

PUBLIC, EDUCATION AND GOVERNMENT (PEG)
PROGRAMMING SIGNAL FIRST OFFICE APPLICATION
TESTING AGREEMENT

THIS AGREEMENT is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City") acting by and through its City Manager, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 2007 and Southwestern Bell Telephone, L.P. d/b/a AT&T Texas ("AT&T Texas"), both of which may be referred to herein collectively as the "Parties" or separately as "Party."

RECITALS

A. WHEREAS, in June, 2006 AT&T Texas began a commercial launch of its U-Verse TV Service in San Antonio, Texas. U-Verse TV Service is a monthly video subscription service running over a broadband IPTV network.

B. WHEREAS, pursuant to Section 66.009(a) of the Texas Utilities Code, the City may request AT&T Texas to provide capacity on its IPTV network for carriage of the City's three PEG channels, with such capacity to be provided within 120 days of AT&T Texas' receipt of such request. For the purpose of this Agreement, the Parties agree that capacity for PEG noncommercial programming will be provided upon successful completion of First Office Application testing ("FOA Testing").

C. WHEREAS, beginning on or about May, 2006, AT&T Texas and the City began to participate in planning sessions to discuss carriage of the City's three (3) PEG channels in relation to AT&T Texas' planned advanced web-based solution for delivery of community access programming ("AT&T Internet Sourced PEG Solution").

D. WHEREAS, pursuant to Section 66.009(g) of the Texas Utilities Code the City is required to provide PEG programming in a format or protocol compatible with AT&T Texas' IPTV technology, and pursuant to Section 66.009(f) of the Texas Utilities Code AT&T Texas must provide connectivity up to 200 feet from each PEG channel point of distribution (i.e., "point of demarcation"). For the purpose of this Agreement, the City will designate one point of demarcation for all three of its PEG channels.

E. WHEREAS, with the successful implementation of the AT&T Texas Internet Sourced PEG Solution will require the City to deliver, at its option, PEG content either to the public Internet or directly to AT&T Texas.

F. WHEREAS, the City will deliver its PEG programming signal to AT&T Texas via transport provided by-AT&T Texas. The PEG programming signal shall be in a Windows Media Version 9 IP signal compatible with AT&T's IPTV technology.

G. WHEREAS, AT&T Texas and the City have agreed to begin FOA Testing in order to establish the compatibility of the City's PEG programming IP signal with the AT&T Internet Source PEG Solution.

H. WHEREAS, as part of the FOA Testing, AT&T Texas and the City will supply and install, at their own cost and expense, the equipment identified in this Agreement in order for the City to provide a PEG programming IP signal compatible with the AT&T Texas Internet Sourced PEG Solution.

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of and reliance upon the respective representations, promises, concessions, terms and conditions contained herein, the City and AT&T Texas agree as follows:

- A. **Point of Demarcation.** The City will make available a single point of demarcation for delivery of its PEG programming signal at 515 S. Frio Street, the address for the City's Information Technology Services Department ("ITS Department"). The City will be responsible for transporting to the ITS Department public access and government related content from the Municipal Plaza Building at 114 W. Commerce Street, and educational related content from San Antonio College at 110 Howard Street. The FOA Testing will include equipment testing at all three locations. The precise point of demarcation shall be the point where the PEG programming signal connects to AT&T Texas' transport facility.
- B. **Equipment Installation.** The City will install at its own expense composite video and audio transmission equipment to transmit the City's public access content and government access content over single mode fiber from the Municipal Plaza Building, AV Control Room, 114 W. Commerce Street to 515 S. Frio Street; and composite video and audio transmission equipment to transmit the City's educational access content over single mode fiber from San Antonio College, AV Control Room, 110 Howard Street to 515 S. Frio Street. AT&T Texas will install at its own expense encoding equipment at 515 S. Frio Street. Exhibit A contains a listing of the City's equipment to be used for the transmission of composite video and audio over single mode fiber.
 - (1) The City will install and test at both AV Control Room locations composite video and audio transmission equipment to transmit the analog video signal to 515 S. Frio Street and AT&T Texas shall install and test encoders and the associated encoder cards to capture and encode the City's PEG programming at 515 S. Frio Street. The encoding equipment shall have the capability of transforming the City's analog PEG signal to a Windows Media Version 9 IP signal compatible with the AT&T Texas Internet Source PEG Solution.

