

The City of Auburn & the City of Lewiston
Auburn-Lewiston Local Cable TV Operations
Interlocal Agreement
DRAFT (pjn – 9.21.15)

YELLOW HIGHLIGHTS – LEWISTON AMENDMENTS

GREEN HIGHLIGHTS – 9.21.15 Cable Committee comments

This Agreement is made and entered into as of this _____ day of _____, 201() by and between the Cities of Lewiston and Auburn, both political subdivisions of the State of Maine, in accordance with Chapter 115 of Title 30-A of the Maine Revised Statutes.

WHEREAS the Auburn-Lewiston Cable TV Committee, a group of concerned citizens and elected/appointed officials representing a wide variety of community interests, assembled for the purpose of articulating a community vision for its public, educational and government (PEG) cable television programming has successfully operated our community PEG station with distinction for some fifteen years;

WHEREAS the Lewiston and Auburn City Councils now believe the time has arrived to address the commitment by both cities to memorialize the operations of the Great Falls TV local PEG cable station through the joint approval of an interlocal agreement, as stipulated in the Cable Television Ordinance approved by the Lewiston City Council on December 17, 1996;

WHEREAS the joint budgeting process has revealed administrative issues which must be addressed so that the staffing, operations, financial obligations and the administrative oversight of Great Falls TV are properly addressed to better ensure the long term stability and sustainability of our community PEG channel for years to come;

WHEREAS the Cities of Lewiston and Auburn agree to formally authorize the assignment of all personnel and financial administration to the City of Auburn; to have the City of Auburn integrate Great Falls TV into its municipal operations; to agree that the Cities of Lewiston and Auburn will equally share all assets owned and/or purchased by Great Falls TV; **to continue to carry out the Cities' joint interest in maintaining Great Falls TV as a PEG cable station, which includes ensuring that the operational duties of Great Falls TV employees are consistent with the mission of a PEG cable station;** and to assign responsibility to oversee the administration and operations of Great Falls TV to the City of Auburn subject to the programming and franchise agreement authority of the Auburn-Lewiston Cable TV Committee;

NOW, THEREFORE, BE IT ORDERED BY THE CITY COUNCILS OF THE CITY OF LEWISTON AND AUBURN THAT the city formally approve the creation of the Auburn-Lewiston Cable TV Committee; to assign the responsibilities for general programming and day-to-day broadcast management to the Auburn-Lewiston Cable TV Committee; and to agree that all Great Fall TV staff be formally hired as City of Auburn employees and that human resources, supervisory and financial responsibility for Great Falls TV staff and general operations be assigned to the City of Auburn in accordance with the following:

For purposes of this Agreement, the following words and phrases shall have the meanings ascribed to them by this section:

(1) "Committee" means the the Auburn-Lewiston Cable TV Committee.

- (2) "Organization" means the Great Falls TV PEG (public, education, government) local cable system.
- (3) "Franchising Authority" means the authority granted to the cities of Lewiston and Auburn through any cable TV franchise agreement approved by the cities of Auburn and Lewiston.
- (4) "Franchise Agreement" means any municipally approved contract with a cable TV operator to provide cable TV services in a specific municipality.

A. CREATION OF THE LEWISTON-AUBURN CABLE TV COMMITTEE

- (1) **The Committee:** The **eight (8) member** Auburn-Lewiston Cable TV Committee is hereby created. All appointments shall be as follows:
- (2) **Terms and other conditions:**
- One (1) City Councilor or Mayor from each city shall be appointed by each city's Mayor to serve two (2) year terms (to correspond with Mayor/City Council elections), and may be reappointed to an unlimited number of consecutive terms; and
 - **with the exception of the Lewiston City Administrator staff position, the inaugural terms of each of the following committee members shall be staggered as one (1), two (2) and three (3) year terms based on a blind draw conducted by the Chair of the committee at the first inaugural meeting of the Committee. Terms for all members thereafter shall be two year terms; and**
 - in Auburn, three (3) Committee members shall be nominated by the Mayor, appointed by **each** City Council, and serve no more than three (3) two (2) year terms;
 - in Lewiston, the City Administrator shall appoint one (1) staff member who shall serve at the pleasure of the City Administrator, and the Mayor shall nominate two additional members who shall be appointed by the City Council and serve no more than three (3) two (2) year terms; and
 - all actions of the Auburn-Lewiston Cable TV Committee will require no less than five (5) affirmative votes
- (3) **Special voting conditions:** When a matter before the Committee only affects cable customers in one city, no less than three (3) members representing the city involved **all** vote in the affirmative for passage.
- (4) **By-Laws:** The Committee's By-Laws will be crafted and submitted by the Committee for approval by both City Councils within **sixty ninety** (90) days of final approval of this Agreement. The By-Laws shall include language which shall require language to cover the following:
- Any applicable Committee responsibilities contained within this Agreement
 - Priority programming areas for broadcast: Public, education and government (PEG).
 - Ensuring that [policy is created to provide equitable content broadcasting opportunities for both **cities**

Comment [PN21]: 9.7.15 (PN&DD)—this and the next bullet are subject to whatever changes each council deems appropriate. One or no elected officials and specific or open appointments for all four seats for each city.

