

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM
3.8
(ID # 7837)

MEETING DATE:

Tuesday, October 2, 2018

FROM : CLERK OF THE BOARD:

SUBJECT: CLERK OF THE BOARD: Initiation of an Ordinance Establishing Local Regulations Applicable to Holders of a State Video Franchise Granted by the California Public Utilities Commission Pursuant to the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), and Approval of the Riverside County Public, Educational, and Governmental (PEG) Channel Plan and template Use Agreement for Use of Riverside County's PEG Channel (RivCoTV). (District All) [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Adopt an order initiating an ordinance that would regulate holders of a State video franchise granted by the California Public Utilities Commission pursuant to the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), and direct the Clerk of the Board to prepare and process the ordinance;
2. Approve the attached Riverside County PEG Channel Plan; and
3. Approve the attached template Use Agreement, and authorize the Clerk of the Board to sign, as approved by County Counsel, future agreements with governmental entities substantially in the form of the attached template Use Agreement.


ACTION: Policy


Kecia Harper-Ihem, Clerk of the Board 8/31/2018

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Perez, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
Nays: None
Absent: None
Date: October 2, 2018
xc: COB, Co.Co.

Kecia Harper-Ihem
Clerk of the Board
By 
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$0	\$0	\$0	\$0
NET COUNTY COST	\$0	\$0	\$0	\$0
SOURCE OF FUNDS: 100% Franchise Fee Revenue			Budget Adjustment:	No
			For Fiscal Year:	18/19

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

On October 17, 2006 (Item 9.10), the Board of Supervisors approved County Ordinance No. 503.11, amending County Ordinance No. 503.10, Regulating Cable, Video and Telecommunications Service Providers. This ordinance established a regulatory framework for franchising procedures and allowed for greater flexibility in how the County addresses cable franchise related matters that may differ from community to community and from cable operator to cable operator.

Historically, cable franchises were issued and regulated at the local level in California. However, the California Legislature enacted the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), which went into effect on January 1, 2007. Under DIVCA, the Legislature created a new regulatory scheme for cable and video franchising in California that essentially shifted franchising authority away from local government to the State level. Under this new regulatory scheme, only the California Public Utilities Commission (CPUC) may issue video franchises under DIVCA, and as locally granted franchises expire, the video service provider operating under a local franchise must obtain a State DIVCA franchise to continue to serve the local community. For that reason, AT&T and Spectrum are now operating under a DIVCA franchise in the County of Riverside. Frontier Communications, formerly known as Verizon California, entered into a Cable Franchise Agreement with the County on November 14, 2006 (Item 9.4) and continues to operate under its local franchise with the County, which does not expire until 2021. Antilles Wireless, LLC d/b/a USA Communications ("Antilles") and NPG Cable, LLC d/b/a Suddenlink Communications ("Suddenlink") also have DIVCA franchises to operate in the County of Riverside.

Although the CPUC now has most of the regulatory authority over the holders of State video franchises under DIVCA, DIVCA preserves some local government regulatory authority. This regulatory authority includes the following items which would be addressed in the proposed ordinance:

1. **Franchise Fees.** DIVCA requires holders of State video franchises to pay a franchise fee in an amount not to exceed what was being charged to incumbent providers, and in any event not more than 5% of gross revenues. All providers are paying 5% of gross revenues, and the proposed ordinance will continue to require the same franchise fee. The Board of Supervisors Information Technology Team estimates the County will receive approximately \$2.6 million in franchise fee revenue per fiscal year from Spectrum, AT&T, Frontier, Antilles, and Suddenlink combined.
2. **PEG Fees.** DIVCA allows local governments to establish, by ordinance, a fee to

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support public, educational, and governmental access (PEG) channel facilities payable by holders of State video franchises, subject to certain limitations. None of the providers are paying PEG fees at the moment. The proposed ordinance would establish the fee and set the maximum contribution permitted of 1% of gross revenues. The Board of Supervisors Information Technology Team estimates the County will receive approximately \$520,000 in PEG fee revenue per fiscal year from Spectrum, AT&T, Frontier, Antilles, and Suddenlink combined.

3. Right-of-Way Management. DIVCA preserves local authority to regulate the time, place and manner of placement of facilities and equipment in the public rights-of-way by DIVCA franchise holders, but requires that said authority be exercised consistent with how the local jurisdiction regulates the use of the public rights-of-way by telecommunications providers. As required by DIVCA, the proposed ordinance would provide a 60 day time limit for the County to issue or deny an encroachment permit and give State video franchise holders the right to appeal to the Board of Supervisors any denials.

4. Customer Service. DIVCA preserves local authority to enforce State and Federal customer service requirements but does not permit enforcement of any additional or different customer service rules. DIVCA also directs that local governments adopt a set schedule of penalties for violations of such customer service standards. Under DIVCA, half of any penalties collected by the local government must be remitted to the CPUC.

The proposed DIVCA ordinance would be in addition to, and not a replacement for, Ordinance 503.11. Once adopted, the County may then exercise its limited regulatory authority under the new ordinance over DIVCA franchise holders such as Spectrum and AT&T and any new providers with a State video franchise serving the County of Riverside. So long as Frontier operates under its local franchise, the County may continue to exercise its regulatory authority over Frontier pursuant to its franchise with Frontier and Ordinance 503.11. However, once Frontier begins operating under a State DIVCA franchise upon the expiration of the local franchise, the County may exercise only its limited regulatory authority under the proposed DIVCA ordinance, and may consider repealing Ordinance 503.11 as it will no longer apply to any video service provider after that time.

