

Public Access

Performance Agreement

**BETWEEN
THE PEOPLES CHANNEL INC.
AND
THE TOWN OF CHAPEL HILL**

NORTH CAROLINA
ORANGE COUNTY

AN AGREEMENT BETWEEN THE PEOPLES CHANNEL INC., A NORTH CAROLINA NON-PROFIT CORPORATION; AND THE TOWN OF CHAPEL HILL, A NORTH CAROLINA MUNICIPAL CORPORATION.

WITNESSETH:

THE PEOPLES CHANNEL INC., and the Town of Chapel Hill hereby agree as follows:

I. PURPOSE OF THIS AGREEMENT

The purpose of this performance agreement (“Agreement”) is to provide public access television services to Town of Chapel Hill citizens through THE PEOPLES CHANNEL INC. (hereinafter, THE PEOPLES CHANNEL) with certain funds provided through the Town of Chapel Hill (hereinafter, the “Town”) and in accord with the franchise agreement between the Town and Time Warner Entertainment/Advance-Newhouse Partnership (hereinafter, “Time Warner Cable”) and any superceding cable franchise to which Time Warner Cable is subject as a condition of serving the Town.

II. SERVICES BY THE PEOPLES CHANNEL INC.

THE PEOPLES CHANNEL will continue to provide services in accordance with this Agreement.

Services provided by THE PEOPLES CHANNEL shall include but not be limited to the following:

A. Operation of a Public Access Studio and Editing Suite(s)

1. Continuance of Services

Operation of a fully equipped and staffed studio/editing facility with related office space shall continue with the execution of this agreement.

2. Staffing

The studio-editing facility shall be staffed with qualified individuals as determined by THE PEOPLES CHANNEL. These paid positions shall be dedicated to provide services to Chapel Hill citizens in accord with this Agreement. In addition, 250 hours per year of training time shall be dedicated to Chapel Hill citizens and provided by paid or volunteer positions.

3. Relationship to Agreement with Other Jurisdictions

If THE PEOPLES CHANNEL enters into performance agreement(s) with other parties, THE PEOPLES CHANNEL will notify the Town and provide copies of the agreement(s) to the Town. This Agreement may be revised by mutual agreement. For example, if THE PEOPLES CHANNEL desires to allocate part of the time of the public access manager to service citizens from other jurisdiction, this Agreement may be revised to reflect an increase in hours of another position(s) dedicated to serving Chapel Hill citizens as noted above. THE PEOPLES CHANNEL shall, along with giving notice, provide to the Town copies of the performance agreement with other party(ies). THE PEOPLES CHANNEL intends keeping the Town generally informed of plans to enter into agreements with other parties.

4. Operating Hours

The studio/editing facility shall be open for citizens to use during normal operating hours and by appointment.

5. Size and Equipping of Studio and Editing Facility

The studio and editing suite area plus office space shall have at least 900 square feet of floor area and shall be equipped with production and editing equipment as set forth in the Proposal to the extent such equipment can be purchased with funds received through the Town as provided below, and other sources.

6. Location of Facility

The studio/editing facility shall be located within the Town limits of Chapel Hill or the Town's Urban Services District as defined in the Comprehensive Plan, have convenient parking, be within 1,200 feet of a regular stop on a Chapel Hill Transit bus line, be accessible to all Chapel Hill citizens, and meet requirements of the U.S. Americans with Disabilities Act as it may be amended.

