

OPERATING AGREEMENT
BETWEEN
THE COUNTY OF SANTA BARBARA
AND
THE SOUTH COAST COMMUNITY MEDIA ACCESS CENTER

THIS OPERATING AGREEMENT is made and entered into on November 12, 2002, by and between:

THE COUNTY OF SANTA BARBARA (“County”) and

**THE SOUTH COAST COMMUNITY MEDIA
ACCESS CENTER**, a California non-profit 501(c)3
corporation (“Access Center”).

WITNESSETH:

THAT, WHEREAS, pursuant to (1) an ordinance of the Board of Supervisors of the County of Santa Barbara approving Cable Communications System Franchise between the County of Santa Barbara and Cox Com, Inc. [Ordinance No. 4439, as amended 3/26/02] (“the Franchise Agreement”), and (2) a November 21, 2001 letter from Julie McGovern, Vice-President and General Manager, Cox Communications to Scott Ullery, Deputy County Administrator, Re: Public Access Commitments (“Additional Commitments”), funds, facilities, equipment, and channel capacity have been made available for the purpose of supporting non-profit public and educational access television in the County of Santa Barbara; and

WHEREAS, the Board of Supervisors created the Santa Barbara Fund for Public and Educational Access (Fund) as the recipient and depository of funds made available pursuant to the Franchise and letter of Public Access Commitments; and

WHEREAS, the Board of Supervisors authorized the County Treasurer to accept and invest funds of the Santa Barbara Fund for Public and Educational Access in the same manner as other funds of local public agencies and as contemplated by Section 53684 of the California Government Code; and

WHEREAS, the Board of Supervisors has found and determined that the Access Center is a non-profit public benefit corporation operated for the purpose of providing public and educational access in the Santa Barbara County South Coast area; and

NOW THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. PURPOSE OF AGREEMENT

The purpose of this Grant Agreement is to recognize the Access Center as the entity designated to manage Public and Educational Access channels, to receive existing public access equipment and accumulated unexpended funds from Cox Communications, and use and expend public and educational access funds and services provided under this agreement, and to establish the conditions under which the Access Center will receive funds for public and educational access provided through the Franchise Agreement and Additional Commitments.

II. TERM

This Agreement commences on January 1, 2003 and shall terminate with the expiration of the Franchise Agreement on January 10, 2015, unless extended for two additional years pursuant to Section 7.3 (E) of the Franchise, or sooner terminated, as herein provided.

III. ROLE AND RESPONSIBILITIES OF THE ACCESS CENTER

The Access Center shall be responsible for providing the following functions effective as of January 1, 2003:

A. Public Access Channel Management - Management of the access channel provided in the Franchise Agreement for public access, in a manner consistent with the principles set forth in the Franchise, with the primary purpose being to administer, coordinate and assist those requesting access on a non-discriminatory basis in accordance with the requirements of the Federal Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 (hereinafter, collectively, the "Cable Act.")

B. Education Access Channel Management - Management of the access channel provided in the Franchise Agreement for education access in a manner consistent with the principles set forth in the Franchise, with the primary purpose being for the Access Center to administer, coordinate and assist educational institutions requesting access on a non-discriminatory basis in accordance with the Cable Act.

C. Facilities and Equipment - Manage a video production facility and equipment, in such a manner as to make them available for public use at such hours and times as are reasonably determined by the Access Center to adequately serve the community. Access to equipment and facilities shall be open to all those who satisfactorily complete training classes provided by the Access Center or who receive certification from the Access Center identifying said user as having satisfied training requirements through means other than the Access Center's training classes.

D. Equal Access - Provide access to the use of the equipment, facilities, channels and services provided hereunder on a non-discriminatory basis to all members of the community, whether individuals, groups or organizations, for non-profit non-commercial public and educational access programming, pursuant to operating rules promulgated by the Access Center.

E. Training - Train Santa Barbara South County residents and, when requested, County, school and college, and other public employees on the policies of the public and educational access channel use and in techniques of video production, and provide technical advice in the execution of productions.

F. Playback/Cablecast - Pursuant to Section 7.11 A. 5. of the Franchise Agreement, the Access Center shall provide for playback and cablecasting of programs on the public and educational access channel(s) and make all reasonable efforts to cablecast enough locally produced programming to avoid the loss of unused channel capacity.

G. Maintenance of Equipment - Provide regular maintenance and repair of all equipment and facilities transferred from Cox Com to the Access Center or purchased with monies received pursuant to this Agreement.