In addition to the initiation of the proposed DIVCA ordinance, the Clerk of the Board's office requests the Board's approval of the attached PEG Channel Plan, which sets forth the purposes, policies, programming priorities, and operational procedures for the County's PEG channel ("RivCoTV"). Currently, the County broadcasts on AT&T Channel 99 and Frontier Channel 36 Riverside County Board of Supervisor meetings and the meetings of other boards and committees that meet in the Board Chambers in the County Administrative Center in Riverside, California. Once fully implemented, RivCoTV will be a governmental access channel used for programming by the County, including providing live and "playback" recordings of board, committee, and commission meetings that are held in the County Administrative Center Board Chambers and other off-site meetings. Supplemental programming with the Media/Communications Coordinator, Board of Supervisors, and Executive Office will also be broadcasted on RivCoTV. The programming will provide, among other things, public service announcement videos created by departments within Riverside County and relevant subject matter to the constituents of Riverside County and the cities within the County in an effort to keep them updated with information presented in the various meetings. The nature of the

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information provided to the constituents could involve health, public safety, or upcoming events available to or that affect the target audience.

One of RivCoTV's programming priorities is to include programming of local and regional government entities. In furtherance of this programming priority, the Clerk of the Board's office has provided for the Board's approval a template Use Agreement to be entered into with government entities who desire to broadcast government-related programming on RivCoTV that is consistent with the PEG Channel Plan. The Use Agreement will provide the terms and conditions that will govern (1) the broadcast on RivCoTV of content submitted to the County by such government entities, and (2) any production services provided by the County at the request of such government entities. The costs and expenses incurred by the County for these items would be paid for by the government entities under the Use Agreement.

Both the PEG Channel Plan and the template Use Agreement have been reviewed and approved as to form by County Counsel.

Impact on Residents and Businesses

The impact on residents and businesses will be greater transparency and improved access to information regarding the meetings, programs, and events of the County of Riverside and other government entities, including emergency programming involving public health, safety, and welfare.

Attachments

PEG Channel Plan
Use Agreement template



Gregory V. Priamos, Director County Counsel 9/20/2018

RIVCOTV RIVERSIDE COUNTY PEG CHANNEL PLAN



Public, Educational, and Governmental
Access Channel

RIVERSIDE COUNTY
ADMINISTRATIVE
Clerk of the Board of Supervisors

4080 Lemon Street, 1st Floor 951-955-1069
Riverside, Ca 92501 it@rivco.org

RivCoTV: Riverside County "PEG" Channel

Introduction

The Board of Supervisors Information Technology Team, under the direction of the Clerk of the Board, is working to implement the Riverside County PEG channel ("RivCoTV"). Currently, the County broadcasts, on AT&T Channel 99 and Frontier Channel 36, Riverside County Board of Supervisor meetings and the meetings of other boards and committees that meet in the Board Chambers in the County Administrative Center in Riverside, California. Once fully implemented, RivCoTV will be a governmental access channel used for programming by the County, including providing live and "playback" recordings of board, committee, and commission meetings that are held in the County Administrative Center Board Chambers and other off-site meetings that might occur from time to time. Supplemental programming with the Media/Communications Coordinator, Board of Supervisors, and Executive Office will also be broadcasted on RivCoTV. The programming will provide public service announcement videos created by departments within Riverside County and relevant subject matter to the constituents of Riverside County and the cities within the County in an effort to keep them updated with information presented in the various meetings. The nature of the information provided to the constituents could involve health, public safety, or upcoming events that affect the target audience. RivCoTV may have content on cable channels within its jurisdiction including but not limited to AT&T Channel 99 and Frontier Channel 36.

Purpose of RivCoTV

- To provide a convenient and information-rich resource for residents, visitors, businesses, non-profit organizations, other public agencies, and schools to access their County government.
- To make public proceedings and events more accessible to County residents by providing, among other things, footage of Board of Supervisors, Planning Commission, Transportation Commission, and other local government meetings.
- To provide more extensive information on important County issues and activities.
- To promote County-sponsored or County co-sponsored special events.

- To employ the latest technology to improve customer service and communication relating to issues of interest within the County and its surrounding area.
- To contribute to the improvement of County services, foster economic development, and enhance the sense of community within the County.
- To act as a source of information during local emergencies.

RivCoTV Policy

RivCoTV is a non-public forum. While the County encourages the public to view RivCoTV to access information and resources, the County expressly reserves the right to impose certain restrictions on the use of RivCoTV. As a governmental access channel, RivCoTV is reserved for the exclusive control of the County for the purposes of one-way communication to residents of the County. RivCoTV will provide non-editorial information and shall not be used to facilitate a general debate or the free exchange of ideas. RivCoTV is not intended as a mechanism for building support for a particular ballot issue or candidate for political office. Declared candidates for any elective office will not be eligible to appear on RivCoTV; provided, however, that this policy does not apply to persons who receive incidental air time as a part of a public meeting being broadcasted on RivCoTV or to officials acting as part of their regular duties when such actions do not involve partisan policies or campaign activities.

