

COMMUNITY MEDIA CENTER FACILITY USE AGREEMENT

This Community Media Center Use Agreement (the "Agreement"), effective July 1, 2017, through June 30, 2018, is entered into by and between the City of Fremont ("City"), a municipal corporation of the State of California, and Chabot-Las Positas Community College District ("Chabot"), a California community college district, who agree as follows:

RECITALS

Comcast and AT&T ("State Franchisees") have each been granted a state franchise to provide video services in the City of Fremont pursuant to the California Digital Infrastructure and Video Competition Act ("DIVCA"). In the past, pursuant to obligations contained in the now-expired local franchise agreement between the City and Comcast, public access equipment, facilities, and services were provided by Comcast or its predecessors-in-interest that owned the cable system serving Fremont.

As a result of DIVCA, Comcast no longer has the direct responsibility for providing public access equipment, facilities, and services. However, DIVCA provides that certain channel capacity and funding shall be provided by State Franchisees for public, educational, and government ("PEG") access.

Chabot controls that certain real property commonly known as the TV Studio, located at 25555 Hesperian Boulevard, Building 100, Rooms 124A, 124B, and 124D, Hayward, CA. 94545 (referred to herein as the "Property").

Chabot wishes to enter into this Agreement with the City to allow access to the Property for PEG access production and programming.

Chabot and the City agree as follows:

AGREEMENT

- 1) Term of Agreement. Chabot hereby grants to the City the right to occupy and use the Property, as defined above, for PEG access production and programming for a period of one year, commencing upon the effective date of this Agreement, with two (2) one year renewal options. The City may exercise a renewal option by providing written notice to Chabot thirty (30) days before the expiration of the term that the City wishes to extend this Agreement an additional year.
- 2) Capital Improvements. In return for this access, the City shall pay Chabot \$150,000 per year to be used exclusively for capital improvements, including equipment. Chabot shall keep and retain records of how the funds were used and upon request by the City, Chabot shall, within ten (10) days of the date of the request, provide the City proof of how the funds were used. City shall make annual payments to Chabot. The first payment shall be due upon the effective date of this Agreement and shall thereafter be due and payable on the first day of July for each year of this Agreement.
- 3) Use: The Property shall be used as a PEG access production and programming facility. The TV Studio shall be equipped with video and electronic media production equipment consistent with that identified in Exhibit B for use by and the benefit of the residents of the City of Fremont, the students and staff served by Chabot, and other educational institutions in the City of Fremont, representatives of local governmental agencies that serve Fremont and other eligible users as defined by the City (collectively the "Eligible Users").

Chabot shall not be liable for an interruption or failure of the above facilities, which occur for reasons other than the gross negligence or willful misconduct of Chabot, its agents or employees. Neither Chabot nor the City shall use or allow the TV Studio to be used in violation of any law or ordinance. The TV Studio shall be maintained by Chabot in a clean and sanitary manner and in compliance with all applicable laws, ordinances, rules, and regulations.

- 4) Access to TV Studio. The TV Studio shall be used for both PEG access, as set forth in Paragraph 3 above, and Chabot teaching purposes. City personnel and Eligible Users shall be permitted access to the Property and the TV Studio during regular college business hours, except during campus planned closures and/or related safety needs and/or emergency. City personnel and Eligible Users will demonstrate proficient use of facility equipment and receive three hours of safety and use training prior to access. The opportunity to demonstrate proficiency and receive safety and use

training will be given on an individual basis as requested. Access will be established based on the availability of the TV Studio so as not to interfere with Chabot's use of the TV Studio for instructional and other academic purposes, which take priority. The TV Studio shall remain closed to Eligible Users on holidays, but designated City personnel shall have access to the Property and the TV Studio on holidays if necessary for the operation of the TV Studio. City personnel and all users of the TV Studio shall follow and be subject to the security procedures and other rules for use of the Property as set forth in Chabot College Policies and Procedures (C1: *Facilities Rental Policy* and C2: *Facilities Rental Procedures*).

5) Hours of Operation. Eligible Users shall be permitted access to the Property during regular college business hours, with specific hours to be determined. Access will be established based on the availability of the TV Studio so as not to interfere with Chabot's use of the TV Studio for instructional, other academic purposes, and other pre-arranged use. Chabot personnel shall be present at all times the TV Studio is open to Eligible Users. Nothing in this Agreement requires the City to assign personnel to staff the TV Studio.

