunset in the future? N/A

(If yes, identify sunset date)

Spending/Cash Flow:

Fund Name & #	Department	Budget Control Level*	2011 Expenditures	2012 Anticipated Expenditures
TOTAL				

* See budget book to obtain the appropriate Budget Control Level for your department.

Spending/Cash Flow Notes:

What is the financial cost of not implementing the legislation? If the City does not implement the legislation and does not go forward with awarding a contract, the Public Access Channel will go dark starting July 1, 2011, or the City will need to extend the existing temporary agreement with SCAN.

Does this legislation affect any departments besides the originating department? No

What are the possible alternatives to the legislation that could achieve the same or similar objectives? None

Is the legislation subject to public hearing requirements? No public hearings were required. There was considerable public outreach while we were developing the RFP, including a public workshop, online survey and questionnaire, blogging and the RFP process itself.

Other Issues: This legislation allows the City to continue Public Access television.

List attachments to the fiscal note below: None