

*City of Brisbane*  
*Agenda Report*

**TO:** Honorable Mayor and City Council

**FROM:** Fred Smith via Clay Holstine, City Manager

**DATE:** Meeting of March 16, 2009

**SUBJECT:** Consider approval of revised Vendor Agreement with Millbrae Community Television (MCTV) for telecasting and station management services.

**PURPOSE:**

Use Channel 27 on Comcast to keep the public informed by showing City Council and Planning Commission meetings as well as additional information related to the City.

**RECOMMENDATION:**

Authorize the Mayor to execute the Vendor Agreement with MCTV.

**BACKGROUND:**

- 2002 – City enters into contract with Millbrae Community Television (MCTV) to televise City Council and Planning Commission meetings over the City’s cable television PEG (Public, Education, Government) channel.
- 2005 - City contracts with MCTV to provide overall station management services for channel 27 and to provide for expanded programming and rebroadcast of meetings.
- Both agreements have been extended several times.

**DISCUSSION:**

Both agreements with MCTV have now expired. The new production equipment installed in the Community Meeting Room changes the nature of the telecasting services provided by MCTV. As part of the City remodel permanent cameras, controllers and switching equipment was installed in the in the community meeting room. MCTV no longer has to bring in and set up this equipment for each meeting which reduces costs. In addition, the City’s production equipment is installed next to and integrated with the playback equipment.

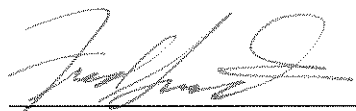
Since the two services are no longer as distinct, staff has combined the telecasting and station management services into one agreement with MCTV. The fee for station management services has been increased by approximately 14%. The cost to the City had not changed since 2005. Since MCTV will be using the City's equipment, rather than their own, we will save \$150 per normal City Council meeting. The cost to televise a Planning Commission meeting will be about the same. Except now instead of having one camera we will have multiple camera production from a single operator.

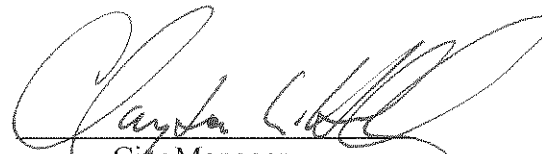
**FISCAL IMPACT/FINANCING ISSUES:**

The new contract will result in an overall reduction of approximately \$1900 per year in the cost of televising meetings and managing the City's cable television channel.

**MEASURE OF SUCCESS:**

Continued operation of Brisbane Channel 27.

  
\_\_\_\_\_  
Department Head

  
\_\_\_\_\_  
City Manager

**ATTACHMENTS:**

Proposed agreement with MCTV

## VENDOR AGREEMENT

**THIS AGREEMENT**, dated \_\_\_\_\_, 2009 by and between Millbrae Community Television, Inc., a California non-profit corporation (“Operator”), and the CITY OF BRISBANE, a municipal corporation (“City”), is made with reference to the following facts:

A. City has entered into a franchise agreement with Comcast of California, Inc. (“Comcast”), which requires Comcast to provide a PEG (Public Educational Government) channel to City so that City can telecast live and prerecorded video programming from origination points at City facilities listed in Exhibit B of the franchise agreement.

B. City desires to award a contract to provide operation of playback equipment and station management services for telecasting prerecorded video programming and announcements over the cable television PEG channel in Brisbane and for videotaping of public City Council and Planning Commission meetings for live telecasting over the cable television PEG channel in Brisbane (“Service”).

C. Operator represents that it is trained, experienced and qualified to perform the equipment installation and station management Service and is willing to do so pursuant to the terms of the Agreement.

**NOW, THEREFORE, it is agreed as follows:**

### **1. TERM OF AGREEMENT**

The term of this Agreement shall commence on the date City issues a written Notice to Proceed, and shall continue thereafter for a two (2) year period, unless terminated sooner pursuant to Section 17, and may be extended for additional two (2) year periods pursuant to Section 18.

### **2. OPERATOR RESPONSIBILITY**

(a) Operator shall provide Service to City in accordance with the terms and conditions attached hereto as Exhibit “A” and the terms of this Agreement, including the provision of all equipment and personnel necessary to operate equipment and provide such Service.

(b) Operator shall provide Service to City for all regular City Council meetings, which are held on the first and third Monday of each month. If the regular meeting date is a holiday, the following Tuesday will be a regular meeting date. The Operator shall also provide Service to City for all regular Planning Commission meetings, which are held on the second and fourth Thursday of each month. Operator shall provide Service for additional meetings on an “as

available” basis. City recognizes that Operator’s resources are limited and that dates for special meetings will be reserved by Operator on a “first come first served” basis.

(c) Operator shall work closely with Comcast to ensure that Operator’s and City’s equipment is compatible with Comcast’s reverse feed connection at City’s facilities.

(d) Operator shall work closely with Comcast and take all reasonable measures needed to ensure that a clear and audible signal of the live and prerecorded video programming reaches the cable subscribers in Brisbane.

(e) Operator shall invoice City monthly for compensation due, as set forth in Section 3 and Section 5 of this Agreement.