B Marketing and Promotion

Marketing and promotion shall include providing information to the community regarding or including, as appropriate:

1. the daily and weekly schedule of programming,
2. public access training opportunities and schedule,
3. the production and editing facilities and equipment,
4. studio/editing facility hours, telephone number, e-mail address, postal address and location,

5. user and membership fees (if any)
6. a statement that public access programming in Chapel Hill is limited to non-commercial programming (other than brief announcements permitted under the cable franchise agreement), and that laws regarding obscenity, libel, copyrights, etc. also limit programming content,
7. the opportunity to submit non-commercial video programming for cablecasting and to participate through “soapbox” programming,
8. the schedule of upcoming board meeting of THE PEOPLES CHANNEL and a statement that the board meetings will be open to the public and that there will be advance public notice to news media, and to citizens who have requested notice, in the same manner as if THE PEOPLES CHANNEL were subject to requirements of the NC Open Meeting Law as it may be amended, and that the board of directors will receive comments and petitions from Chapel Hill citizens at a designated time in each meeting,
9. a statement that the Town of Chapel Hill has no involvement in decisions by THE PEOPLES CHANNEL to accept, schedule and cablecast programming other than non-commercial programming requirements of the cable franchise and has no involvement in personnel or management decisions of THE PEOPLES CHANNEL,
10. the amount of the monthly public access fee charged to cable subscribers and the estimated annual amount of this revenue,
11. a statement that THE PEOPLES CHANNEL’s performance agreement with the Town is available for any citizen to review in THE PEOPLES CHANNEL studio facility and at Town Hall,
12. a statement that additional information on public access policies and rules is available through THE PEOPLES CHANNEL’s Web page, by telephone and at the public access studios, and
13. additional information as determined by THE PEOPLES CHANNEL regarding the purposes and opportunities of public access.

The above and other information as deemed appropriate by THE PEOPLES CHANNEL shall be provided to citizens through the following methods:

- Carrying public information on the bulletin board on the public access channel.
- Providing a telecommunications device for the deaf (TDD) in response to inquiries.
- Establishing a home page on the World Wide Web (www.thepeopleschannel.org)
- Mailings at least once per year to community organizations and interested citizens (except that program schedules not be mailed).

C. Public Information

THE PEOPLES CHANNEL will provide additional information as listed below to citizens of Chapel Hill:

Items (1) through (13 from (B) above.

14. a summary of THE PEOPLES CHANNEL's procedures for the submission of programming,
15. opportunities and rules for "soapbox" programming,
16. a summary of opportunities and rules for live programming, citizen comment programs and other programming with special procedural and technical requirements,
17. THE PEOPLES CHANNEL's procedures for scheduling programs, and
18. Names of key principles and manager(s) of THE PEOPLES CHANNEL.

The above information will be provided to citizens:

- Through a home page on the World Wide Web (www.thepeopleschannel.org)
- In response to telephone calls, and
- In written material provided in response to citizens' requests received by mail, telephone, etc. and in written form. Citizens may read and copy (for a fee) other material related to public access at THE PEOPLES CHANNEL's studios.

D. Responsiveness and Openness to Citizens

THE PEOPLES CHANNEL will also receive and respond to telephone calls at a locally published number during regular operating hours of the studio/editing facility. After regular operating hours, recorded information will be available to callers.

THE PEOPLES CHANNEL will survey Chapel Hill access producers and users (including a sample of citizens who receive training and/or submitted programming for playback) at least once every ~~year~~ 2 years and will report the results to the Town.

THE PEOPLES CHANNEL will conduct and cablecast live on the public access channel (or, as an option and if available and approved by the Town Manager), a Chapel Hill government or educational access channel, an annual meeting of Chapel Hill public access producers and other interested citizens to receive comments regarding Chapel Hill citizens' needs related to THE PEOPLES CHANNEL's services and public access in Chapel Hill.

E. Training and Orientation

Training and orientation programs, including scholarship opportunities, shall be provided as set forth in the Proposal.

F. Playback of Programming

THE PEOPLES CHANNEL may require citizens who submit programming to certify that the programming complies with all applicable laws and with the non-commercial content requirement in the Town's cable franchise.

THE PEOPLES CHANNEL will accept and play back programming submitted by Chapel Hill citizens if the citizen(s) submitting the programming certify that it complies with THE PEOPLES CHANNEL's policies and procedures and with all relevant State and federal laws and with Chapel Hill cable franchise. No programming decisions, including but not limited to acceptance and scheduling, will be based on content so long as it is lawful and non-commercial consistent with the Chapel Hill franchise requirements. THE PEOPLES CHANNEL reserves the right to establish reasonable technical standards for submitted programming, and to establish the rules for length, frequency and scheduling of programming.

