

INTERLOCAL AGREEMENT FOR MEDIA SERVICES

BETWEEN

AND

The City of Vancouver
By and through the
City-County Cable Television Office
P O Box 1995
Vancouver, WA 98668-1995

Port of Vancouver
3103 NW Lower River Road
Vancouver, WA 98660-1027

Inter-Local Agreement Period:
Beginning: January 1, 2008
Ending: December 31, 2012

Services provided: Government Cable Access and Video
Production Services

Projected costs: \$8,880/2008 - \$16,800/2013
(See Exhibit B – Rate Card)

City Project Contact: Stephanie Anderson
Phone: 360-692-8235
City Fiscal Contact: Dee Gonser
Phone: 360-696-8235

Port Project Contact: Nelson Holmberg
Phone: 360-360-992-1107
Port Fiscal Contact: Maggie Smith
Phone: 360-992-1112

This Inter-local Agreement consists of the following exhibits:

- General Terms and Conditions
- Exhibit A – Scope of Services
- Exhibit B - CVTV 2008 – 2013 Rate Card
- Exhibit C – Inventory of Production System

The City of Vancouver and the Port of Vancouver agree to the terms and conditions of this Interlocal Agreement and its exhibits as listed above by signing below:

FOR PORT OF VANCOUVER,
WASHINGTON,
a municipal corporation of
the State of Washington

SIGNATURE ON FILE

Lawrance L. Paulson, Executive Director

Approved as to form:

SIGNATURE ON FILE

Attorney for Port

FOR CITY OF VANCOUVER,
WASHINGTON VANCOUVER
a municipal corporation

SIGNATURE ON FILE

Pat McDonnell, City Manager 9-11-08

Attest:

SIGNATURE ON FILE

R. Lloyd Tyler, City Clerk
By: Carrie Lewellen, Deputy City Clerk

Approved as to form:

SIGNATURE ON FILE

Ted H. Gathe, City Attorney

GENERAL TERMS AND CONDITIONS

I. PURPOSE AND BACKGROUND

- A. This is an Interlocal Agreement entered into under the authority of the Interlocal Cooperation Act, RCW 39.34 between the City of Vancouver (the "City"), a municipal corporation and charter city of the first class in the State of Washington and the Port of Vancouver (the "Port"), a municipal corporation of the State of Washington.
- B. The City, pursuant to the City-County Cable TV Office Interlocal Agreement dated March 22, 1982, operates the City/County Cable Television Office, and through it, Clark Vancouver Television (CVTV), a government cable access programming service.
- C. The Port desires to utilize the available services of the City-County Cable Television office to provide coverage of Port meetings and production of some short edited informational videos and of CVTV government access channels to distribute Port-related programming to cable television subscribers in the Vancouver and Clark County franchise areas.
- D. The purpose of this Agreement is to set forth the terms and conditions for provision of such government cable access programming and video services.
- E. The Port and the City desire to reduce to writing their understanding related to such services.

II. DURATION OF AGREEMENT

The term of this Agreement is for the five (5) year period set forth above, subject to termination as set forth in this Agreement.

III. TERMINATION OF AGREEMENT

- A. Either party may terminate the Agreement for any reason whatsoever upon giving the other party a minimum of ninety (90) days written notice in advance of the date sought for such termination.
- B. If for any cause, either party fails to fulfill its obligations under this Agreement in a timely and proper manner, or if either party violates the terms and conditions of this Agreement, then the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the failure or violation. If the failure or violation is not corrected within fifteen (15) working days of the notice, then the party giving the notice may

terminate the Agreement immediately upon giving written notice of termination to the other.

- C. The City reserves the right to terminate this Agreement within thirty (30) days written notice if it becomes necessary to end operations of CVTV, either temporarily or permanently.

IV. SCOPE OF SERVICES

The services provided to the Port by the City shall be as set forth in the attached Exhibit A (Scope of Services), which is incorporated in this Agreement as if fully set forth.