(f) Operator shall begin Service immediately upon execution of this agreement.

### **3. COMPENSATION**

(a) Operator’s compensation during the term of this Agreement shall be based on the quoted billing rate and Cost per Meeting rate, as set forth in Exhibit A attached hereto and incorporated herein by reference.

(b) Compensation shall include pre meeting testing of equipment and telecast signal as set forth in Exhibit A attached hereto and incorporated herein by reference.

**4. INSURANCE.** Operator, at its own expense, shall procure and maintain, for the duration of this Agreement, insurance policies which satisfy the following requirements:

(a) Type of policies and coverage:

(1)*General Liability Coverage.* Operator shall maintain commercial general liability insurance in an amount not less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage, providing coverage at least as broad as Insurance Services Office Commercial General Liability form CG 0001 (Ed. 11/88). If the form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

(2)*Automobile Liability Coverage.* Operator shall maintain automobile liability insurance in an amount not less than \$1,000,000 combined single limit for each occurrence, for bodily injury and property damage, providing coverage at least as broad as Insurance Services Office form CA 0001 (Ed. 12/90) Code 1 (any auto).

(3) *Workers' Compensation and Employer's Liability Coverage.* Operator shall maintain workers' compensation insurance as required by the State of California and employer's liability insurance in an amount not less than \$1,000,000 per occurrence, for any and all persons employed by Operator in connection with the performance of services under this Agreement. In the alternative, Operator may rely on a self-insurance program to provide this coverage so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or Operator, if a program of self-insurance is provided, shall waive all rights of subrogation against City for loss arising from work performed by Operator for City.

(b) Endorsements: Each general liability and automobile liability insurance policy shall contain, or be endorsed to contain, the following provisions:

(1) The City, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of Operator; products and completed operations of Operator; premises owned, occupied or used by Operator; or automobiles owned, leased, hired or borrowed by Operator. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents or volunteers.

(2) For any claims related to the Service, Operator's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, agents or volunteers shall be excess of Operator's insurance and shall not contribute with it.

(3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, its officers, officials, employees, agents or volunteers.

(4) Operator's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(5) Operator's insurance coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

(c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Operator shall

demonstrate financial capability for payment of such deductibles or self-insured retentions.

- (d) Acceptability of Insurers. Insurance is to be placed with insurers having a current A.M. Best rating of no less than A:VII, unless otherwise approved by City in writing.
- (e) Verification of coverage. Operator shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required by this Agreement. Certificates of such insurance shall be filed with City before commencement of work by Operator. At the request of City, Operator shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by this Agreement.

## **5. BILLING AND PAYMENT**

(a) Operator shall submit monthly invoices for compensation, including any documentation, by the tenth (10<sup>th</sup>) of each month for services provided in the previous month.

(b) City shall make payment to Operator in accordance with invoices that reflect the actual services provided during the previous month. Payment shall be made by City within thirty (30) days after receipt of approved invoices.

(c) Any necessary supporting documentation for payment must be included with the invoice.

## **6. CHANGES IN COST OR LEVELS OF SERVICE**

(a) No change shall be made by Operator to the cost of providing Service, as set forth in Section 3, in the absence of written agreement to such change by City.

(b) No change shall be made by Operator in the Service without the prior written approval of City.

(c) City reserves the right to reduce or increase Service in light of decreased or increased need and/or funding availability. Any changes in the level of Service requested by City will entitle either City or Operator to request an appropriate adjustment in the compensation payable to Operator. City cannot increase the level of Service without the prior consent of Operator.

## **7. GOVERNING LAW**

This Agreement shall be governed by the laws of the State of California.

## **8. COMPLIANCE WITH LAWS**

Operator shall comply with all applicable local, county, state and federal laws, rules and regulations governing or related to the operation of the Services and the performance by Operator of its duties and responsibilities under this Agreement.

## **9. PERSONNEL**

(a) City shall have the right to reject temporarily or permanently, by notice to Operator, for any reasonable reason whatsoever, any employee furnished by Operator for the provision of the Service. Reasons for rejecting an Operator's employee include, but are not limited to, unprofessional conduct, disruption of meetings, and rudeness to members of the public or City personnel. Operator shall replace promptly any employee not acceptable or rejected by City.

(b) It is understood that Operator shall be solely responsible for payment of all of its employee's wages and employee benefits, if applicable. Operator, without any cost or expense to City, shall faithfully comply with the requirements of all applicable state enactments with respect to employer's liability, worker's compensation, unemployment insurance and other forms of social security, and also with respect to withholding of income tax at its source from wages of Operator's employees. Operator shall indemnify and hold harmless City from any liability, damages, claims, costs and expenses of whatever nature arising from alleged violation of such enactments or from any claims or subrogation provided for in such enactments.

## **10. PROJECT SUPERVISOR**

Operator shall designate a Project Supervisor who shall oversee the operation of the Service. The Project Supervisor shall be responsible for operational management of the Service.

## **11. TRAINING**

Operator shall provide thorough training for all its personnel in the proper performance of their duties. Operator's employees providing services under this Agreement shall receive proper training and instruction at the time of hiring and prior to being assigned to the Service.