Comment [PN22]: LCC 7.14.15—requested language from LCC

Comment [PN23]: PN&DD 9.9.15—amended the section to require that the impacted city have a majority of its members (3 out of 4) vote in the affirmative for passage.

Comment [PN24]: LCC 7.14.15—desires to have language for equitable broadcasting opportunities for both cities

- Four members will constitute a quorum-~~Quorum~~ and will require no less than four (4) members in physical attendance or ~~and no less than three (3) in physical attendance and no more than one (1) member who may call in via telephone or videoconference. If fewer than four (4) members are physically in attendance~~
- Grievance procedures for citizens who submit programming content
- Establishing a monthly meeting schedule. ~~meetings may be rescheduled to another date or canceled by a majority affirmative vote by Committee members. Chair may cancel meetings in advance of bad weather/ other publicly declared emergencies~~
- Meeting posting requirements
- Committee term and member vacancy language
- Voting requirements
- Email voting prohibition
- Attendance conditions and non-attendance notification requirements
- Web page posting of all policies, agendas and meeting minutes
- By-laws amendment requirements
- Franchise agreement complaint handling

Comment [PN25]: LCC 7.14.15—requested by LCC. Quorum requirements will be adjusted accordingly for any proposed increases in Committee members and will reflect what is needed for a simple majority vote.

Physical attendance – some question about the clarity of the original language. Original language drafts intended to establish a quorum as 4 members and permit 3 to physically attend and 1 to participate by phone. Language could be amended to require 4 to be physically attend.

B. COMMITTEE DUTIES AND POWERS.

(1) **Duties.** The duties of the Committee shall be:

- (a) To create broadcast and programming policy and to oversee the programming, technical operations/management, and cable TV broadcast and internet operations of Great Falls TV and to oversee and manage existing cable television franchise(s) issued by the franchising authorities of Auburn and Lewiston and any future franchise agreement enacted by the franchising authority;
- (b) To monitor and annually submit a budget for its next fiscal year itemizing expenses of operations, maintenance and repairs, planned capital improvements, and current and future indebtedness no later than January 31st of each year. The budget will be submitted to both the Auburn Manager and Lewiston City Administrator and will include details as to present assets, accounts receivables and payables, and other liabilities as the Cities of Lewiston and Auburn may reasonably require. The Committee will also estimate all anticipated revenues for the upcoming fiscal year
- (b) To assign to the Committee all responsibility to oversee the necessary regulations of franchised cable television operators, including but not limited to, rate regulations, rate setting procedures, procedures to ensure only properly established rates as stipulated in the franchise agreement are being charged customers, consumer protection regulations, and such other regulations as the Committee deems necessary to perform its duties;

(c) Within the limitations of this chapter, the Committee shall recommend to the Lewiston City Administrator and/or the Auburn City Manager the imposition of penalties for violation of any franchise agreement provision;

(d) To establish procedures for hearing and disposing of all customer complaints concerning cable television service provided by the franchised cable television operator;

(e) Except for powers expressly reserved to the franchising authority and to the municipal officers of Auburn and Lewiston, to perform within the geographic jurisdiction of the franchising authority all functions now or hereafter granted to local franchising authorities under the Federal Act and FCC regulations;

(f) To perform such other duties delegated to the Committee by mutual agreement of the Auburn and Lewiston City Councils; and

(g) To conduct the business of the Committee in accordance with the By-Laws enclosed within this Agreement.

(2) **Delegation.** Except for the approval of a final Committee budget; imposing and/or collecting franchise fee violation fines; the signing of all contracts; pursuing legal action associated with any Organization activity; establishing what revenues shall be created or dedicated to support Committee operations; and those items expressly reserved in the franchise agreement to the franchising authority or the enclosed Committee By-Laws, all powers of the franchising authority under state and federal law and under the franchising authority's existing cable television franchise agreement are hereby delegated to the Committee.

(3) **Powers.** To enable the Committee to perform its duties but subject to the limitations in this Agreement, the Committee shall have the following powers:

(a) To advise the City of Auburn with respect to approving, implementing and enforcing the Committee's operating and capital budget; contracts; personnel hiring, firing and regulation; and all other legal obligations;

(b) To work with the Auburn City Manager and the Lewiston City Manager in those instances where the Committee has requested assistance of those offices;

(c) Negotiate new franchise agreements and/or amendments to existing franchise agreements;

(d) To consult with the City of Auburn on the hiring of regular full time or part time staff;

(4) **Relocation of Facilities and Committee Transition.** In the event that the Committee is not officially assembled in advance of the final approval of this Agreement, the existing Cable TV Committee shall remain in its advisory role and work with the City of Auburn to assist with broadcast/studio relocation matters from Central Maine Community College and any broadcasting/studio/content or

other related Great Falls TV business. Following the formal adoption of this Agreement and upon the formal appointment of all new Committee members, the new Committee shall assume all responsibilities outlined in this Agreement upon its inaugural meeting date.