V. COMPENSATION FOR PROGRAMMING

The compensation from the Port to the City from the effective date of this Agreement through December 31, 2008, shall be as set forth in Exhibit B (CVTV Rate Card for Port of Vancouver 2008 – 2013), which is incorporated in this Agreement as if fully set forth.

VI. CONTROL BOOTH AND VIDEO PRODUCTION SYSTEM AT PORT

The City, after approval of PEG (Public Educational and Government) funding by the City Council and County Board of Commissioners, installed a four-camera Production System at the Port's 3103 Lower River Road, Vancouver, Washington, headquarters and supplied the equipment, installation, and connection of the Port headquarters to the Comcast Cable System. Collectively, such Production System and related equipment and connections shall be referred to as "the Production System." The cost of the Production System was \$234,126. An inventory of the Production System components installed is attached and incorporated herein as Exhibit C.

In consideration of the City's installing the Production System, the Port constructed, at its own expense, a cable production control booth next to the Port's hearing room of approximately 12' by 12' in size in which the City installed the above-described production system and related connections.

The Production System, funded from PEG Grant funds which originate as cable subscriber contributions for support of PEG Access under the terms of the City and County cable franchise agreements, shall (pursuant to the franchises and the Interlocal Agreement between the City and Clark County for PEG Access, Auditor's File Number 3212167) remain the property of the City for government access programming production. The City may from time to time install additional equipment, which shall be deemed part of the Production System and remain its property. In the event of the expiration or termination of this Agreement, the City shall have the right to remove and retain the Production System and related connections.

The Port shall be responsible for any loss or damage to the Production System or any other equipment or other personal property used by the City at the Port to carry out this Agreement which results from the negligence of the Port or which results from the failure on the part of the Port to maintain and manage the Port's 3103 Lower River Road, Vancouver, Washington, facility in accordance with sound management practices. Upon loss or destruction of, or damage to, any of the Production System or any other equipment or other personal property used by the City at the Port to carry out this Agreement, the Port shall notify the City thereof and shall take all reasonable steps to protect the same from further damage.

The City shall be responsible for any loss or damage to the Port property at the Port's 3103 Lower River Road, Vancouver, Washington, facility, which results from the negligence of the City or which results from the failure on the part of the City to maintain and manage the Production System in accordance with sound management practices. Upon loss or destruction of, or damage to, any of the Port property at the Port's 3103 Lower River Road, Vancouver, Washington, facility, the City shall notify the Port thereof and shall take all reasonable steps to protect the same from further damage.

VII. RIGHTS TO PROGRAMMING

Material created by the City and paid for by the Port shall be owned by the City and shall not be a "work made for hire" as defined by Title 17 USCA, Section 101; PROVIDED that the Port shall have a perpetual license to use such material internally and to provide it to the public pursuant to the Public Records Act, Ch 42.56 RCW; and PROVIDED further that such license shall be limited to the extent the City has a right to provide such license. "Material" as used in this Agreement includes but is not limited to: books; computer programs; documents; films; audio and video reproductions regardless of medium; and/or training materials.

VIII. BILLING METHOD AND PROCESS

- A. The City will bill the Port for service charges on a quarterly basis.
- B. The billing invoice will identify the dates, the actual hours worked, and include the amount due for that billing period.
- C. The billing invoice will include sufficient backup documentation to verify the services rendered for the billing period and include an indication (via signature) that at least one City supervisory-level employee has reviewed the billing documentation for correctness. Any backup documentation supplied with billing invoices will be expected to reconcile to whatever tracking system the Port employs.
- D. Any inquiries regarding a billing should be directed to the parties' fiscal contact persons as indicated on this Agreement's face sheet.

- E. Payments that are not paid within the allotted time period shall be considered delinquent. Delinquent charges shall accrue interest on the unpaid balance, from the date of delinquency until paid, at an interest rate of one percent (1%) per month.