RivCoTV Programming Priorities

- Emergency programming involving public health, safety, or welfare.
- Programming of or about meetings of local legislative and policy-making bodies, including the Board of Supervisors, Planning Commission, and Transportation Commission.
- Programming of County departments and their services.
- Programming of local and regional government boards, commissions and/or agencies.
- Programming of County-sponsored or County co-sponsored events and activities.
- Programming sponsored by public utilities that service County residents or businesses specifically to assist individuals relocating to the County.

RivCoTV Operational Procedures

The Chief of Technology for the Board of Supervisors is responsible for maintaining the integrity of the content placed on RivCoTV based on these

policies and procedures. Upon receiving requests for material to be broadcast, the Chief of Technology will determine if the proposed material is consistent with this PEG Channel Plan. If the Chief of Technology concludes that the proposed material violates this PEG Channel Plan, his or her decision may be appealed to the Clerk of the Board or his/her designee.

The County reserves the right to refuse any request for RivCoTV programming that it deems in violation of this PEG Channel Plan and the mission, purpose, goals, procedures, priorities, and policies of RivCoTV or any federal, state, or local law.

RivCoTV Sample Programming

The Board of Supervisors Information Technology Team manages the County Board Chambers located at the County Administrative Center, 4080 Lemon Street, Riverside, CA 92501. There are currently several boards, committees, or commissions that regularly meet in the chambers. These ongoing meetings will make up the bulk of RivCoTV programming and other time slots will be filled with other channel programming consistent with the mission, purpose, goals, and policies set forth in this PEG Channel Plan. To fill up the 24/7 schedule, previously recorded meetings or videos will also be replayed on the channels.

Current Meeting Schedules

Riverside County Board of Supervisors	Tuesdays from 9:00 am - finish
Western Riverside County Regional Conservation Authority	Mondays from 12:20 pm - 1:30 pm
Western Riverside Council of Governments	Mondays from 2 pm - 4:30 pm
Inland Empire Health Plan	Mondays every other month from 9 am - 11:30 am
Riverside County Planning Commission	Wednesday from 9:00 am - 5 pm
Riverside County Habitat Conservation Agency	Thursday from 2 pm - 4 pm
Riverside County Airport Land Use Commission	Thursday from 9:00 am - 12:30 pm
Riverside County Transportation Commission	Mondays & Wednesdays from 9:30 am - 1 pm
Riverside Local Area Formation Commission	Thursday 9:00 am - 11:30 am
Riverside Transit Agency	Thursday 1:00 pm - 4:30 pm
California Air Resources Board	Quarterly on Thursday and Friday All Day
City of Riverside Public Utilities	Quarterly on Thursday from 6 pm - 9pm
Riverside County Youth Commission	Monthly on Thursday from 6 pm - finish

Use of PEG Facilities

In the coming year, the Board of Supervisors Information Technology Team envisions opportunities for the County to enter into revenue-generating agreements with other local government entities for the use of County PEG

facilities to broadcast content consistent with the mission, purpose, goals, priorities, and policies of this PEG Channel Plan.

Providers

The Media/Communications Coordinator is currently working with three cable companies to roll out RivCoTV. AT&T, Frontier (formerly known as Verizon California), and Spectrum (formerly known as Time Warner) have all been communicating with the County at this time. These providers have an intended audience of approximately 300,000 constituents as of May 1, 2018. AT&T and Spectrum are now operating under a DIVCA franchise in the County of Riverside. Frontier Communications, formerly known as Verizon California, continues to operate under its local franchise, which does not expire until 2021. Antilles Wireless, LLC d/b/a USA Communications ("Antilles") and NPG Cable, LLC d/b/a Suddenlink Communications ("Suddenlink") also have DIVCA franchises to operate in the County of Riverside, and the County intends on discussing the roll out of RivCoTV with Antilles and Suddenlink as well.

Hardware and Software Requirements

Currently, the County owns and operates the board chambers located on the first floor of the County Administrative Building. The chambers is currently equipped with a control room, broadcast head-end and connectivity to AT&T and Frontier and basic field production equipment. The board chambers was recently upgraded to distribute digital audio and video signals for optimal production and customer experience. To operate RivCoTV, the County will also need to procure hardware/software to produce the programming, which include, but are not limited to, the following:

- Electronic News Gathering & Event Videography Equipment
- Audio Equipment Necessary for the Transmission of Audio Signals for Broadcast
- Lights and Control Equipment
- Castus Media Server (*Ordered and installed*)
- Adobe Editing & Encoding Software (*Ordered and installed*)
- Broadcast Router for monitoring of audio and video (*Need to Order*)
- Standards Converter (*Need to Order*)

Section 611 of the Communications Act

Per the FCC ("Federal Communications Commission") website: "Pursuant to Section 611 of the Communications Act, local franchising authorities may require

cable operators to set aside channels for public, educational, or governmental ("PEG") use." (<https://www.fcc.gov/media/public-educational-and-governmental-access-channels-peg-channels>)

Digital Infrastructure and Video Competition Act

In 2006, the Digital Infrastructure and Video Competition Act was signed into law and codified at California Public Utilities Code section 5800, et seq., ("DIVCA"). DIVCA established a state video franchising system that replaced local cable franchising but also recognized the need to protect local public entity revenues.

