



W o r l d

C l a s s

R e g i o n

TRIANGLE J COUNCIL OF GOVERNMENTS

4307 Emperor Boulevard, Suite 110
Durham, NC 27703

Mailing Address: PO Box 12276
Research Triangle Park, NC 27709

919.549.0551 FAX: 919.549.9390
www.tj cog.dst.nc.us

CABLE BROADBAND CONSORTIUM SERVICE AGREEMENT

This AGREEMENT, made as of the ___ day of _____ 2008, by and between the Triangle J Council of Governments, 4307 Emperor Boulevard, Suite 110, Durham, NC 27703, and the Town of Chapel Hill, 405 Martin Luther King Jr. Blvd., Chapel Hill, NC 27514.

WHEREAS, in response to the needs of its member governments, TJCOG has formed the Triangle J Cable Broadband Consortium to assist its members in addressing their cable television and telecommunication responsibilities; and,

WHEREAS, in order to properly administer the Cable Broadband Consortium, TJCOG has secured a contractor that has substantial knowledge and experience in broadband infrastructure development, cable television administration and regulation, Public, Education and Government (PEG) channel development, and right-of-way enforcement matters necessary for local governments to respond to the cable and broadband needs of their communities; and to protect the public interest; and,

WHEREAS, the Town is desirous of receiving assistance from TJCOG regarding these cable and broadband services and wishes to become a member of the Cable Broadband Consortium; and,

WHEREAS, TJCOG wishes to enter into an agreement with the Town to provide the stated services and admit the Town into membership of the Cable Broadband Consortium;

NOW, THEREFORE, IT IS AGREED among the parties that the following terms and conditions shall apply to the admission of the Town into the membership of the Cable Broadband Consortium and to the delivery of services arising therefrom:

1. Definitions

- 1.1. "Cable Broadband Consortium" shall mean the various local governments comprising the Triangle J Cable Broadband Consortium, under the auspices of the Triangle J Council of Governments.

MISSION STATEMENT

*To serve as an intergovernmental organization for local elected officials
that works proactively on regional issues in order to sustain and improve the quality of life for our citizens.*

- 1.2. "Cable Television Administration" shall mean the provision of expert consultation regarding cable television and telecommunication regulatory matters that includes contract/franchise negotiation, contract compliance, contract enforcement, rate regulation, right-of-way management, transfer of ownership assessments, PEG channel development and enforcement and other cable-telecommunication services.
- 1.3. "Person" shall mean an individual, partnership, corporation, limited liability company, association, trust, joint venture, unincorporated organization and any government, governmental department or agency or political subdivision thereof.
- 1.4. "Termination Date" shall mean the last day of the Term.
- 1.5. "TJCOG" or "the COG" shall mean the Triangle J Council of Governments.
- 1.6. "Town" shall mean the Town of Chapel Hill.
2. Term. The term of the consulting arrangement under Sections 3 and 4 of this Agreement (the "Term") shall commence on April 1, 2008 and shall end on March 31, 2010. Thereafter the agreement shall renew automatically for annual periods, unless terminated as provided herein.
3. Scope of Services. TJCOG shall provide to the Town such assistance as may be related to cable television administration; public, education and government access television; broadband infrastructure development and telecommunication regulatory matters as provided in Exhibit B.
4. Fees. The Town shall pay to TJCOG a consortia membership fee in accordance with the schedule attached hereto as Exhibit A. This fee will afford the Town a basic package of services as identified in said exhibit. "A-la-carte" and other services may be provided by TJCOG on an hourly, or flat fee basis consistent with a schedule of current billing rates as shown in Exhibit A. Such rates shall remain fixed for at least one year from the date hereof. Any increase thereafter shall not exceed 10% and shall require 60 days advance written notice to the Town of Chapel Hill. Such rates include all administrative overhead expense, secretarial support, local telephone calls and profit. The Town shall promptly pay TJCOG for all reasonable and necessary expenses incurred in performing work in connection with this Agreement. To receive payment, TJCOG shall submit an invoice requesting payment to the Town.
5. Amendments-Waiver. Any amendment to or modification of this Agreement and any waiver of any provision hereof, shall be in writing and shall require the prior written approval of the COG and the Town.
6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina applicable to contracts made and to be performed therein.
7. Consent to Jurisdiction. Each Party hereby agrees to submit to the nonexclusive jurisdiction of the court in and of the State of North Carolina and to the courts to which an appeal of the decisions of such courts may be taken and consents that service of process with respect to all courts in and of the State of North Carolina may be made by registered mail to such address set forth on page 1 hereof.

8. No Third Party Beneficiaries. This Agreement is not intended to confer any rights or remedies upon any Person other than the parties hereto and their successors and permitted assigns.
9. Independent Contractor. The parties expressly acknowledge hereto that the relationship of TJCOG to the Town of Chapel Hill is that of independent contractor. Nothing contained in this Agreement shall create an employer-employee, principal-agent, or partnership relationship between TJCOG and the Town. The Town shall not exercise control or direction over the manner or method by which services are rendered by TJCOG hereunder, either expressly or by implication.
10. Termination. This Agreement may be terminated by either the COG or the Town upon 30-days written notice without penalty. In the event of such termination, the Town shall be liable only for payments due hereunder and incurred by TJCOG prior to the date of the notice of termination.
11. Successors and Assigns. Neither of the contractor parties shall have the right to assign this Agreement to its successors and assigns, including all covenants and agreements hereunder, without the prior written consent of either TJCOG or the Town.
12. Captions: Gender and Number. The captions of the sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section of this Agreement. The gender and number used in this Agreement are used as reference terms only and shall apply with the same effect whether the parties are of the masculine, neuter or feminine gender, corporate or other form, and the singular shall likewise include the plural.
13. Entire Agreement. This Agreement constitutes the full and entire understanding and agreement between the parties hereto with regard to the subject hereof, and supersedes all prior agreements and understandings, whether oral or written, with respect hereto.