THE PEOPLES CHANNEL shall comply with:

- The relevant terms of the Town's cable television franchise granted to Time Warner Cable,
- The relevant terms of any superceding cable franchise governing Time Warner Cable service to the Town,
- All applicable laws regarding First amendment rights, obscenity, libel and slander, copyrights, service marks, etc. In its operation and management of public access services including cablecasting of THE PEOPLES CHANNEL's programming produced by itself; and to the extent required by law, in establishing and carrying out procedures regarding acceptance and playback of programming submitted by others.

G. Citizen Comment and Programming

THE PEOPLES CHANNEL may provide the technology to give citizens the opportunity to make comments for cablecast on the public access channel. In such a case, THE PEOPLES CHANNEL:

- shall determine the frequency, schedule and length of this programming and may adopt reasonable limits on frequency, number and length of comments but not on lawful non-commercial content for an individual's comments, and
- shall establish and carry out procedures for producers to certify compliance with all applicable laws and with the Town's franchise regarding the non-commercial content requirement for public access.

H. Live Programming

THE PEOPLES CHANNEL may offer citizens the opportunity to make live call-in comments for cablecast on the public access channel. In such a case, THE PEOPLES CHANNEL:

- shall determine the frequency, schedule and length of this programming and may adopt reasonable limits on frequency, number and length of comments but not on lawful non-commercial content for an individual's comments, and
- shall establish and carry out procedures for producers to certify compliance with all applicable laws and with the Town's franchise regarding the non-commercial content requirement for public access.
- may require citizens who plan to make comments for cablecast to certify that they will comply with applicable laws and the non-commercial content requirements for public access.

I. Priority for Chapel Hill Residents in Public Access Services Funded through the Town

Citizens who reside within the Town limits of Chapel Hill shall have priority over non-residents in THE PEOPLES CHANNEL'S training and other services which are funded through the Chapel Hill cable television franchise agreement and in decisions to schedule programming.

The Town will provide to THE PEOPLES CHANNEL at least once each calendar year (normally in July) an accurate map of the Town limits and of the Town's urban services district. A representative of The Peoples Channel will contact the Town Manager's Office to request copies of these maps.

J. Non-involvement of the Town in Programming Decisions

THE PEOPLES CHANNEL understands and specifically agrees that the Town shall have no editorial control over, involvement in or responsibility for the content or scheduling of public access programming. THE PEOPLES CHANNEL shall make all decision to accept, schedule and cablecast programming and to adopt audio-video format and other technical standards subject to the basic non-commercial programming restrictions set forth in the franchise between the Town and Time Warner Cable.

Any attempt by Town personnel or by a person or organization affiliated with the Town to influence

- programming content,
- production,
- acceptance or scheduling decisions,
- format and other technical standards, or
- personnel or management decisions by THE PEOPLES CHANNEL shall be deemed not to be an action on behalf of the Town.

K. Other Agreements Regarding Public Access Services in Orange County and the Triangle Region

Nothing in this Agreement shall prohibit THE PEOPLES CHANNEL from entering into public access agreements with other entities in Orange County or the Triangle region. Such joint agreements are encouraged so long as they do not conflict with this Agreement including the provisions on priority for Chapel Hill residents in services and use of equipment funded from Chapel Hill public access fees. The Town shall receive notice of such agreements and this Agreement may be revised as provided above.

As indicated above, THE PEOPLES CHANNEL will notify the Town if THE PEOPLES CHANNEL enters into performance agreements(s) with other parties and this Agreement may be revised by mutual consent. THE PEOPLES CHANNEL shall, along with giving notice, provide to the Town copies of performance agreements with other parties.