Franchise Fees

Under DIVCA, a video service provider or cable operator with a state franchise to provide video services in the County must pay a franchise fee to the County of 5% of its gross revenues. The Board of Supervisors Information Technology Team estimates the County will receive approximately \$2.6 million in franchise fee revenue from Spectrum, AT&T, Frontier, Antilles, and Suddenlink combined. The revenues generated by the franchise fee may be used by the County for any lawful purpose.

PEG Fees

Under DIVCA, the County can require a fee from providers "to support PEG channel facilities consistent with federal law" of up to 1% of gross revenues, or in some limited cases to establish a fee of up to 3% of gross revenues "to support PEG activities."

Riverside County Ordinance 503.11, which now applies solely to Frontier as the only provider with a local franchise, was approved by the Board of Supervisors on 10/31/2006 and became effective on 12/01/2006. Section 2.140 (Fee for Support of Local Cable Usage) of Ordinance 503.11 states:

A fee paid to the County is hereby established for the support of public, educational, and governmental access facilities and activities within the County. Unless a higher percentage is authorized by applicable state or federal law, this fee shall not exceed one percent (1%) of a Grantee's gross revenues, as the term "gross revenues" is defined in the Grantee's franchise agreement or in applicable provisions of state or federal law.

The Board of Supervisors Information Technology Team estimates the County will receive approximately \$520,000 in PEG fee revenue.



**Use Agreement
Between
[Future Customer Insert Name Here]
and
County of Riverside
for RivCoTV**

This **Use Agreement** ("Agreement") dated as of _____, 20__ ("Effective Date"), is made by and between the County of Riverside ("County"), a political subdivision of the State of California, and the _____, [insert legal capacity (e.g., a municipal corporation, a special district, etc.)] ("Customer"). Customer and County are sometimes collectively referred to herein as "Parties" and individually as "Party".

WHEREAS, AT&T, Spectrum, USA Communications, and Suddenlink Communications (collectively, "State Franchisees") have each been granted a state franchise to provide video services in the County of Riverside pursuant to the California Digital Infrastructure and Video Competition Act of 2006 ("DIVCA").

WHEREAS, DIVCA provides that certain channel capacity and funding shall be provided by State Franchisees for the exclusive use of the County or its designees to provide public, educational, and governmental ("PEG") channels.

WHEREAS, the County has also granted a franchise to Frontier Communications ("Local Franchisee") to operate a cable television system in the County of Riverside pursuant to that certain Cable Franchise Agreement ("Franchise Agreement") Between the County of Riverside and Verizon California Inc., predecessor-in-interest to Frontier Communications.

WHEREAS, the Franchise Agreement provides that certain channel capacity be provided for PEG access and certain payments shall be made by Local Franchisee for local PEG programming under certain conditions.

WHEREAS, the County has a PEG channel, known as RivCoTV, which is a governmental access channel that broadcasts 24 hours a day, 7 days a week and is used for programming by the County. Said programming includes, among other things, live and playback recordings of board, committee, and commission meetings that are held in the County Administrative Center, public service announcement videos created by departments within Riverside County, and relevant subject matter to the constituents of Riverside County and the cities within the County in an effort to keep them updated with information presented in the various meetings.

WHEREAS, the County owns and controls video and electronic media equipment capable of PEG access production and programming ("Equipment"), primarily located in and around the Board Chambers of the Riverside County Administrative Center ("CAC"), with an address of 4080 Lemon Street, Riverside, CA 92501.

WHEREAS, the Customer seeks to broadcast Customer's content on RivCoTV, with said content either produced by Customer and provided to the County or created or produced by County staff for the Customer.

WHEREAS, the County desires to enter into this Agreement to provide the terms and conditions by which the County shall create, develop, produce, and/or broadcast Customer's content for/on RivCoTV.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises of the covenants hereinafter contained, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. SCOPE

The Parties mutually agree that County shall broadcast Customer's content on RivCoTV and, if requested by Customer, create or produce Customer's content for broadcast on RivCoTV, as outlined and specified in Exhibit A, attached hereto and incorporated herein by reference.

2. TERM

This Agreement shall be effective upon the Effective Date and continues in effect through [INSERT DATE], unless terminated earlier.

3. CUSTOMER RESPONSIBILITIES

a. Customer shall be solely responsible for all costs and expenses associated with or related to the creation, development, production, post-production, transmission, delivery, or broadcast of Customer's content. To the extent the County incurs any costs or expenses related to the creation, development, production, post-production, transmission, delivery, or broadcast of Customer's content, including the services of County set forth in Exhibit A, the Customer agrees to pay County for said costs or expenses. Maximum payments by Customer to County shall not exceed [INSERT DOLLAR AMOUNT] annually including all costs and expenses. County shall be paid in accordance with an invoice submitted to Customer by County within fifteen (15) days from the last day of each calendar month in which County incurs said costs or expenses, and Customer shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. County shall not be responsible for payment of any of Customer's expenses related to this Agreement. Customer shall not be entitled to any PEG fee monies received by or owed to the County by State Franchisees or Local Franchisee.

b. Customer agrees to comply with the County's PEG Channel Plan, attached hereto as Exhibit B and incorporated herein by reference, as it may be subsequently amended from time to time. If amended by the County, such amended PEG Channel Plan shall replace the attached

Exhibit B, and the County agrees to provide the Customer a copy of the amended PEG Channel Plan.

c. Customer shall be solely responsible for the management of all Customer's content that is broadcasted on RivCoTV, including compliance with all applicable federal, state, and local laws, rules, or regulations. Prior to broadcast, Customer shall review and approve all content created or produced by County at Customer's request, and Customer shall be solely responsible for said content. County, however, shall have the absolute right to deny creating, producing, or broadcasting Customer's content if County determines, in its sole discretion that said content violates any applicable law, rule, or regulation or does not conform to the County's PEG Channel Plan, attached hereto as Exhibit B and incorporated herein by reference.