IX. AGREEMENT ADMINISTRATION AND COMMUNICATIONS

Contract managers, designated by the Port and City as set forth on this Agreement's face sheet, shall administer this Agreement. Contract managers shall monitor service level and budget provisions of this Agreement. Each month, the Port and City contract managers shall review service levels, service delivery, and costs. During the term of this Agreement, the respective contract managers will communicate via telephone or e-mail to relay information, answer questions, or raise concerns.

X. DISPUTE RESOLUTION

In the event of a dispute between the Port and the City regarding the delivery of services under this Agreement, which cannot be resolved by their respective designated contract managers, the Port's Executive Director and the Vancouver City Manager or their designated representatives shall review such dispute and options for resolution. Any dispute not resolved by the representatives shall be referred to the Port's Executive Director and the Vancouver City Manager. The decision of the Port's Executive Director and the City Manager regarding the dispute shall be final as between the parties.

XI. INDEPENDENT CONTRACTOR

The City is and shall at all times be deemed to be an independent contractor in the provision of the services set forth in this Agreement. Nothing herein shall be construed as creating the relationship of employer and employee, or principal and agent, between the Port and the City or between any of the Port's or City's employees. The City shall retain all authority for provision of services, standards of performance, discipline and control of personnel, and other matters incident to the performance of services by the City pursuant to this Agreement. Nothing in this Agreement shall make any employee of the Port an employee of the City or any employee of the City an employee of the Port for any purpose, including but not limited to, for withholding of taxes, payment of benefits, workers' compensation pursuant to Title 51 RCW, or any other rights or privileges accorded their respective employees by virtue of their employment.

XII. HOLD HARMLESS/INDEMNIFICATION

- A. **CITY RESPONSIBILITY.** The City agrees to indemnify, defend, save and hold harmless the Port, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the negligent performance of the terms and conditions of this Agreement by the City.

1. In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against the Port, the Port retains the right to participate in said suit if any principal of public law is involved.
 2. This indemnity and hold harmless shall include any claim made against the Port by an employee of the City or subcontractor or agent of the City, even if the City is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the sole negligence of the Port.
- B. **PORT RESPONSIBILITY.** The Port agrees to indemnify, defend, save and hold harmless the City, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the negligent performance of the terms and conditions of this Agreement by the Port.
1. In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against the City, the City retains the right to participate in said suit if any principal of public law is involved.
 2. This indemnity and hold harmless shall include any claim made against the City by an employee of the Port or subcontractor or agent of the Port, even if the Port is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the sole negligence of the City.
- C. The parties specifically acknowledge that the provisions contained in this section have been mutually negotiated by them.
- D. Except as provided herein, the parties shall bear their own costs of enforcing the rights and responsibilities under this Agreement.

XIII. FORCE MAJEURE

Neither Party shall be held responsible for delay or default caused by fire, riot, acts of God and war which is beyond its reasonable control. The affected party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the contract.

XIV. ASSIGNMENT/SUBCONTRACTING

Neither party shall transfer or assign, in whole or in part, any or all of its respective rights or obligations under this Agreement without the prior written consent of the other. The

City shall not subcontract for the provision of any services it is to provide the Port under this Agreement without the prior written consent of the Port.

XV. NO THIRD PARTY BENEFICIARY

The Port does not intend by this Agreement to assume any contractual obligations to anyone other than the City. The City does not intend by this Agreement to assume any contractual obligations to anyone other than the Port. The Port and the City do not intend there be any third-party beneficiary to this Agreement.

XVI. NOTICE

Any notices to be given under this Agreement shall at minimum be delivered, postage prepaid and addressed to:

To the City:

CONTRACTUAL ISSUES
City of Vancouver
Attention: City Manager
P O Box 1995
Vancouver WA 98668-1995

TECHNICAL ISSUES
City of Vancouver
Attention: Stephanie Anderson
PO Box 1995
Vancouver WA 98668-1995
Phone: 360-692-8235

To Port:

CONTRACTUAL ISSUES
Port of Vancouver
Attention: Dave Hurt
3103 Lower River Road
Vancouver, WA 98660

TECHNICAL ISSUES
Port of Vancouver
Attention: Leonard York
3103 Lower River Road
Vancouver, WA 98660
Phone: 360-992-1117

The name and address to which notices shall be directed may be changed by either the Port or the City by giving the other party notice of such change as provided in this section.