Agreements with other communities should include provisions for fees that are reasonably commensurate with fees paid by Chapel Hill residents for The Peoples Channel services. Given the complicated nature of franchising, THE PEOPLES CHANNEL shall make every attempt to negotiate a commensurate fee for free programming, but cannot guarantee that other municipalities will be able to reach such an agreement with Time Warner Cable.

L. Fees

THE PEOPLES CHANNEL may charge user fees as set forth in the Proposal. Fees may be increased no more than once per year and with 30 days' notice given to the public. THE PEOPLES CHANNEL may charge fees for training as set forth in the proposal.

THE PEOPLES CHANNEL is encouraged to seek the comments of the Town Manager's Office if THE PEOPLES CHANNEL considers implementing fees.

M. Coordination with Time Warner Cable

THE PEOPLES CHANNEL will maintain communications with Time Warner Cable as needed to ensure continued carriage of public access programming on the cable television system in the event of channel changes, equipment changes, etc. and to coordinate transmittal of signals into the cable system.

N. Signal Quality on Public Access Channel(s)

The Town will make reasonable good faith efforts to ensure that Time Warner Cable complies with federal standards as may be amended for signal quality on the channel(s) assigned by Time Warner Cable for public access uses to the extent that Time Warner Cable is technically and legally responsible for quality of signals within its system.

Such efforts by the Town may include technical testing of signal quality, review of proof of performance tests available from Time Warner Cable and enforcement actions as

provided in the cable franchise and by law. The Town will determine the level and types of effort that are reasonable and prudent, taking into account costs and potential benefits.

THE PEOPLES CHANNEL will notify the Town when THE PEOPLES CHANNEL believes that the signal quality on public access channel(s) does not meet federal standards and the basis for such belief.

O. Annual Report

THE PEOPLES CHANNEL will provide to the Town an annual report, usually each October, covering its services in accord with this agreement and additional items as are reasonable and appropriate which may be requested by the Town plus items included by THE PEOPLES CHANNEL in its discretion.

III. PAYMENTS BY THE TOWN

A. Public Access Fees Collected After the Effective Date of this Agreement

Within 30 days of receiving quarterly payments of Public Access Fees from Time Warner Cable the Town will remit to THE PEOPLES CHANNEL the actual amount of each quarter's Public Access Fees, along with a copy of the statement provided to the Town by Time Warner Cable. Payments from Time Warner Cable should be distributed to THE PEOPLES CHANNEL within 30 days of receiving them.

The Town agrees only to remit public access fees actually received by the Town, and give no assurance of the amount of such fees.

B. Supplemental PEG Funds and PEG Subscriber Fees Collected from the North Carolina Department of Revenue

According to the Video Service Competition Act (SL 2006-151), §105-164.4(b) – (d) a municipality must certify to the Dept of Revenue (DOR) by July 15th of each year, the number of qualifying Public, Education and Government (PEG) channels it operates. The DOR must then include the applicable amount of supplemental PEG channel support in each quarterly distribution to that municipality, due within 75 days after the end of the quarter. The law also specifies that these Supplemental PEG funds “distributed to it for the operation and support of each of the qualifying PEG channels it certifies by allocating the amount it receives equally among each of the qualifying PEG channels.” With this in mind, the Town agrees to distribute these funds to the Public, Education or Government channels, no later than within 30 days of receiving these funds.

According to the Video Service Competition Act (SL 2006-151), §105-164.4 (e), a municipality that imposed PEG subscriber fees during the first six months of the 2006-2007 fiscal year, and certified them with the Department of Revenue by March 15, 2007, must use those funds, when distributed by the DOR to the municipality as a percentage of its Video Programming Tax, “for the operation and support of PEG channels.” The law

also specifies that the amount “that must be used for PEG channel operation and support is two times the amount of subscriber fee revenue the county or city certified to the Secretary that it imposed during the first six months of the 2006–2007 fiscal year and must be “used for this purpose in fiscal year 2006– 2007.” With this in mind, the Town agrees to distribute these funds to THE PEOPLES CHANNEL, no later than 30 days after receiving these funds.

IV. EFFECTIVE DATE

This agreement shall be effective upon execution.