4. TERMINATION

a. Either Party may terminate this Agreement without cause, upon thirty (30) days' written notice to the other Party.

b. County may, upon five (5) days' written notice terminate this Agreement for Customer's default, if Customer fails to comply with the terms of this Agreement or fails to make progress that may endanger performance and does not immediately cure such failure.

c. Customer's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a material or material breach of this Agreement by Customer or in the event of Customer's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement.

d. Termination of this Agreement shall not affect or modify any rights, duties or obligations of either party arising from its acts or omissions prior to the termination. After termination, Customer shall make payment to County for amounts owed to County in accordance with this Agreement.

e. The rights and remedies of County provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

5. INDEMNIFICATION

a. Customer shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as "Indemnitees") from any liability whatsoever, based or asserted upon any act or omission of Customer, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not

limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the broadcast or transmission of Customer's content, including content created or produced by County at Customer's request, or from the performance of Customer, its officers, employees, subcontractors, agents or representatives Indemnitors from this Agreement. Customer shall defend, at its sole expense, all costs and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the Indemnites in any claim or action based upon such alleged acts or omissions.

b. With respect to any action or claim subject to indemnification herein by Customer, Customer shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Customer's indemnification to Indemnites as set forth herein.

c. Customer's obligation hereunder shall be satisfied when Customer has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

d. The specified insurance limits required in this Agreement shall in no way limit or circumscribe Customer's obligations to indemnify and hold harmless the Indemnites herein from third party claims.

e. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the Customer from indemnifying the Indemnites to the fullest extent allowed by law.

6. INSURANCE

a. Without limiting or diminishing the Customer's obligation to indemnify or hold the County harmless, Customer shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverages during the term of this Agreement. As respects to the insurance section only, the "County" herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

b. Workers' Compensation: If the Customer has employees as defined by the State of California, the Customer shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the County of Riverside.

c. **Commercial General Liability:** Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of Customer's performance of its obligations hereunder. Policy shall name the County as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

d. **Vehicle Liability:** If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Customer shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount of not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the County as Additional Insureds.

e. **General Insurance Provisions - All lines:**

i. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A.M. Best rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer, such waiver is only valid for that specific insurer and only for one policy term.

ii. The Customer must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceed \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the County, and in the election of the County's Risk Manager, Customer's carriers shall either: 1) reduce or eliminate such self-insured retention as respects this Agreement with the County, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

iii. Customer shall cause Customer's insurance carrier(s) to furnish the County of Riverside with either 1) properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If Customer insurance carrier(s) policies does not meet the minimum notice

requirement found herein, Customer shall cause Customer's insurance carrier(s) to furnish a 30 day Notice of Cancellation Endorsement.

iv. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Customer shall not commence operations until the County has been furnished original Certificate(s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.

v. It is understood and agreed to by the Parties hereto that the Customer's insurance shall be construed as primary insurance, and the County's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

vi. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of the Agreement, or the term of this Agreement, including any extensions thereof, exceeds five (5) years, the County reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Management's reasonable judgment, the amount or type of insurance carried by the Customer has become inadequate.

vii. Customer shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

viii. The insurance requirements contained in this Agreement may be met with a program(s) of self insurance acceptable to the County.

ix. Customer agrees to notify County of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

7. INDEPENDENT CONTRACTOR

a. For purposes of this Agreement, all persons employed in the performance of services and functions for the County shall be deemed County employees. No County employee shall be considered an employee of the Customer, under the control of the Customer, nor shall such County employees be entitled to any benefits to which Customer employees are entitled,

including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits.

b. For purposes of this Agreement, all persons employed in the performance of services and functions for the Customer shall be deemed Customer employees. No Customer employee shall be considered an employee of the County, under the control of the County, nor shall such Customer employees be entitled to any benefits to which County employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits.

8. NON-DISCRIMINATION

Customer shall not discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code § 2900 et. Seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. § 1210 et seq.) and all other applicable laws or regulations.

9. CONFIDENTIALITY

a. Customer shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; County information or data which is not subject to public disclosure; County operational procedures; and knowledge of selection of contractors, sub-contractors or suppliers in advance of official announcement. The Customer shall not use such information for any purpose other than carrying out the Customer's obligations under this Agreement. The Customer shall promptly transmit to the County all third party requests for disclosure of such information. The Customer shall not disclose, except as otherwise required by law or specifically permitted by this Agreement or authorized in advance in writing by the County, any such information to anyone other than the County.

b. County shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; Customer information or data which is not

subject to public disclosure; Customer operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement. County shall not use such information for any purpose other than carrying out the County's obligations under this Agreement. County shall promptly transmit to the Customer all third party requests for disclosure of such information. County shall not disclose, except as otherwise required by law or specifically permitted by this Agreement or authorized in advance in writing by the Customer, any such information to anyone other than the Customer.