H. Promotion – Actively promote the use and benefit of the public and educational access channels and facilities to cable subscribers and the public. The Access Center, by no later than December 31, 2006, shall utilize promotional air time on other cable networks as provided by Cox Com, free of charge, pursuant to Section 7.11.F of the Franchise Agreement.

I. Fundraising - Undertake public fundraising efforts and activities to benefit public and educational access programming activities and services, as deemed appropriate by the Access Center and the obligation to facilitate and promote access programming and provide non-discriminatory access.

J. County and Cox Com Seats on the Board of Directors - The Access Center's Bylaws shall provide for one Director's seat each for representatives appointed by the County and CoxCom respectively. The Directors representing the County and CoxCom shall be non-voting members of the Access Center Board of Directors.

IV. LOCATION OF PRINCIPAL OFFICE

The principal office and all satellite offices for the transaction of business for the Access Center shall be located within the Cox Com franchise areas located within the Santa Barbara South County region.

V. CONTENT CONTROL

The Access Center agrees to keep the Public Access channel(s) open to all potential users in a manner consistent with all state and federal constitutional and statutory requirements and as required by the Cable Act. The Access Center may develop and enforce policies and procedures which are designed to encourage local use of the Access channels and make programming accessible to the viewing public. Neither the County nor Cox Com nor the Access Center shall control the content of

programming on the channels, so long as the programming is lawful.

VI. NONDISCRIMINATION

The Access Center agrees to comply in all respects with Santa Barbara County Code, Chapter 2, Article XIII, Sec. 2-94 – 2-97, marked Exhibit A and incorporated herein by reference.

VII. USE OF FUNDS

A. Subject to terms and conditions contained herein, the Access Center agrees that the County will authorize the Treasurer of Santa Barbara County to accept and invest funds, held by the Santa Barbara Fund for Public and Educational Access, in the amounts provided for in the Franchise Agreement and Additional Commitments as summarized below:

- \$1,000,000 capital endowment, the interest income derived from the investment of which may be used solely for capital purposes consistent with Section 622(g)(2)(c) of the Cable Act
- \$250,000 for capital purposes consistent with Section 622(g)(2)(c) of the Cable Act
- \$1,700,000 for operating or capital purposes.

Additionally, the Access Center will receive directly from Cox Com, (1) on no later than January 1, 2003, a capital grant in the amount of \$200,000, and (2) on no later than March 1, 2003, the balance of any unspent public access funds in Cox's possession that were accrued under its previous and existing franchise agreements with the County and the cities of Santa Barbara and Carpinteria.

These funds shall be used by the Access Center exclusively for performing the roles and responsibilities defined in this agreement for the furtherance of public and educational access television.

B. By **December 1, 2002**, the Access Center shall submit a detailed budget, duly approved by the Access Center's Board of Directors, for the remainder of the July 2002 to June 2003 fiscal year to the County. By **March 1, 2003** and annually thereafter, a budget for the following

July-to-June fiscal year shall be submitted to the County. The submitted budgets shall show both itemized categories of expenditures and itemized sources of funds, and shall state the amount of quarterly draws to be made on the amounts provided pursuant to the Franchise Agreement and Additional Commitments. These budgets must reflect the use of the grant funds provided under this Agreement for the purposes described herein.

C. If the Access Center uses said funds, other than as provided for herein, the County shall have the right to terminate this Agreement and demand that the Access Center effect the transfer of equipment and facilities and unexpended funds provided pursuant to this Agreement to an entity designated by the County.

VIII. DISBURSEMENTS

In consideration of the use of funds, after execution of the Agreement of the respective parties hereto, and commencing on January 1, 2003, the County shall disburse funds to the Access Center, by an advance of quarterly payments for the support of public and educational access in the amounts stated in the Access Centers annual budget. The amounts of quarterly disbursements may deviate 10% from the budgeted amount, upon the Access Center's request. Deviations in amounts greater than 10% must be approved in writing by the County Administrator. County Administrator's approval shall not be withheld unreasonably. Disbursements shall made in a timely manner upon filing of a claim for payment by the Access Center in a manner required by the County Treasurer and the Auditor Controller.

IX. SITE FOR A FUTURE ACCESS CENTER

A. The County shall make available, if needed, a site for the future location of Access Center facilities. The site provided shall be provided free of charge to the Access Center, shall be at a location selected by the County, shall be for the sole purpose of providing a location for the Access Center to construct or locate a building or buildings for its use consistent with the purposes

outlined in this agreement and the Franchise Agreement; and shall be for a period coterminous with the Franchise Agreement.