XVII. WAIVER

No waiver by either party of any term or condition of this Agreement incorporated in this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or different provision. Any waiver shall not be construed to be a modification of the terms and conditions of this Agreement.

XVIII. SURVIVABILITY.

The following terms and conditions in this Agreement shall survive the expiration or termination of this Agreement:

- A. That portion of Section VI pertaining to disposition of the Production System upon expiration or termination of this Agreement.
- B. Section VII – Rights to Programming.
- C. Section XII – Hold Harmless/Indemnification.

XIX. AMENDMENT.

The provisions of this Agreement may be amended with the mutual consent of the parties. No additions to, or alterations of, the terms of this Agreement shall be valid unless made in writing and formally approved and executed by the duly authorized agents of both parties.

XX. RATIFICATION AND CONFIRMATION.

Acts taken prior to the execution of this Agreement that are consistent with the intent and purpose of the same are hereby ratified and confirmed.

XXI. DOCUMENT EXECUTION AND FILING

The City and Port agree that there shall be two (2) duplicate originals of this Agreement procured and distributed for signature by the necessary officials of the parties. Upon execution, one executed original of this Agreement shall be retained by the Vancouver City Clerk and one shall be retained by the Port. The Vancouver City Clerk shall cause a copy of this Agreement to be posted on the City website pursuant to Chapter 32, Laws of Washington 2006 (RCW 39.34.040). Upon execution of the originals and posting of a copy on the City's website, each such duplicate original shall constitute an agreement binding upon all parties.

XXII. INTERLOCAL COOPERATION ACT COMPLIANCE.

Pursuant to RCW 39.34 RCW, the purpose of this Interlocal Agreement is as set forth in Article I (Purpose and Background). Its duration is as specified in Article II. (Duration of Agreement). Its method of termination is set forth in Article III (Termination of Agreement). Its manner of financing and of establishing and maintaining a budget therefore is described in Article V (Compensation) and Article VIII (Billing Method and Process).

The manner of property acquisition and disposal upon partial or complete termination of this Agreement is specified in Article VI (Control Booth and Video Production System at Port).

XXIII. SEVERABILITY

If any section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of this Agreement.

XXIV. ENTIRE AGREEMENT

This Agreement contains all of the agreements of the parties with respect to the subject matter covered or mentioned therein, and no prior agreements shall be effective to the contrary.

CVTV Rate Card for Port of Vancouver 2008 - 2012

2008

(Cost derived from 2006 Port Proposal prior to true cost analysis)

Estimated Cost by Production Type	Program Length			
	1 Hour	2 Hour	3 Hour	4 Hour
Booth Productions	\$93	\$144	\$195	\$246
Single Camera	\$144	\$220	\$296	\$372
Remote System	\$245	\$296	\$347	\$398
Studio System	\$432	\$636	\$840	\$1,044
Playback Costs - Min. 12 Airings	\$100	\$100	\$100	\$100
Total Costs				
Booth Productions	\$193	\$244	\$295	\$346
Single Camera	\$244	\$320	\$396	\$472
Remote System	\$345	\$396	\$447	\$498
Studio System	\$532	\$736	\$940	\$1,144
Producer Hourly Rate:	\$35			
Video Production Asst. Hourly Rate	\$25			

2009

(Cost based off a three-year ramp up to true cost)

Estimated Cost by Production Type	Program Length			
	1 Hour	2 Hour	3 Hour	4 Hour
Booth Productions	\$161	\$214	\$267	\$320
Single Camera	\$214	\$293	\$356	\$424
Remote System	\$320	\$372	\$425	\$478
Studio System	\$633	\$790	\$1,002	\$1,159
Playback Costs - Min. 12 Airings	\$219	\$219	\$219	\$219
Total Costs				
Booth Productions	\$380	\$433	\$486	\$539
Single Camera	\$433	\$512	\$575	\$643
Remote System	\$539	\$591	\$644	\$697
Studio System	\$852	\$1,009	\$1,221	\$1,378
Producer Hourly Rate:	\$60			
Video Production Asst. Hourly Rate	\$27			