10. OWNERSHIP OF MATERIALS

The County agrees that all content created or produced by the County at the request by Customer for broadcast on RivCoTV for which County has been compensated by Customer pursuant to this Agreement shall be the sole property and responsibility of the Customer.

11. ADMINISTRATION

The Clerk of the Board for the Riverside County Board of Supervisors, or his/her designee, shall administer this Agreement on behalf of the County. The official representatives for the Customer shall be the _____ or his/her designee. These official representatives shall be responsible for assuring compliance with the Agreement.

12. NOTICES

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after deposit in the United States mail, postage prepaid:

County of Riverside

Customer

(INSERT DEPARTMENT NAME)

(INSERT CUSTOMER NAME)

(INSERT ADDRESS)

(INSERT ADDRESS)

13. FORCE MAJEURE

If either Party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such Party shall not be held liable for such failure to comply.

14. DISPUTES

Prior to the filing of any legal action related to this Agreement, the Parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The Parties shall share the cost of the mediations.

15. MISCELLANEOUS

a. Customer shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of County. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

b. Any waiver by County of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of County to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing County from enforcement of the terms of this Agreement.

c. Customer shall comply with all applicable federal, state and local laws, rules, and regulations. Customer will comply with all applicable County of Riverside policies and procedures. In the event that there is a conflict between the various laws, rules, or regulations that may apply, the Customer shall comply with the more restrictive law or regulation.

d. Customer shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

e. This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the Parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

f. This Agreement, including any attachments or exhibits, constitutes the entire agreement of the Parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both Parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Customer and the County have executed this Agreement as of the date first above written.

County:

County of Riverside, a political subdivision of the State of California

Customer:

[Insert legal capacity]

By: _____

Kecia Harper-Ihem
Clerk of the Board
Riverside County Board of Supervisors

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM
Gregory P. Priamos, County Counsel

Deputy County Counsel

DRAFT

EXHIBIT A

1. All programs or content submitted by Customer, or created or produced by County at Customer's request, for broadcast must comply with the County's PEG Channel Plan, attached to the Agreement as Exhibit B.
2. All programs or content submitted by Customer for broadcast must be of good technical quality. Customer agrees to comply with the technical standards and specifications determined by County staff.
3. All recorded media files submitted by Customer for broadcast must be labeled in the following manner: Name of Producer, Title of Show or Public Service Announcement, TRT.
4. All submitted media will be broadcast on a space and time available basis at the discretion of the County.
5. All programs or content must be submitted with a Request for Broadcast form at least two weeks before airing.
6. Customer agrees, as a condition of the broadcast, that for all Customer content or programs, including content or programs created or produced by County at Customer's request, Customer has previously made all appropriate arrangements to obtain all rights to all material to be broadcasted and clearances from broadcast stations, networks, sponsors, music licensing organizations' representatives, and without limitation from the foregoing, any and all other persons as may be necessary to transmit its or their program material. Customer shall maintain for inspection by County, upon reasonable notice, copies of all clearances and releases required by this Section.
7. Periodically, County will broadcast the following statement: "The contents and ideas expressed in this program are the sole and exclusive ideas of the producer and do not necessarily reflect the views and opinions of the County."
8. The production of the following programs or content is strictly prohibited:
 - a. Material designed to promote the sale of commercial products or services.
 - b. Commercial programming that in whole or in part depicts, demonstrates, or discusses products, services, or businesses with the intent or substantial effect of benefiting or enhancing a profit-making enterprise.
 - c. The solicitation or appeal for funds or other things of value for any and all purposes.
 - d. Advertising that endorses or opposes candidates for public office which is also intended to be presented as a paid political advertisement on other media.

- e. Programming that constitutes or promotes any lottery or gambling enterprise in a manner that violates any applicable local, state, or federal law.
 - f. Material that is obscene or pornographic in accordance with local community standards.
 - g. Material that constitutes libel, slander, unfair competition, or which might violate any local, state or federal law.
 - h. Any material subject to copyright, royalty, or other ownership rights without the necessary releases, licenses, or other permission acceptable to County.
 - i. Material that has a reasonable probability of creating an immediate danger of damage to property or injury to persons.
9. Customer shall provide the County with contact information that will be provided to the public in the event the County receives complaints or questions regarding Customer's content. The Parties agree that all complaints, questions, or other issues related to Customer's content shall be handled, managed, and resolved solely by the Customer in a timely fashion. The County shall forward to Customer any complaints or questions it receives regarding Customer's content, and Customer shall inform County in writing as to the disposition of such complaints.
10. County will make every effort to broadcast Customer's program or content. No warranty or guarantee will be made for specific time slots. Customer understands County may reschedule and/or interrupt Customer's programming and/or production for any reason. In the event Customer's program or content does not air at the scheduled time or is interrupted for any reason, County will make reasonable efforts to reschedule the programming.
11. At the County's sole discretion, County may provide Customer with services to create, develop, and/or produce Customer content or programs for broadcast on RivCoTV. Said services may include the following: on-location public service announcement or event recordings, audio/video editing for replay on RivCoTV, filming coordination and engineering work. For said services provided by County, Customer shall supply scripts, storyboards, product props, production notes, music, celebrity talent, creative guidance, and related clearances. Customer will supply track or musical composition(s) and rights clearances unless otherwise specified.