IN WITNESS WHEREOF, this Agreement has been executed in duplicate originals, one of which is retained by each party as of the date and year first above written.

TRIANGLE J COUNCIL OF GOVERNMENTS

By: _____
Dee Freeman, Executive Director

TOWN OF CHAPEL HILL

By: _____
Roger Stancil, Manager

EXHIBIT A - RATES

CONSORTIA MEMBER RATES

1. General Cable Television Administration and Broadband Services (see Exhibit B) will be provided to the Town of Chapel Hill as part of the TJCOG Cable Consortium at an annual rate of \$6,500. This rate is based on the Town's population and follows the following fee schedule:

Population	Base Rate
<3000	\$2,750
3001-7500	\$4,000
7501-20,000	\$5,000
20,001-40,000	\$5,750
40,001+	\$6,500

Rates for jurisdictions within region J but not a member of TJCOG include a \$750 surcharge. Rates for jurisdictions outside region J include a \$1,000 surcharge.

Review of FCC-394 cable television transfer of ownership proceeding documents will be evaluated as necessary at an additional \$3,850 per consortia member. This expense is usually recoverable from the cable operator.

2. Cable television initial grants, franchise fee audits and telecommunication (non-cable TV) matters exceed the scope of this agreement and are performed at the contractor's discounted TJCOG member hourly rates plus expenses.

A LA CARTE RATE SCHEDULE

The hourly professional service fees for team members is as follows: Mr. Sepe (Principal), \$110/hr; Ms. Rice (Associate), \$85/hr; Attorney, \$185/hr.; Engineer, \$100/hr. and administrative support, \$35/hr.

EXHIBIT B - PURPOSE

The Triangle J **CABLE BROADBAND CONSORTIUM** advocates for and protects the public interest in the regulation and development of cable and broadband communications systems including, the administration of cable television, video service, and/or other telecommunication services provided pursuant to local or state-issued agreements; resolution of customer concerns; and participates in the planning and implementation broadband technologies by its member local governments.

The policy and regulatory work of the Consortium is undertaken in a dynamic communications technology environment. Consequently, the Consortium retains flexibility to modify or revise its purpose and services as may be required from time to time. Consortium members will receive quarterly updates in the following areas:

STATE LAW OVERSIGHT AND ADVOCACY

- Monitor grant of State Video Franchises to incumbent providers to ensure compliance with the Video Service Competition Act to ensure that State franchises are not used to improperly invalidate a current local cable franchise;
- Inform Secretary of State and Attorney General when state cable franchises are filed illegally;
- Monitor video sales tax payments from the N.C. Department of Revenue to Consortium members to determine whether the revenues fully replace cable television franchise fees. Advise Consortium members of any underpayments;
- Contact the N.C. Department of Revenue and NCLM regarding discrepancies between state video programming sales tax revenues distributed to a Consortium member and amounts collected under local cable franchise fees;
- Assist local governments in certification of PEG Channels for PEG Supplemental Funds and monitor payment of PEG Supplemental Funds to consortium members.
- Report to N.C. Department of Revenue any inaccuracies in payment of PEG Supplemental Funds;
- Assist Consortium members to request PEG Channels from State Franchised Cable Service Providers; monitor provisioning of PEG Channels by State Franchised Cable Operators;
- Report to N.C. Attorney General all non-compliance with PEG provisions of Video Service Competition Act by State Franchised Cable Providers;
- Document failures of Video Service Competition Act;
- Inform appropriate State legislators and State Officials of documented failures of Video Service Competition Act and advocate for changes which preserve and develop PEG channels, ensure actual competition, and preserve local revenues tied to video services.

LOCAL CABLE FRANCHISE ADMINISTRATION

- Investigate complaints regarding lack of cable or broadband service, cable or broadband service quality or billing problems by residents. Provide a phone number and e-mail service to receive complaints within Consortium member jurisdictions; Serve as an ombudsman to resolve service complaints with cable operator;
- Conduct effective cable rate regulation reviews that meet the spirit and intent of federal legislation and FCC rules. Evaluate FCC 1240 and 1205 rate forms for each consortium member that has authority to regulate cable television rates;

- Upon persistent service quality complaints, on request, inspect and evaluate the quality of the television signals the cable television operator is providing to determine whether it complies with the Federal Communication Commission's Part 76(k) technical specifications for signal transmission; teach local government staff how to identify and report National Electric Safety Code violations to the power, telephone and cable television providers for the purpose of safeguarding public safety;
- Advise Consortium members how to activate and use public, education and government (PEG) channels;
- Advise Consortium members on available PEG Grants and provide guidance on application process.
- Upon request, prepare a request for proposal (RFP) to equip the local government boardroom with television cameras for the purpose of televising local government board meetings;
- Guide Consortium members through Form 394 transfer of cable system ownership evaluation process;
- Advise Consortium members on changes to federal and state laws and regulations affecting local cable franchising authority;
- Advocate at state and federal levels for preservation of local cable franchising and development of PEG Channels

BROADBAND DEPLOYMENT

- Advocate for state and federal legislation that preserves municipal authority to deploy community broadband systems;
- On request, assist the local government implement 2.4 GHz Wi-Fi hotspots, 2.4 GHz Wi-Fi mesh networks and 4.9 GHz public safety networks;
- On request, perform a 2.4Ghz wireless signal audit to determine signal quality, bit rate, packet loss and service quality;
- On request, assist the local government in developing a Request for Proposal (RFP) to perform a community broadband feasibility study;
- Document deployment of community broadband networks across the state.