6) Utilities. Chabot shall provide and be responsible for all utility charges including gas, electricity, telephone, garbage, janitorial services, and other public utilities for the TV Studio during the term of this Agreement. Access to utilities (e.g. telephone, etc.) may be limited by TV Studio personnel and/or other Chabot officials.

7) Security System. The parties agree to cooperate and coordinate with each other regarding the use of the Property's security system within the TV Studio.

8) Repairs, Maintenance and Upkeep. During the term of this Agreement and any renewal or extension thereof, Chabot shall keep the exterior roof, interior and exterior painting and cosmetic appearance, electrical system, plumbing, heating, ventilating, air conditioning, structural supports, and foundation of the building of the Property and the TV Studio in good repair at its own cost and expense. City agrees, however, that its personnel and/or users shall:

- a. Place all waste in the waste receptacles provided by Chabot for removal from the premises;
- b. Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances, including elevators on the Property;
- c. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the Property or other premises of Chabot, or knowingly permit any person to do so;
- d. Conduct itself in a manner that will not disturb Chabot, its students, faculty, staff, and their business invitees of peaceful enjoyment of the Property;
- e. Make no alterations, changes, repairs or replacements in the buildings of the Property and the TV Studio, or the furniture or furnishings contained therein, without obtaining the prior written consent of Chabot; and
- f. Enforce Chabot's no smoking policy within the building(s) and on the campus subject to this Agreement.

Should City unreasonably fail to comply with any or all of the foregoing conditions, Chabot may immediately terminate this Agreement.

9) Surrender. On termination of this Agreement as hereinafter provided, the City shall promptly surrender occupation of that portion of the Property designated for the City's use in as good condition as it was on the date of this Agreement, except reasonable wear and tear and damage by the elements or fire or any casualty beyond the control of the City.

10) Parking. Eligible City users agree to comply with all Chabot College parking regulations and fees.

11) Accessibility. The TV Studio shall be accessible to Eligible Users at all times during which the TV Studio is open for operation pursuant to Paragraph 8 above.

12) Signage: Chabot shall erect and maintain signage which clearly identifies the TV Studio location to Eligible Users.

13) Liability and Indemnification. Governmental Code Section 895.2 imposes certain tort liability jointly upon public agencies solely by reason of such public agencies being parties to an agreement as defined in Government Code Section 895. Therefore, the parties hereto, as between themselves, pursuant to the authorization contained in Government Code Sections 895.4 and 895.6, each assumes the full liability imposed upon it or any of its officers, agents, representatives or employees by law for injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement, to the same extent that such liability would be imposed in the absence of Government Code Section 895.2. To achieve this purpose, each party shall be responsible for any and all claims, demands, loss or liability as a result of or arising out of the negligence of that party, its officers, agents, employees, or guests. In the event that any claim, demand, loss or liability arises out of the negligence of both parties; each party shall be responsible based upon its proportionate share of negligence. The City shall defend, indemnify, and hold harmless Chabot, its officers, employees and agents from and against all claims, damages, losses and expenses, including attorney fees and costs arising out of the use of the TV Studio which may be caused in whole or in part by any act or omission of the City, or which otherwise may be incurred by Chabot solely by virtue of Governmental Code Section 895.2. Chabot shall likewise defend, indemnify, and hold harmless the City, its officers, employees and agents from and against all claims, damages, losses and expenses, including attorney fees and costs arising out of the use of the TV Studio, which may be caused in whole or in part by any act or omission of Chabot, or which otherwise may be incurred by City solely by virtue of Governmental Code Section 895.2.

14) Insurance. Without limiting the above indemnification provision and during the term of this Agreement, the parties shall obtain and maintain commercial general liability insurance in an amount of not less than one million dollars (\$1,000,000) for bodily injury or death and property damage as a result of any one occurrence and a two million dollar (\$2,000,000) general aggregate policy. Upon request, a party shall deliver to the other party a certificate of insurance evidencing the existence of the policy required hereunder.

- a. The parties mutually agree to notify one another of any accident or incident relating to services performed under this Agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against any of the parties, and, of any actual third party claim or lawsuit arising from or related to services under this Agreement.
- b. Each party shall obtain and maintain Workers Compensation Insurance for its respective employees and agents during the coverage term of this Agreement in conformance with the laws of the State of California and applicable federal laws. Both parties agree to provide one another a workers compensation certificate of insurance upon request.