B. The County shall be under no obligation to provide a site in the event the City of Santa Barbara does not enter into and maintain agreements with the Access Center to provide, commencing on January 1, 2003, grants to the Access Center in amounts equal to no less than seventy-three thousand three hundred ninety-eight dollars per quarter, which grant amount shall be increased effective April 1, 2003 and continuing through the end of the City's current franchise agreement with Cox Com and pursuant to the City of Santa Barbara's Grant Agreement with the Access Center.

X. AUDIT OF THE ACCESS CENTER'S RECORDS

The Access Center shall, at all times during the term of this grant agreement, keep and maintain in Santa Barbara full, complete, and appropriate books, records, and accounts relating to the funds provided by the County including all such books, records and accounts necessary or prudent to evidences or substantiate in full detail the expenditure and use of funds provided by the County in accordance with this Agreement. Such books, records and accounts shall provide for a separate accounting of funds provided under this agreement.

All books, records, and accounts relating, in County's reasonable judgment, to the Access Center's compliance with the terms, provisions, covenants and conditions of this Agreement shall be kept and maintained in accordance with generally accepted accounting principles (GAAP) consistently applied and shall at all times during normal business hours be open to and available for inspection by County, its auditors, and other authorized representatives. If at any time during the term hereof said books, records and accounts are deemed inadequate or incomplete in the reasonable judgment of County, the Access Center shall, upon the request of County, revise, adjust, complete, procure and maintain such books, records and accounts so that thereafter they shall be of a character and form adequate for said purposes in County's reasonable judgment. Copies of all tax reports and Internal

Revenue tax reports or any other reports that the Access Center may be required to furnish any governmental agency shall at all reasonable times be open for inspection by County at the place that the books, records and accounts of the Access Center are kept. County shall have the right to audit and examine the books, records and accounts of the Access Center necessary for a proper determination of the use of grant agreement funds, and all such books and records shall be held available for such purpose.

XI. REIMBURSEMENT OF IMPROPER EXPENDITURES

If, at any time within the applicable statutory periods of limitation, it is determined by the County, that funds provided under the terms of this Agreement have been used by or on behalf of the Access Center for purposes that do not qualify as allowable expenditures under this Agreement, as designated by the term of this Agreement, the Access Center shall, at the County's request, pay to the County an amount equal to one hundred percent (100%) of any amount expended in violation of said County's action.

XII. LICENSES AND PERMITS

The Access Center shall obtain and maintain any and all licenses and permits necessary to perform under this Agreement and to maintain the facilities and render the services proposed to be maintained or rendered in connection with this Agreement.

XIII. COUNTY'S RIGHT TO TERMINATE AGREEMENT

County shall have the right to terminate this Agreement immediately if the County determines that the Access Center has incurred obligations or made expenditures for purposes that do not constitute allowable expenditures. County shall also have the right to terminate this Agreement immediately if County determines that the Access Center is managing public and educational access in violation of the terms of the Franchise Agreement or this Agreement, or has filed a petition of bankruptcy, or for receivership or reorganization or has filed any other petition under the Bankruptcy

Act (11 USC Paragraph 1 et seq.) or has taken or committed any act preparatory to the filing of any such petition or has become insolvent or has committed any other act of bankruptcy or insolvency. In any event, the County shall have the right to terminate this Agreement at any time with or without cause, by giving the Access Center 30 days prior written notice of the County's intent to terminate this Agreement; provided that, upon such termination County shall pay its share of all obligations incurred by the Access Center prior to the date of such termination, on a pro-rata basis with other franchising agencies, which are authorized under the terms of the Franchise Agreement and of this Agreement.

The County shall also have the right to terminate this Agreement immediately upon termination of any agreement between the Access Center and the City of Santa Barbara.

XIV. INDEMNIFICATION/HOLD HARMLESS

The Access Center shall, to the extent permitted by law, investigate, defend, indemnify and hold harmless the Fund and the County of Santa Barbara, its officers, employees and agents from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expenses (including reasonable attorneys' fees) and causes of action of whatsoever character which the County may incur, sustain, or be subjected to on account of loss or damage to property or loss of use thereof, or for bodily injury to or death of any person (including but not limited to property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way connected with the work to be performed under this Agreement or public and education's access services to be provided under this Agreement.