V. PURCHASE OF AND TITLE OF EQUIPMENT

All equipment purchased with funds provided by the Town shall be prudently and diligently maintained by THE PEOPLES CHANNEL.

Title to such equipment shall remain with the Town, and the equipment shall be returned to the Town within 30 days upon the termination of this agreement (unless extended by mutual consent). The equipment shall be used, if returned to the Town, for public access purposes. If equipment is declared surplus or sold for any reason, the proceeds shall be designated for public access purposes.

THE PEOPLES CHANNEL shall maintain and shall provide to the Town a complete inventory list of equipment purchased with funds from the Town. The inventory shall include make, model and serial numbers where available.

THE PEOPLES CHANNEL shall whenever practical purchase a given equipment item only with Town funds. When equipment is purchased with funds either (a) from the Town or (b) from Town funds and other source(s), the Town shall have title to the equipment. Equipment shall be construed to include production and editing items, furniture, office equipment and other fixed assets.

To the extent possible within the funds available from the Town, THE PEOPLES CHANNEL will purchase all of the equipment listed in its proposal or its equivalent; however, THE PEOPLES CHANNEL may lease equipment when appropriate.

VI. RELATIONSHIP TO AND INCORPORATION BY REFERENCE OF THE FRANCHISE AGREEMENT BETWEEN THE TOWN AND TIME WARNER ENTERTAINMENT/ADVANCE-NEWHOUSE PARTNERSHIP

The Town’s franchise agreement with Time Warner Cable, which incorporates by reference a related cable television regulatory ordinance, governs certain aspects of public access and the relevant portions of the franchise are hereby incorporated by reference into this Agreement. In the event of a conflict between the terms of this Agreement and that franchise agreement, the terms of that franchise agreement including the regulatory ordinance shall govern.

**VII. NOTICE TO THE TOWN REGARDING POTENTIAL INCREASE
IN ACCESS CHANNELS IN ACCORD WITH THE FRANCHISE**

If THE PEOPLES CHANNEL believes that an increase in the number of public access channels should occur under the terms of the cable television franchise noted above, THE PEOPLES CHANNEL shall be responsible for so notifying the Town in writing with appropriate documentation regarding the carriage of non-repeated video programming.

VIII. PROCEDURE FOR CONSIDERING RENEWAL

THE PEOPLES CHANNEL is invited to make a proposal to the Town one year before the end of this Agreement regarding a procedure for considering renewal or extension of this Agreement.

The Town reserves the right to determine the process by which it will consider renewal or extension of this Agreement. For the purposes of this agreement, a letter of intent is sufficient notice for renewal or extension.

IX. TERM

This Agreement shall have a term of 3 years from its effective date unless otherwise terminated. This Agreement may be extended by mutual agreement. If neither party acts to terminate the agreement, the agreement continues in effect until a new agreement can be approved.

X. NON-DISCRIMINATION

THE PEOPLES CHANNEL will not discriminate with respect to race, color, creed, age (except in parental responsibility requirements, etc for minors), national origin, religion, sex, marital status, disability status, or sexual orientation in its employment and contracting decisions nor in the offering of services.

XI. INDEMNIFICATION

THE PEOPLES CHANNEL agrees to defend, indemnify and hold harmless the Town from any and all loss, liability, claims or expenses (including reasonable attorneys' fees) arising from the actions and omissions of THE PEOPLES CHANNEL in connection with this Agreement. In particular, THE PEOPLES CHANNEL shall hold harmless and defend the Town against any claims arising from THE PEOPLES CHANNEL's decisions regarding the acceptance, scheduling, cablecasting or content of public access programming which is in any way received and transmitted by or produced by THE PEOPLES CHANNEL. Such indemnification shall not extend to claims arising out of disputes over provisions of the Town's cable television ordinance or the franchise agreement between the Town and Time Warner Cable, or to other actions taken by the Town or Time Warner Cable.