15) Property Insurance. At its own cost and expense during the term of this Agreement, Chabot shall keep the Property, the TV Studio and associated rooms and access ways insured for its full replacement cost against loss or destruction by fire and the perils, including special causes of loss, commonly covered under the standard special form policy in the county where the Property is located. Upon request, Chabot shall provide the City with a certificate of insurance indicating the existence of insurance as described herein.

16) Destruction. Should the TV Studio, associated rooms, or access ways of the Property be damaged or destroyed during the term of this Agreement, the party responsible for same shall promptly repair or replace the damaged or destroyed portions to the extent not covered by proceeds of any applicable insurance of the responsible party. Should any equipment be destroyed, either party may replace the equipment to the extent not covered by proceeds of any applicable insurance of the responsible party.

17) Licenses and Permits. City represents and warrants to Chabot that, to the extent it is required to do so, City and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to conduct the activities contemplated in this Agreement. City represents and warrants to Chabot that City and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to conduct the activities contemplated in this Agreement.

18) Compliance with Law. Each party agrees that it will meet all Federal, State, County and City laws and regulations so far as applicable to its obligations under this Agreement. Each party further agrees that it will comply with

all reasonable orders and directives of appropriate agencies and to satisfy any such directives from such agencies to meet obligations under this Agreement.

19) Independent Contractor Status. The parties hereby acknowledge that they are independent contractors. As such, each party shall be liable for any debts, obligations, acts and omissions relating to its own agents, representatives, students or employees, including the deduction of all federal, state and local income taxes, social security, FICA and other charges, if any, to be deducted from the compensation of its employees. Furthermore, in no event shall this Agreement be construed as establishing the relationship of agent, servant, employee, partnership, joint venture, association or any similar relationship between the parties hereto. As independent contractors, each party will be solely responsible for determining the means and methods for performing the services described herein. Each party understands and agrees that other party is engaged in an independent business or enterprise and the party shall have no right to direct or control in any way or to any degree the manner of other party's performance hereunder. Each party further understands that it is not authorized and shall not make any agreement, contract or representation on behalf of the other party or create any obligation, express or implied, on the part of the other party.

Neither Chabot nor any of its agents, representatives, students or employees shall be considered agents, representatives, or employees of City as a result of this Agreement. Furthermore, each and every person employed by Chabot who is providing services to City under this Agreement shall, at all times, remain an employee of Chabot. Chabot employees shall not, at any time, or in any way, be entitled to sick leave, vacations, retirement, or other fringe benefits from City, nor shall they be entitled to overtime pay from the City. City will make no State or Federal unemployment insurance or disability insurance contributions on behalf of Chabot and/or its agents or employees. Neither Chabot nor its employees shall be included in any bargaining unit or have any property rights to any position, or have any of the rights that an employee of the City may otherwise have in the event of termination of this Agreement.

Neither City nor any of its agents, representatives, or employees shall be considered agents, representatives, or employees of Chabot as a result of this Agreement. Furthermore, each and every person employed by City who is providing services to Chabot under this Agreement shall, at all times, remain an employee of City. City employees shall not, at any time, or in any way, be entitled to sick leave, vacations, retirement, or other fringe benefits from Chabot, nor shall they be entitled to overtime pay from the Chabot. Chabot will make no State or Federal unemployment insurance or disability insurance contributions on behalf of City and/or its agents or employees. Neither City nor its employees shall be included in the classified or faculty service, have any property rights to any position, or have any of the rights that an employee of the Chabot may otherwise have in the event of termination of this Agreement.

20) Default. Upon any default by any party in the performance of any of its duties and obligations contained herein and as may otherwise be required by law, the other party shall have all of the rights and remedies which may be provided by law.

21) Non-Waiver. No delay or omission to exercise any right, power, or remedy accruing to a party upon any breach or default by the other party to this Agreement shall impair such right, power, or remedy of the non-defaulting party; nor shall such delay or omission be construed as a waiver of any such breach or default, or of any similar breach or default thereafter occurring; nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers under this Agreement must be in writing. All remedies either under this Agreement or by law afforded to any party hereto shall be cumulative and not alternative or exclusive.

22) Amendment. This Agreement may be amended or modified only by a writing executed by each of the parties hereto.

23) Attorneys Fees. The prevailing party in any dispute under this Agreement is entitled to recover reasonable attorney's fees and costs.