XV. INSURANCE

As part of the consideration of this Agreement, Access Center agrees to purchase and maintain at its sole cost and expense during the life of this agreement insurance coverage as specified in A, B, C, D, E, and F below. All insurance coverage is to be placed with insurers that: 1) have a Best rating of no less than B+: XII, and 2) are admitted insurance companies in the State of California. All

other insurers require prior approval of the County.

A. General and Automobile Liability: Combined single limits of not less than One Million Dollars (\$1,000,000) of General Liability and One Million Dollars (\$1,000,000) of Automobile Liability insurance, including Bodily Injury and Property Damage.

B. Media and Broadcaster's Liability: Professional liability insurance covering errors and omissions with minimum limits of \$1,000,000, covering content of productions that are cablecast on the access channel(s) or placed on the Access Center website(s) in, at minimum, the following areas: libel and slander, copyright or trademark infringement, plagiarism, infliction of emotional distress, invasion of privacy, misuse of musical or literary materials. This policy shall not be required to cover individual access producers. Said policy shall provide that County shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

C. Directors & Officers Liability: Insurance covering against loss due to the conduct of Access Center Board Directors and Officers with minimum limits \$1,000,000. At minimum, such insurance shall provide for payment of defense and indemnity costs incurred by the insured, and personally by directors and officers, for claims brought by access users, creditors, employees, competitors and others which arise out of allegations of breach of duty, neglect, error, misstatement, violation of rights, and similar causes whether or not the allegations are groundless or false.

Insurance in items A, B and C above shall include the following:

1. Extension of coverage to County, its officers, employees and agents, as additional insured parties, with respect to the Access Center's liabilities, but only with respect to the operations of the named insured.

2. A provision that coverage will not be cancelled or subject to reduction until at least thirty (30) days' prior written notice has been given to the County Administrator, addressed to 105 E. Anapamu Street, Rm. 406, Santa Barbara, California 93101-2065.

3. A provision that the Access Center's insurance shall apply as primary, and non-contributory to the full limits stated in the declarations, and if the COUNTY has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess.

4. Contractual liability coverage sufficiently broad so as to include the liability assumed by the Access Center in the indemnity or hold harmless provisions included in this Agreement.

5. A Cross Liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each.

6. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance.

7. Policy shall apply on an "occurrence" basis.

D. Workers' Compensation: In accordance with the provisions of the California Labor Code, Access Center is required to be insured against liability for Workers' Compensation or to undertake self-insurance. Statutory Workers' Compensation and Employers' Liability of at least \$1,000,000 shall cover all Access Center staff while performing any work incidental to the performance of this agreement. The policy shall provide that no cancellation, major change in coverage or expiration shall be effective or occur until at least thirty (30) days after receipt of such written notice by County.

E. Real & Personal Property Insurance: Insurance against loss, loss of use, or damage to real and personal property including, but not limited to, improvements, fixtures, broadcasting and video equipment with limits equivalent to the replacement cost.

F. Fidelity Bond: Bond coverage insuring against loss due to dishonest acts of Access Center or its Board of Directors and Officers, with limits not less than \$300,000. Approval of the insurance by County or acceptance of the certificate of insurance by County shall not relieve or decrease the extent to which the Access Center may be held responsible for payment of damages

resulting from Access Center's services or operation pursuant to this Agreement, nor shall it be deemed a waiver of County's rights to insurance coverage hereunder.

A Certificate of Insurance evidencing the above insurance coverage and endorsement shall be completed by Access Center insurer or its agent and submitted to the County prior to execution of this Agreement by the County. Access Center shall require all subcontractors to provide insurance as set forth above. If, for any reason, Access Center fails to maintain insurance coverage, which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. County, at its sole option, may terminate this Agreement and obtain damages from the Access Center resulting from said breach. Alternately, County may purchase such required insurance coverage, and without further notice to Access Center, County may deduct from sums due to Access Center any premium costs advanced by County for such insurance.

XVI. INDEPENDENT CONTRACTOR.

It is understood and agreed by the parties hereto that the Access Center, while engaged in conducting the program and complying with any of the terms of this Agreement, is an independent contractor and is not an officer, agent or employee of the County; and officers, employees and agents of the Access Center are not entitled to any of the benefits of County employees.

XVII. ASSIGNMENT

The Access Center shall not assign this Agreement or any part thereof or any monies payable hereunder without the prior written consent of the County, which consent may be withheld in the sole and absolute discretion of the County.