- (2) AT&T Texas shall also install the necessary transport to carry the City's PEG programming from the City's facility at 515 S. Frio Street to AT&T Texas' IPTV network. AT&T will provide only sufficient bandwidth capacity to carry the City's PEG programming as specified in this agreement and the City shall not use this transport facility for any other purpose than the carriage of PEG programming.
 - (3) Upon the termination of this Agreement, the City shall be entitled to keep all equipment as installed by AT&T for the carriage of the City's PEG programming and may use such equipment to deliver all of its PEG programming to AT&T Texas.
 - (4) AT&T Texas will continue to provide the transport facility on its side of the point of demarcation at 515 S. Frio Street once the test period is complete as noted above for the sole purpose of transporting City's PEG programming.
- C. **Network Capacity.** Consistent with Section 66.009(f) of the Texas Utilities Code and with the successful completion of the FOA Testing, AT&T Texas shall provide capacity on its IPTV network for PEG noncommercial programming associated with the City's PEG channels.
- D. **Content.** AT&T Texas shall not exert direct or indirect programming control or assert ownership over City's PEG programming. All PEG content provided to AT&T Texas by the City as part of the FOA Testing shall remain the responsibility of the City. The City shall ensure that it has the appropriate rights to transmit all content provided to AT&T Texas as part of the FOA Testing. AT&T shall have no editorial control over the City's PEG programming. In no event will AT&T be held responsible for any content that is found to be obscene, indecent, or defamatory.
- E. **Term.** This Agreement shall commence on the date it is signed by both Parties following the date of passage of its authorizing ordinance and shall expire on completion of FOA Testing, unless otherwise agreed by both Parties ("the Term"); provided, however, the Parties understand and agree that either Party may terminate this Agreement upon ten (10) days' advance written notice and in such event, the terminating Party shall incur no liability whatsoever for such termination. Notwithstanding the above, the Parties further acknowledge and agree that AT&T Texas may determine that the FOA Testing objectives have been successfully met prior to the anticipated completion of the FOA testing. Whereupon, AT&T Texas will provide the City ten (10) days' advance written notice of the successful completion of the FOA Testing and planned termination of this Agreement and in such event, the AT&T Texas shall incur no liability whatsoever for such termination.
- F. **Cooperation.** The City and AT&T Texas recognize that AT&T Texas' IPTV network is new and subject to modifications as AT&T Texas and the City gain

operational experience with IPTV delivery of video programming. Successful deployment of IPTV requires that the City as a PEG programming provider and AT&T Texas as a content delivery provider work together closely. Therefore, the Parties agree that they will meet in good faith, as necessary, to effectuate the FOA Testing and the provisioning of PEG noncommercial programming.

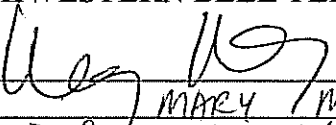
- G. **Confidentiality.** From time to time, AT&T Texas may share with the City non-public or proprietary information related to AT&T Texas's business in order to assist the City in its participation in the FOA Testing outlined in the Agreement. All such information, whether provided orally or in writing, shall be considered confidential. The City agrees not to disclose any such information to any person not an employee of the City and not involved in the FOA Testing without the prior written consent of AT&T Texas, and to provide prompt notice to AT&T Texas of any judicial or quasi-judicial demand for such information. The duty to maintain the confidentiality of all such non-public information shall continue during the term of this Agreement and the duty undertaken by the City shall survive and continue after the expiration / termination of this Agreement.
- H. **Copyright and Intellectual Property Rights.** All copyright and intellectual property, trademark, service mark and patent rights are reserved to AT&T Texas in all facets of the design, implementation and conduct of the AT&T Texas Internet Sourced PEG Solution and the FOA Testing conducted under or in connection with this Agreement.
- I. **NO WARRANTY.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AT&T TEXAS MAKES NO WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- J. **LIMITATION OF LIABILITY.** AT&T TEXAS SHALL NOT BE LIABLE FOR CLAIMS, DAMAGES OR LOSSES (INCLUDING ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER INCLUDING ANY DAMAGES FOR INJURIES TO PERSONS OR PROPERTY, WHETHER ARISING FROM A BREACH OF THIS AGREEMENT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER TORT) RESULTING FROM CITY'S PARTICIPATION IN THE FOA TESTING UNLESS AT&T TEXAS' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IS THE SOLE PROXIMATE CAUSE OF SUCH DAMAGES OR LOSSES.
- K. **Modification.** This Agreement may be amended or modified only by a written instrument executed by both Parties.
- L. **Entire Agreement.** This Agreement constitutes the entire FOA Testing Agreement between the City and AT&T Texas with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions,

agreements, and/or representations of or between the City and AT&T Texas regarding the subject matter hereof.

- M. **Waiver.** Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.
- N. **Binding Effect.** This Agreement shall be binding upon and for the benefit of each of the Parties and their respective successors and assigns; and any parents, subsidiaries or affiliated corporations or entities, as applicable..
- O. **Authority.** The undersigned officer and/or agent of AT&T Texas is an authorized representative with full authority to bind AT&T Texas to the terms and conditions of this Agreement and has the necessary authority to execute this Agreement on behalf of AT&T Texas.
- P. **Governing Law.** This Agreement shall be construed under and in accordance with the laws of the State of Texas. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in Bexar County, Texas.
- Q. **Effect.** This Agreement is not intended to alter any rights or obligations of the Parties pursuant to Chapter 66 of the Public Utilities Code.

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Agreement and made the same effective as of the Effective Date.

SOUTHWESTERN BELL TELEPHONE, L.P. d/b/a AT&T TEXAS

By: 
Name: MARY MCCARTHY
Title: DIRECTOR CTV
Date: 26 MAR 07

CITY OF SAN ANTONIO

By: _____
Name: _____
Title: _____
Date: _____

Approved as to Form:

City Attorney

EXHIBIT A

Product Number	Product Description	Qty
DMS-DME-2000	Cisco Encoder w/ Dual Input, Dual Processor, Studio Level	3
UNITY-PWR-US	Power Cord - US, Can, Mex, PR, Phil, Ven, Tai, Col, Ecu	3
CON-SNT-DMSDME2	SMARTNET 8X5XNBD Cisco Encoder w/ Dual Input, Dual Proc	3

EXHIBIT B

Network Architecture