24) Termination. This Agreement may be terminated as follows: (a) by mutual written agreement of the parties; (b) the conclusion of the initial term, or any extension thereof; (c) the termination of the Agreement without cause upon 30 days' written notice; or (d) immediately upon the breach or default by either party of any of the terms, obligations or covenants of this Agreement, which is not waived in writing by the non-defaulting party.

25) Successors. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the City and Chabot, respectively.

26) Time of Essence. Time is expressly declared to be of the essence in this Agreement.

27) Entire Agreement. This instrument constitutes the entire Agreement between the City and Chabot regarding community access use of the TV Studio, associated rooms, and access ways.

28) Notice. For the purposes of this Agreement, any notices required to be given to the parties hereto shall be given in writing and by personal service or by first class mail, postage prepaid, at the addresses hereinafter set forth after the signature of each party, or to such other addresses as each party may substitute by notice to the other. Notice shall be deemed complete upon personal service or, if by mail, five (5) days after the date of the postmark thereon.

Notices shall be addressed as follows:

TO City of Fremont:

ATTN:
Karena Shackelford
Deputy City Manager
3300 Capitol Ave., Bldg. A
Fremont, CA 94538
Tel: (510) 284-4063

TO Chabot-Las Positas Community College District:

ATTN:
Lorenzo Legaspi
Vice Chancellor, Business Services
Chabot-Las Positas Community College District
7600 Dublin Blvd., 3rd Floor
Dublin, CA 94568
Tel: (925) 485-5203
Fax: (925) 485-5255

29) Non-Assignment. No party shall assign this Agreement or any right or privilege any party might have under this Agreement without the prior mutual written consent of all parties hereto, which consent shall not be unreasonably withheld, provided that the assignee agrees in a written notice to all parties to carry out and observe each applicable party's agreements hereunder.

30) Non-Liability of Officials. No officer, member, employee, agent, or representative of either party shall be personally liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon, shall be personally enforced against any such officer, official, member, employee, agent, or representative.

31) Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not signatory to this Agreement.

32) Captions. The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.

33) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. Any photocopy of this executed Agreement may be used as if it were the original.

IN WITNESS WHEREOF, the parties, through their authorized representatives, affix their signatures to this Agreement.

THE CITY OF FREMONT:

CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT

Jessica von Borck
Assistant City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Fremont Deputy City Attorney

Attorneys for Chabot-Las Positas
Community College District

Attest:

City Clerk

EXHIBITS

Exhibit A: TV Studio Floor Plan - See attached enclosure

Exhibit B: Video and Media Production Equipment List - See attached enclosure

Exhibit A

TV Studio Floor Plan

(Rooms 124A, 124B, and 124D first floor building 100 • Chabot College)