XVIII. FINANCIAL STATEMENT AND YEAR-END REPORT

The Access Center agrees to submit to the County, within thirty (90) days following the completion of each fiscal year, an audited annual financial statement of the corporation and a year-end report detailing that disbursements of all sums paid to it by the County have been spent in accordance

with this Agreement.

XIX. COMPLIANCE WITH LAWS AND REGULATIONS

The Access Center agrees that it shall comply with all applicable federal and state laws and regulations including but not limited to the following:

A. Ralph M. Brown Act: The Access Center agrees that the conduct of all meetings of the Board of Directors and all actions of the Access Center shall be governed by the agenda and open meeting requirements and provisions of the Ralph M. Brown Act (California Government Code §§ 54960-54962) as it is presently enacted or hereafter amended, hereinafter referred to as the "Brown Act") and expressly agrees to comply with such requirements.

B. Public Records Act (Secs. 6250-6276.48): Grantee agrees to comply with records disclosure requirements of the Public Records Act (Government Code Secs. 6250-6276.48).

XX. NONPARTISAN ACTIVITIES

As a nonprofit corporation, the Access Center shall not use any of the funds granted to it by the County pursuant to this Agreement to participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office. No substantial portion of the funds granted under this agreement may be used to carry on propaganda, or otherwise to attempt to influence legislation. . Nothing in this section is intended to limit or control the content of programming on the channels produced by members of the public, educational organization and others utilizing public and educational access, so long as the programming is lawful.

XXI. NOTICES

Notices shall be sent to the Access Center addressed as follows:

South Coast Community Media Access Center
414 East Carrillo Street
Santa Barbara, CA 93101

Notices shall be sent to the County addressed as follows:

County Administrator
County of Santa Barbara
105 E. Anapamu Street, Rm. 406
Santa Barbara, CA 93101-2065

XXII. PARAGRAPH HEADINGS

The paragraph headings contained herein are for convenience and reference only and are not intended to define or limit the scope of this Agreement.

XXIII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between County and the Access Center with respect to the subjects matter hereof and supersedes all prior agreements and negotiations, oral and written. This Agreement may not be modified or amended in any respect whatsoever except by an instrument in writing signed and authorized by the County of Santa Barbara and the Access Center.

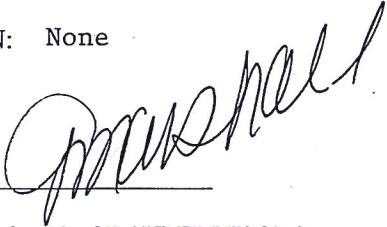
PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara,
State of California, this 12 day of November, 2002, by the following vote:

AYES: Supervisors Schwartz, Rose, Marshall, Gray, Urbanske

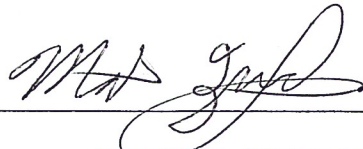
NOES: None

ABSENT: None

ABSTAIN: None

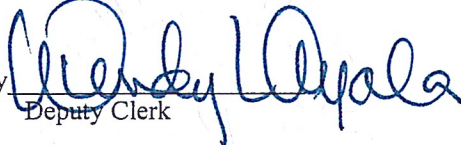


CHAIR, BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA



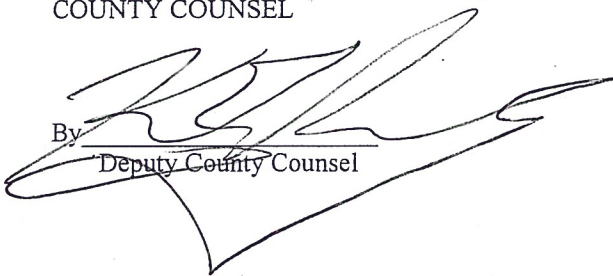
DIRECTOR, SOUTH COAST COMMUNITY MEDIA ACCESS
CENTER

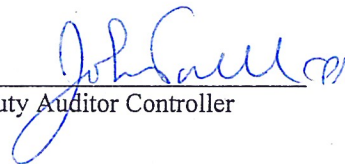
ATTEST:
CLERK OF THE BOARD

By: 
Deputy Clerk

APPROVED AS TO FORM:
AUDITOR-CONTROLLER

APPROVED AS TO FORM:
COUNTY COUNSEL

By: 
Deputy County Counsel

By: 
Deputy Auditor Controller

APPROVED AS TO FORM:
RISK MANAGEMENT

By: 