Customer shall submit a written proposal requesting that the County provide said services. Customer's written proposal shall contain the following information: Name of Customer, Contact Information, Program or Content Title, Proposed Broadcast Date, Proposed Length of Program or Content, Program Type (Series, Special, Live, Audio Programming), Frequency (One-Time, Weekly, Monthly), Production Type (Studio or Field), Detailed Description of the Program or Content, Type(s) of Service(s) Requested, and any additional information requested by County. County shall review Customer's written proposal and notify the

Customer whether County will perform such services or whether additional information is needed. All services provided by County to Customer shall be subject to and governed by the terms of the Agreement.

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EXHIBIT B
PEG CHANNEL PLAN

[Attached on following page]

DRAFT



RivCo TV

AT&T Ch. 99 | Frontier Ch. 36

**Public, Educational, and Governmental
Access Channel**

Clerk of the Board of Supervisors

4080 Lemon Street, 1st Floor 951-955-1069
Riverside, Ca 92501 it@rivco.org

RivCoTV: Riverside County "PEG" Channel

Introduction

The Board of Supervisors Information Technology Team, under the direction of the Clerk of the Board, is working to implement the Riverside County PEG channel ("RivCoTV"). Currently, the County broadcasts, on AT&T Channel 99 and Frontier Channel 36, Riverside County Board of Supervisor meetings and the meetings of other boards and committees that meet in the Board Chambers in the County Administrative Center in Riverside, California. Once fully implemented, RivCoTV will be a governmental access channel used for programming by the County, including providing live and "playback" recordings of board, committee, and commission meetings that are held in the County Administrative Center Board Chambers and other off-site meetings that might occur from time to time. Supplemental programming with the Media/Communications Coordinator, Board of Supervisors, and Executive Office will also be broadcasted on RivCoTV. The programming will provide public service announcement videos created by departments within Riverside County and relevant subject matter to the constituents of Riverside County and the cities within the County in an effort to keep them updated with information presented in the various meetings. The nature of the information provided to the constituents could involve health, public safety, or upcoming events that affect the target audience. RivCoTV may have content on cable channels within its jurisdiction including but not limited to AT&T Channel 99 and Frontier Channel 36.

Purpose of RivCoTV

- To provide a convenient and information-rich resource for residents, visitors, businesses, non-profit organizations, other public agencies, and schools to access their County government.
- To make public proceedings and events more accessible to County residents by providing, among other things, footage of Board of Supervisors, Planning Commission, Transportation Commission, and other local government meetings.
- To provide more extensive information on important County issues and activities.
- To promote County-sponsored or County co-sponsored special events.

- To employ the latest technology to improve customer service and communication relating to issues of interest within the County and its surrounding area.
- To contribute to the improvement of County services, foster economic development, and enhance the sense of community within the County.
- To act as a source of information during local emergencies.

RivCoTV Policy

RivCoTV is a non-public forum. While the County encourages the public to view RivCoTV to access information and resources, the County expressly reserves the right to impose certain restrictions on the use of RivCoTV. As a governmental access channel, RivCoTV is reserved for the exclusive control of the County for the purposes of one-way communication to residents of the County. RivCoTV will provide non-editorial information and shall not be used to facilitate a general debate or the free exchange of ideas. RivCoTV is not intended as a mechanism for building support for a particular ballot issue or candidate for political office. Declared candidates for any elective office will not be eligible to appear on RivCoTV; provided, however, that this policy does not apply to persons who receive incidental air time as a part of a public meeting being broadcasted on RivCoTV or to officials acting as part of their regular duties when such actions do not involve partisan policies or campaign activities.

RivCoTV Programming Priorities

- Emergency programming involving public health, safety, or welfare.
- Programming of or about meetings of local legislative and policy-making bodies, including the Board of Supervisors, Planning Commission, and Transportation Commission.
- Programming of County departments and their services.
- Programming of local and regional government boards, commissions and/or agencies.
- Programming of County-sponsored or County co-sponsored events and activities.
- Programming sponsored by public utilities that service County residents or businesses specifically to assist individuals relocating to the County.

RivCoTV Operational Procedures

The Chief of Technology for the Board of Supervisors is responsible for maintaining the integrity of the content placed on RivCoTV based on these

policies and procedures. Upon receiving requests for material to be broadcast, the Chief of Technology will determine if the proposed material is consistent with this PEG Channel Plan. If the Chief of Technology concludes that the proposed material violates this PEG Channel Plan, his or her decision may be appealed to the Clerk of the Board or his/her designee.

The County reserves the right to refuse any request for RivCoTV programming that it deems in violation of this PEG Channel Plan and the mission, purpose, goals, procedures, priorities, and policies of RivCoTV or any federal, state, or local law.