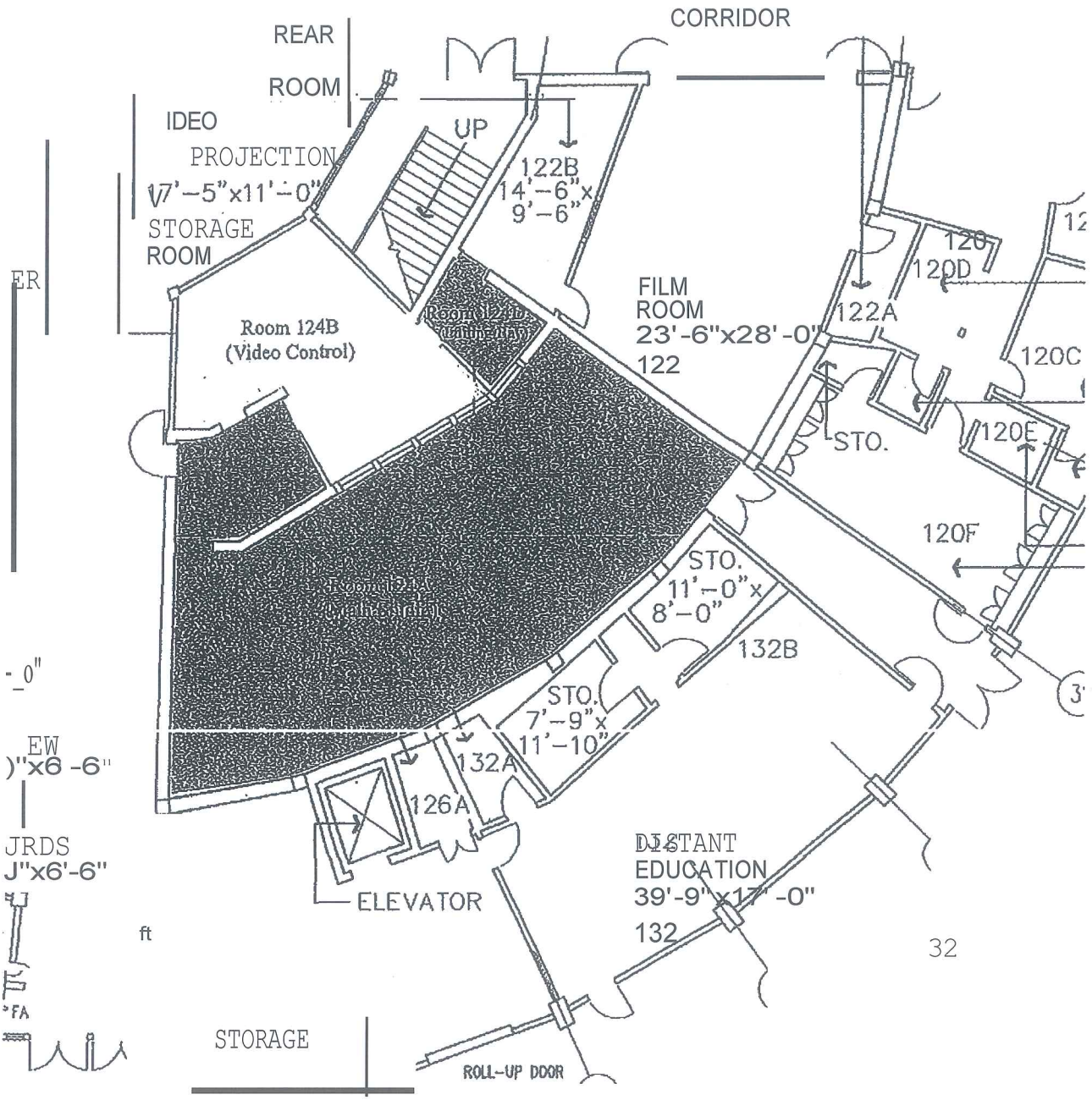


Exhibit B

Product Code	Bar Code	Title and Product Description	Stock Units	Unit Price	Location
Video Switcher	8082016	Tricaster Mini Portable Switcher	1	\$13,244.51	TV Studio
Digital Audio	5420165	Calrec Service Contract	1	\$8,475.77	TV Studio
Skype System	8102016	NewTek Talkshow VS4000	1	\$8,794.51	TV Studio
Brackets	5420170	Mounting Brackets & Cart for TV's	1	\$842.00	TV Studio
Live Transmit	5420164	AVIWEST License for Cell Phones	1	\$1,610.00	TV Studio
Video Camera	5420166	DJI OSMO 4K HandHeld Camera	1	\$1,536.68	TV Studio
Subscription	5420171	Fred Prior Training 1yr Unimited	1	\$299.00	TV Studio
Camera Utility	5420167	DSC Labs CamBook Greyscale	1	\$813.95	TV Studio
Survellence	5420200	Monitor and Surveillance Installation	1	\$1,490.49	TV Studio
Live Transmit	5420234	Vidovation/AVI West License	1	\$1,610.00	TV Studio
Closed Caption	Pending	Closed Captioning Quote-REV	1	\$1,000.00	TV Studio
News Desk	Pending	Studio News Desk (Quote)	1	\$19,500.00	TV Studio
Diag Monitor	5420229	Borland Remote Monitor	1	\$5,433.00	TV Studio
Software	5420231	Newtek Advanced Ed. For Mini	1	\$995.00	TV Studio
Psych - Studio	Pending	Psych and Green Screen fix	1	\$5,500.00	TV Studio
Electrical	5420230	Alameda Electronics (120 Install)	1	\$511.00	TV Studio
FTP Site (PEG)	5420225	Exavault (FTP Site) Billing	1	\$1,080.00	TV Studio
Maintenance	Pending	Studio Maintenance Contract	1	\$18,000.00	TV Studio
Mic Flags	5420218	Flags for Microphones (3)	1	\$142.20	TV Studio
Furniture	5420232	Furniture for 122 and Studio	1	\$4,866.32	TV Studio
Usage Fee	Pending	Vidovation/Overage Fee	1	\$90.00	TV Studio
Tripods	5420226	Tripods for Baby Sony Cams	1	\$439.90	TV Studio
Software	Pending	Streaming & Converting Software	1	\$1,908.00	TV Studio