2010
(True cost)

Estimated Cost by Production Type	Program Length			
	1 Hour	2 Hour	3 Hour	4 Hour
Booth Productions	\$229	\$284	\$339	\$394
Single Camera	\$284	\$366	\$415	\$476
Remote System	\$394	\$448	\$503	\$558
Studio System	\$834	\$944	\$1,164	\$1,274
Playback Costs - Min. 12 Airings	\$338	\$338	\$338	\$338
Total Costs				
Booth Productions	\$567	\$622	\$677	\$732
Single Camera	\$622	\$704	\$753	\$814
Remote System	\$732	\$786	\$841	\$896
Studio System	\$1,172	\$1,282	\$1,502	\$1,612
Producer Hourly Rate:	\$84			
Video Production Asst. Hourly Rate	\$28			

2011
(True cost - 4% increase)

Estimated Cost by Production Type	Program Length			
	1 Hour	2 Hour	3 Hour	4 Hour
Booth Productions	\$238	\$295	\$353	\$410
Single Camera	\$295	\$381	\$432	\$495
Remote System	\$410	\$466	\$523	\$580
Studio System	\$867	\$982	\$1,211	\$1,325
Playback Costs - Min. 12 Airings	\$352	\$352	\$352	\$352
Total Costs				
Booth Productions	\$590	\$647	\$704	\$761
Single Camera	\$647	\$732	\$783	\$847
Remote System	\$761	\$817	\$875	\$932
Studio System	\$1,219	\$1,333	\$1,562	\$1,676
Producer Hourly Rate:	\$87			
Video Production Asst. Hourly Rate	\$29			

2012*(True cost - 4% increase)*

Estimated Cost by Production Type	Program Length			
	1 Hour	2 Hour	3 Hour	4 Hour
Booth Productions	\$248	\$307	\$367	\$426
Single Camera	\$307	\$396	\$449	\$515
Remote System	\$426	\$485	\$544	\$604
Studio System	\$902	\$1,021	\$1,259	\$1,378
Playback Costs - Min. 12 Airings	\$366	\$366	\$366	\$366
Total Costs				
Booth Productions	\$613	\$673	\$732	\$792
Single Camera	\$673	\$761	\$814	\$880
Remote System	\$792	\$850	\$910	\$969
Studio System	\$1,268	\$1,387	\$1,625	\$1,744
Producer Hourly Rate:	\$91			
Video Production Asst. Hourly Rate	\$30			

2013*(True cost - 4% increase)*

Estimated Cost by Production Type	Program Length			
	1 Hour	2 Hour	3 Hour	4 Hour
Booth Productions	\$258	\$319	\$381	\$443
Single Camera	\$319	\$412	\$467	\$535
Remote System	\$443	\$504	\$566	\$628
Studio System	\$938	\$1,062	\$1,309	\$1,433
Playback Costs - Min. 12 Airings	\$380	\$380	\$380	\$380
Total Costs				
Booth Productions	\$638	\$700	\$762	\$823
Single Camera	\$700	\$792	\$847	\$916
Remote System	\$823	\$884	\$946	\$1,008
Studio System	\$1,318	\$1,442	\$1,690	\$1,813
Producer Hourly Rate:	\$94			
Video Production Asst. Hourly Rate	\$31			

Estimate Costs for Covering 24 Board Sessions per Year
(Assumes 1.5 hour meeting time average with 24 meetings annually)

Year	Average Meeting Rate	Annual Cost Estimate
2008	\$244	\$5,856
2009	\$433	\$10,392
2010	\$622	\$14,928
2011	\$647	\$15,528
2012	\$673	\$16,152
2013	\$700	\$16,800