RivCoTV Sample Programming

The Board of Supervisors Information Technology Team manages the County Board Chambers located at the County Administrative Center, 4080 Lemon Street, Riverside, CA 92501. There are currently several boards, committees, or commissions that regularly meet in the chambers. These ongoing meetings will make up the bulk of RivCoTV programming and other time slots will be filled with other channel programming consistent with the mission, purpose, goals, and policies set forth in this PEG Channel Plan. To fill up the 24/7 schedule, previously recorded meetings or videos will also be replayed on the channels.

Current Meeting Schedules

Riverside County Board of Supervisors
Western Riverside County Regional
Conservation Authority

Tuesdays from 9:00 am - finish
Mondays from 12:20 pm - 1:30 pm

Western Riverside Council of Governments
Inland Empire Health Plan
Riverside County Planning Commission
Riverside County Habitat Conservation Agency
Riverside County Airport Land Use Commission
Riverside County Transportation Commission
Riverside Local Area Formation Commission
Riverside Transit Agency
California Air Resources Board
City of Riverside Public Utilities
Riverside County Youth Commission

Mondays from 2 pm - 4:30 pm
Mondays every other month from 9 am - 11:30 am
Wednesday from 9:00 am - 5 pm
Thursday from 2 pm - 4 pm
Thursday from 9:00 am - 12:30 pm
Mondays & Wednesdays from 9:30 am - 1 pm
Thursday 9:00 am - 11:30 am
Thursday 1:00 pm - 4:30 pm
Quarterly on Thursday and Friday All Day
Quarterly on Thursday from 6 pm - 9pm
Monthly on Thursday from 6 pm - finish

Use of PEG Facilities

In the coming year, the Board of Supervisors Information Technology Team envisions opportunities for the County to enter into revenue-generating agreements with other local government entities for the use of County PEG

facilities to broadcast content consistent with the mission, purpose, goals, priorities, and policies of this PEG Channel Plan.

Providers

The Media/Communications Coordinator is currently working with three cable companies to roll out RivCoTV. AT&T, Frontier (formerly known as Verizon California), and Spectrum (formerly known as Time Warner) have all been communicating with the County at this time. These providers have an intended audience of approximately 300,000 constituents as of May 1, 2018. AT&T and Spectrum are now operating under a DIVCA franchise in the County of Riverside. Frontier Communications, formerly known as Verizon California, continues to operate under its local franchise, which does not expire until 2021. Antilles Wireless, LLC d/b/a USA Communications ("Antilles") and NPG Cable, LLC d/b/a Suddenlink Communications ("Suddenlink") also have DIVCA franchises to operate in the County of Riverside, and the County intends on discussing the roll out of RivCoTV with Antilles and Suddenlink as well.

Hardware and Software Requirements

Currently, the County owns and operates the board chambers located on the first floor of the County Administrative Building. The chambers is currently equipped with a control room, broadcast head-end and connectivity to AT&T and Frontier and basic field production equipment. The board chambers was recently upgraded to distribute digital audio and video signals for optimal production and customer experience. To operate RivCoTV, the County will also need to procure hardware/software to produce the programming, which include, but are not limited to, the following:

- Electronic News Gathering & Event Videography Equipment
- Audio Equipment Necessary for the Transmission of Audio Signals for Broadcast
- Lights and Control Equipment
- Castus Media Server (*Ordered and installed*)
- Adobe Editing & Encoding Software (*Ordered and installed*)
- Broadcast Router for monitoring of audio and video (*Need to Order*)
- Standards Converter (*Need to Order*)

Section 611 of the Communications Act

Per the FCC ("Federal Communications Commission") website: "Pursuant to Section 611 of the Communications Act, local franchising authorities may require

cable operators to set aside channels for public, educational, or governmental ("PEG") use." (<https://www.fcc.gov/media/public-educational-and-governmental-access-channels-peg-channels>)

Digital Infrastructure and Video Competition Act

In 2006, the Digital Infrastructure and Video Competition Act was signed into law and codified at California Public Utilities Code section 5800, et seq., ("DIVCA"). DIVCA established a state video franchising system that replaced local cable franchising but also recognized the need to protect local public entity revenues.

Franchise Fees

Under DIVCA, a video service provider or cable operator with a state franchise to provide video services in the County must pay a franchise fee to the County of 5% of its gross revenues. The Board of Supervisors Information Technology Team estimates the County will receive approximately \$2.6 million in franchise fee revenue from Spectrum, AT&T, Frontier, Antilles, and Suddenlink combined. The revenues generated by the franchise fee may be used by the County for any lawful purpose.

PEG Fees

Under DIVCA, the County can require a fee from providers "to support PEG channel facilities consistent with federal law" of up to 1% of gross revenues, or in some limited cases to establish a fee of up to 3% of gross revenues "to support PEG activities."

Riverside County Ordinance 503.11, which now applies solely to Frontier as the only provider with a local franchise, was approved by the Board of Supervisors on 10/31/2006 and became effective on 12/01/2006. Section 2.140 (Fee for Support of Local Cable Usage) of Ordinance 503.11 states:

A fee paid to the County is hereby established for the support of public, educational, and governmental access facilities and activities within the County. Unless a higher percentage is authorized by applicable state or federal law, this fee shall not exceed one percent (1%) of a Grantee's gross revenues, as the term "gross revenues" is defined in the Grantee's franchise agreement or in applicable provisions of state or federal law.

The Board of Supervisors Information Technology Team estimates the County will receive approximately \$520,000 in PEG fee revenue.