THE PEOPLES CHANNEL shall maintain comprehensive general liability insurance in a form satisfactory to the Town Manager and in the amount of at least \$1 million per occurrence combined single limit for bodily and personal injury and damage of property. The insurance shall include premises and/or operations, independent contractors, products and/or completed operations, broad form property coverage, XCU coverage and a contractual liability endorsement.

The Town shall be named as an additional insured party. A certificate of insurance meeting the insurance requirements shall be forwarded to the Town of Chapel Hill. Wording on the certificate that provides that no liability shall be imposed on the insurance company for failure to provide notice shall not be acceptable.

THE PEOPLES CHANNEL shall maintain worker's compensation insurance for its employees, and shall require its subcontractors to maintain worker's compensation insurance, for statutory limits in accord with applicable State and federal laws. The policy shall include employers' liability with a limit of at least \$100,000 per accident; \$100,000 for bodily injury by disease for each employee and at least a \$500,000 bodily injury by disease policy limit. The worker's compensation insurance shall fully protect the Town from any claims arising from occurrences in the course of employees' and subcontractors' work on or off studio premises.

THE PEOPLES CHANNEL shall maintain property insurance sufficient to cover the replacement cost of equipment and other assets items purchased with fund from the Town. The amount of such insurance shall be subject to approval by the Town Manager.

XII. ANNUAL FINANCIAL AUDIT

THE PEOPLES CHANNEL shall have an independent audit performed at least annually and shall provide a copy of each year's audit to the Town. A copy of this audit report should be provided to the Town Manager's Office within 30 days of completion of the report.

XIII. PUBLIC RECORDS

Because THE PEOPLES CHANNEL will likely be funded primarily or entirely from public sources, THE PEOPLES CHANNEL's financial and other records will be treated as public records as if they were such under State law. Certain personnel and other records are not public in accord with current State law.

XIV. NORTH CAROLINA LAW

This Agreement is governed by North Carolina law.

XV. ENTIRETY OF AGREEMENT; AMENDMENTS

This Agreement constitutes the entirety of the understanding and agreements between THE PEOPLES CHANNEL and the Town regarding public access.

This Agreement may be amended only in writing and by mutual consent.

XVI. NOTICES

Notices under this Agreement shall be in writing.

To the Town:

Town Manager
405 Martin Luther King Jr. Blvd.
Chapel Hill, NC 27514

To THE PEOPLES CHANNEL

Chair of the Board of Directors
The Peoples Channel
300AC S. Elliott Rd.
Chapel Hill, NC 27516

XVII. TERMINATION; REMEDIES FOR VIOLATIONS

This Agreement may be terminated by either party without cause upon 180 days' written notice to the other party.

This Agreement may be terminated for failure to perform services due or to meet other requirements of this Agreement following written notice of such failure as provided below.

If a party to this Agreement believes that the other has failed to meet a material obligation under this Agreement, that party shall notify the other of the alleged failure with a statement of the particular facts. The notified party shall have 30 days (or if the Town is the notifying party, such additional time as the Town Manager may allow under the particular circumstances) to correct to alleged failure.

If the alleged failure is denied, the notified party shall so notify the other party with a statement of the reasons that the allegation is denied. The parties shall enter into discussion to reach a resolution of issues if there is a notice of default and the allegation of default is denied.

If a failure to meet a material obligation is not corrected within the prescribed time, the notifying party may terminate this Agreement for cause by giving written notice of termination and the reason therefor. Either party may terminate this Agreement if a party determines, after following the notice procedures set forth above, that there has been more than one material default during the term of this Agreement.

This the _____ day of _____, 2008.

THE PEOPLES CHANNEL, INC.

By: _____

Title: Chair of the Board of Directors

Attest: _____

Secretary

(corporate seal)

TOWN OF CHAPEL HILL

By: _____

Town Manager

Attest: _____

Town Clerk

Approved as to form and authorization:

Town Attorney

This instrument has been pre-audited in accord with the requirements of the N.C. Local Government Budget and Fiscal Control Act.

Director of Business Management