

Management Agreement with URTV, INC.

THIS AGREEMENT is made this 1st day of February 2005, by and between County of Buncombe, North Carolina, a body corporate and politic (the "County") and URTV, Inc., a nonprofit corporation (the "Contractor").

WHEREAS, the County's cable franchise with the Cable Operator (the "franchise") has dedicated certain channel capacity for public, educational and governmental access use; and

WHEREAS, the County has dedicated a portion of such channel capacity for public access programming purposes and desires to engage the services of the Contractor to operate such public access cable channel(s) pursuant to the terms herein contained.

WHEREAS, the County will not be the only or primary financial support of Contractor.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the County and the Contractor agree as follows:

SECTION 1. SCOPE OF SERVICES. In exchange for the funding allocated by the County from funds provided by Charter Communications, the Contractor, pursuant to this Agreement, shall provide the following services:

- A. **OPERATE PUBLIC ACCESS CABLE CHANNEL(S).** Provide for the playback/cable-casting of programs on the public access channel(s) with the primary purpose being to administer, coordinate, and assist those requesting access on a non-discriminatory basis. For purposes of this agreement, a member is a member as defined by the Contractor's operating policies. Locally produced programming shall include programming produced by members of URTV or produced within designated Public Access service areas.
 - a. ~~Cablecast locally produced original programming, and/or other programming~~ submitted by members supplemented by replays. Priority will be given to locally produced programming.
 - b. Design and implement a daily public access program schedule.
 - c. Accept videotapes submitted by members and ensure that program playback occurs as scheduled.
 - d. Maintain a log reporting the number of hours of original and rerun programming cablecast per month.
 - e. Promote community dialogue via cable television and emerging electronic media.
- B. **OPERATE A PUBLIC ACCESS CENTER.** Manage a video-production facility available for public use at such hours and times as are determined by Contractor.
 - a. Schedule, monitor, and maintain editing facilities, studios, and portable production equipment.

- b. Generate quarterly reports no later than fifteen days following the last day of the third month of the quarter to the attention of the County Manager that includes information on budget tracking, program production, use of resources and services, revenue generation, to include efforts to obtain grant funding, and other reporting that is required under this Agreement.
 - c. Prepare annual reports as specified in Section 4 of this Agreement.
 - d. Utilize personnel and funds to provide the most effective and efficient use of resources in compliance with applicable laws and regulations.
 - e. Maintain an accurate inventory of all equipment, furniture, and capital goods.
- C. **PROVIDE NONDISCRIMINATORY ACCESS.** Provide access to the use of the equipment, facilities, channels, and services provided hereunder on a non-discriminatory basis to all members of the community in designated Public Access service areas for non-commercial programming purposes, whether individuals, groups, or organizations, pursuant to operating policies promulgated by Contractor.
- D. **DEVELOP OPERATING POLICIES AND PROCEDURES.** Develop policies and procedures for use and operation of the public access equipment, facilities, and channel(s). These policies and procedures shall be filed with the County and shall be provided to all public access producers, as well as members of the public who request them.
- E. **DEVELOP AND CONDUCT REVENUE-GENERATING ACTIVITIES.** Conduct fund raising activities including grant writing and aggressive pursuit of grant opportunities, development of underwriting support, and other activities that: 1) are consistent with the mission and purpose of public access, and 2) will not jeopardize the Contractor's nonprofit status.
- F. **COMPLY WITH LAWS, RULES, AND REGULATIONS.** Administer the channel(s) and facilities in compliance with applicable laws, rules, regulations, and in compliance with the Franchise.
- G. **PROVIDE TRAINING.** Train interested citizens in techniques of video production and provide technical advice in the execution of productions.
- a. Create and provide a training curriculum with orientation classes, basic field production, studio production and editing.
 - b. Create and provide training materials and handouts to augment the training curriculum and to provide ongoing reference.
 - c. Provide advanced and special classes when possible.
 - d. Require completion of training before allowing access to studio and facilities.
- H. **MAINTAIN EQUIPMENT.** Provide regular maintenance and repair of all video equipment purchased and/or leased with funds received pursuant to this Agreement or with funds

received by the Contractor due to its operation of the access channel(s) and services and/or donated, loaned, or leased to Contractor.

- I. **PROMOTE ACCESS SERVICES.** Actively promote the use and benefit of the public access channel(s) and facilities to cable subscribers, the community and public access users.
 - a. Produce and implement an effective promotion plan for public access services and programming.
 - b. Create and implement outreach activities, special events, and partnerships with a broad cross section of community organizations, with a concentrated effort to encourage participation and inclusion of minority groups.
- J. **ENCOURAGE PUBLIC AFFAIRS PROGRAMMING.** Encourage programming and associated channel time for noncommercial public interest programming dedicated to local issues including civic, cultural, educational, local governmental or programming meeting otherwise underserved community needs.
 - a. Encourage production of a minimum of 4 hours of programming per month which discusses local issues and/or meets the needs of an underserved segment of the community and televise at least three-quarters of this public affairs programming between the hours of 7 AM and 10 PM.
 - b. Meet with community leaders to ascertain the needs of various segments of the community and work in coalition with community leaders and local non-profit groups to develop programming and maintain a paper or electronic record of these efforts.
- K. **OTHER ACTIVITIES.** Undertake other public access programming activities and services as deemed appropriate by Contractor and consistent with the obligation to facilitate and promote access programming and provide non-discriminatory access. In the event that County Commissioners appoints a Board liaison to the URTV, Inc. Board, the Board shall provide the County notices of all Board meetings and minutes of all meetings.