C. APPORTIONMENT OF CITY REVENUES & CONTRACTS.

(1) All revenues authorized in a franchise agreement or collected through any revenue generating activity of the Committee shall be apportioned and/or authorized by a mutual vote of both City Councils to the Committee for all Organization expenses as follows:

(a) All fees collected by both cities through a franchise agreement shall be aggregated and apportioned to the Committee as follows:

- i. The total franchise fees collected by each city will be assessed based on a fixed cable TV franchise fee of no less than 2.5%. In the event that either city elects to establish a franchise fee of greater than 2.5%, that city shall have the authority to dedicate any portion of those revenues to any general fund purpose.
- ii. Revenues to the Organization shall be based as a percentage of each municipalities previous fiscal year's 2.5% franchise fee collections plus the percentage of each prior fiscal year's city-wide viewership multiplied by forty percent (40%) of the total contribution-----

Example:

TOTAL FRANCHISE FEE FOR BOTH CITIES: \$285,000

- Auburn total franchise fee: \$135,000 – 47.37%
 - Lewiston total franchise fee: \$150,000 – 52.63%
- 100.00%

TOTAL VIEWERSHIP FOR BOTH CITIES: 13,981

- Auburn viewership: 5,790 – 41.42%
 - Lewiston viewership: 8,191 – 58.58%
- 100.00%

APPORTIONED FRANCHISE FEE CONTRIBUTION FOR CITIES:

- Lewiston: $52.63\% + 58.58\% \div 2 = 55.60\% \times \$285,000 = \$158,460 \times 40\% = \$63,384$
- Auburn: $47.37\% + 41.42\% \div 2 = 44.40\% \times \$285,000 = \$126,540 \times 40\% = \$50,616$

- iii. Any additional fees that are collected through a franchise agreement may be appropriated by a City Council to the Committee and must be expended in accordance with the specified purpose identified in the franchise agreement; and
- iv. any Great Falls TV revenues not specified in a franchise agreement must first be authorized by an affirmative vote of the Committee and approved by an affirmative vote of both City Councils; and
- v. revenues may be assigned to reserve accounts by mutual agreement of both City Councils but all yearend unexpended revenues shall be returned to each city's general fund balance in accordance with the apportioning language in item (i) of this Section(alternative---designated to a Great Falls TV reserve for replacement account); and

Comment [PN26]: PJN 7.14.15—clarification edit.

- vi. the Committee may request any additional funding as it deems appropriate as part of its budget request.

D. CONTRACTS

All contracts with other persons, corporations and governmental bodies or agencies thereof, including contracts to lease the use of buildings, facilities, operations and all other business or legal obligations shall be managed and authorized by the City of Auburn.

E. DISPOSAL OF SURPLUS PROPERTY

When the Committee determines that any Organization assets/equipment are no longer necessary to the accomplishment of the purposes of the organization, it may dispose of the same, subject to any restrictions which may be imposed by mutual agreement of the City Councils upon such terms as they consider advisable. Any proposed disposal of assets/equipment with a value in excess of one thousand dollars (\$1,000) shall be first approved by both City Councils.

F. Relocation of Broadcast Facilities & STAFFING

Any action to relocate any portion of Great Falls TV broadcasting or studio operations from the existing Central Maine Community College site must receive the approval of both City Councils.

It will be the obligation of the City of Auburn to continue to carry out the Cities' joint interest in maintaining Great Falls TV as a PEG cable station, which includes ensuring that the operational duties of Great Falls TV employees are consistent with the mission of a PEG cable station.

G. PROPERTY TAX EXEMPT

The real and personal property of Organization will be exempt from taxation.

H. TERMINATION AND MODIFICATION

Organization will remain in existence for an indefinite term and until terminated by a majority vote of the Auburn and Lewiston City Councils. This agreement may also be modified by a majority vote of both City Councils.

In the event that either municipal body shall vote to modify or terminate this agreement, notice shall be provided in writing and submitted to the City Clerk of the other municipality and to the Chairperson of the Committee. If termination is approved by a majority vote of both City Councils, the Committee shall meet and vote on a termination plan within seven (7) calendar days of the date of approval from the last City Council termination vote.

Termination of operations shall occur no later than forty-five (45) calendar days following the last City Council termination vote. A plan to liquidate all assets will be developed by the Auburn City Manager and the Lewiston City Administrator will be submitted to both City Councils no later than thirty (30) calendar days following termination of operations.

Comment [PN27]: LCC 7.24.15—Given the costs uncertainties associated with the relocation of broadcasting and/or studio operations, the proposal's intention is to ensure that both City Councils fully understand and endorse any relocation actions.

Comment [PN28]: PJN&DD 9.7.15—Lewiston City Council has expressed concerns regarding future staffing of GFTV. Language will be forthcoming to address this issue.

Approval to dissolve all Organization assets/equipment must be approved by a mutual vote of both City Councils. All approvals shall require that the Cities of Lewiston and Auburn mutually agree to share equally the lifetime contingent liabilities associated with Organization operations.

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