## **12. MINIMUM STANDARDS FOR EQUIPMENT**

During the term of this agreement, or any extensions thereto, all equipment to be used for performance of the Service shall meet all criteria listed in Exhibit "A", attached hereto and made a part hereof.

**13. PERFORMANCE GOALS**

- (a) Operator will be responsible for providing timely and reliable Service.
- (b) Operator shall provide sufficient back-up equipment and personnel to assure that Service will be provided to City without interruption. Operator shall not be responsible for interruption or deterioration of cable signal within Comcast's network.

**14. SUB-CONTRACTING**

Operator shall not sub-contract any services provided under this Agreement, without the express written consent of City.

**16. CONTACT PERSONS**

- (a) The following person is hereby designated as the contact person for City:

Mr. Fred Smith  
Assistant to the City Manager  
City of Brisbane  
50 Park Lane  
Brisbane, CA 94005  
Phone: (415) 508-2112      Fax: (415) 467-4989  
E-Mail: fredsmith@ci.brisbane.ca.us

- (b) The following person is hereby designated as the contact person for Operator:

Name: Ms. Randy Sahae  
Title: General Manager  
Address: P.O. Box 898  
Millbrae, CA 94030  
Phone: (650) 259-2343      Fax: (650) 697-8605  
E-Mail: MCTV26@Yahoo.com

**17. TERMINATION OF AGREEMENT**

- (a) City may terminate this Agreement at any time and for any reason by giving Operator thirty (30) days written notice thereof. Notice of termination shall be by certified mail, return receipt requested. Upon termination, City shall pay Operator its allowable costs incurred to date of termination. In the event that Operator at any time during the entire term of this Agreement breaches any of the requirements or conditions of this Agreement, and does not



within ten (10) days of receipt of notice thereof from City cure such breach or violation, City may immediately terminate this Agreement. If a default is cured and the same default subsequently reoccurs, City may terminate this Agreement on written notice to Operator which may be effective immediately.

(b) Operator may terminate this agreement at any time and for any reason by giving City sixty (60) days written notice thereof. Notice of termination shall be by certified mail, return receipt requested.

## **18. EXTENSION OF TERM**

(a) Given the necessity of ensuring continuity of the Service, and as further consideration for the compensation to be paid by City to Operator for the provision of the Service rendered hereunder, Operator grants to City the option to extend the term of this Agreement for two (2) two (2) year periods after expiration of the initial two (2) year term, upon the same terms and conditions set forth in this Agreement, except the rate of compensation payable to Operator during each extended term, which shall be subject to negotiation and agreement between the parties.

(b) If City desires to exercise the option to extend, or further extend, the term of this Agreement, City shall give written notice to Operator of such intention at least ninety (90) days prior to the expiration of the initial term or the extended term, as the case may be. After giving such notice, the parties shall promptly commence negotiations regarding the compensation payable to Operator during the extended term. If agreement is reached, the parties shall confirm the same by executing an addendum to this Agreement, but if the parties are unable to agree, this Agreement shall automatically terminate upon the expiration of the initial or extended term.

## **19. AGREEMENT NOT EXCLUSIVE**

This Agreement is not exclusive. City reserves the right to contract for performance of services such as those described herein through other providers.

## **20. WAIVER OF CONDITIONS**

The waiver of any provision, term, or condition of this Agreement by City on any particular occasion shall not constitute a general waiver of said provision, term or condition, nor a release from Operator's obligation to otherwise perform or observe the same or any other term or condition of this Agreement.

## **22. INDEMNIFICATION**

(a) Operator shall indemnify, keep and save harmless City and its directors, officers, officials, agents and employees (collectively, "Indemnitees") against any and all claims, demands, causes of action, costs, expenses, or liabilities, including attorneys' fees, occurring directly or indirectly by reason of anything done or omitted to be done by Operator or its employees,

subcontractors, representatives or agents in the performance of its duties and responsibilities under this Agreement.

(b) The obligation to indemnify includes the obligation to defend Indemnitees and Operator further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses of Indemnitees arising therefrom or incurred in connection therewith; and if any judgement be rendered against any of Indemnities in any such action, Operator shall, at its expense, satisfy and discharge the same.

### **23. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the parties, whether written or verbal. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**CITY:**

THE CITY OF BRISBANE,  
a municipal corporation

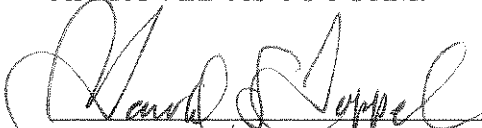
By: \_\_\_\_\_

A. Sepi Richardson, Mayor

Attest: \_\_\_\_\_

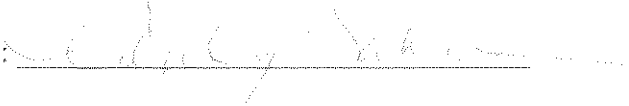
Sheri Marie Spediacci, City

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Harold S. Toppel, City Attorney  
Clerk

**OPERATOR:**

Millbrae Community Television, Inc.  
a California non-profit corporation

By:  \_\_\_\_\_