SECTION 2. CHANNELS OPEN TO PUBLIC. Contractor agrees to keep the Public access channel(s) open to all potential users regardless of their viewpoints, subject to any applicable FCC regulations and other relevant laws and in accordance with Contractor's policies and procedures. Contractor shall have the responsibility and sole authority to promulgate policies and procedures that hold producers of programming responsible for the content of any programming placed on the public access channel to reasonably ensure that such programming so it is not obscene, libelous or otherwise unlawful. In addition, contractor shall have responsibility and sole authority to promulgate and enforce policies and procedures that reasonably ensure that programming that is indecent under FCC regulations be shown at times that children are not likely to be exposed to such programming. Provided that, nothing herein shall prevent Contractor, the County or Cable Company(s) from producing or sponsoring programming, from underwriting programming, or from engaging in activities designed to promote production of certain types of programming or use by targeted groups as consistent with applicable law and rules for use of channels. Contractor may promulgate and enforce policies and procedures that are designed to promote local use of the channel(s) and make the programming accessible to the viewing public, consistent with such time, manner, and place regulations as are appropriate to provide for and promote use of public access channels, equipment and facilities.

SECTION 3. PERFORMANCE REVIEW. The County may, after the initial year of access operation under this Agreement, conduct a performance review. Additional annual reviews under these terms shall be at the sole discretion of County Commissioners. The performance review shall be done by an independent entity or individual with background and experience in public access television selected by the County and shall include an opportunity for the access center users and cable subscribers to provide input. Upon completion a copy of the performance review shall be submitted to the Contractor and open for public inspection. The Contractor must fully cooperate by providing any and all operational information and data in a timely manner at which time such review is deemed in order by the County. The County shall assume all expenses encumbered by such review.

SECTION 4. ANNUAL REPORTS. Prior to December 31 of each year, Contractor shall submit to the County an annual report for the preceding fiscal year (July 1 – June 30). This report shall contain, at a minimum, the following information:

- A. Statistics on programming and services provided, including as an Exhibit A detailed log reporting the number of hours of original and rerun programming cablecast per month.
- B. Current and complete listing of Contractors' Board of Directors including current addresses.
- C. Year-end financial statements audited by an independent certified public accountant.

SECTION 5. RECORDS, FISCAL AUDIT.

- A. Contractor shall maintain all necessary books and records in accordance with generally accepted accounting principles.
- B. Upon reasonable request from the County, through its Commissioners or duly designated representative, contractor shall at any time during normal business hours, make available all of its records with respect to all matters covered by this agreement, except for confidential personnel records, confidential attorney-client communications, or confidential information as defined in N.C. Gen. Stat. § 132-1.2.
- ~~C. Contractor shall annually prepare or have prepared and submit to the County a fiscal audit by a certified public accountant.~~
- D. Contractor shall require all producers to agree in writing to include a contact name, home or business address, phone number and e-mail address to contact producers about the program.

SECTION 6. COPYRIGHT CLEARANCE. Before cablecasting video transmissions, Contractor shall require all users to agree in writing that they have obtained all rights to all material cablecast and clearances from broadcast stations, networks, sponsors, music licensing organizations' representatives, and without limitation from the foregoing, any and all other persons as may be necessary to transmit it or their program material over the public access channels that are operated and managed by Contractor. Contractor shall maintain for the term of the applicable statute of limitations for County's inspection, upon reasonable notice by County, copies of all such user agreements.

SECTION 7. COPYRIGHT AND OWNERSHIP Copyright of programming produced by the public shall be held by such person(s) who produce(s) said programming. Contractor shall own the copyright of any programs that it may choose from time to time to produce.

SECTION 8. DISTRIBUTION RIGHTS Contractor shall require that all programs produced with funds, equipment, facilities, or staff granted under this Agreement shall be cablecast on a local PEG Channel. This subparagraph shall not be interpreted to restrict other distribution (beyond distribution on local PEG Channels), so long as such other cablecasting is consistent with any pertinent guidelines established in the public access operating policies and procedures.

SECTION 9. EQUIPMENT AND FACILITIES

A. Contractor shall be entitled to the use of all equipment and facilities acquired and purchased with funds received pursuant to this Agreement. Upon termination or non-renewal of this Agreement all such equipment or facilities purchased with funds received from the County pursuant to this Agreement shall be surrendered to the County.

B. Upon the dissolution of the Contractor, it shall, subject to the approval of the County, transfer all assets of Contractor as defined in Section 9(A) above to the County or at the County's option, to such organization or organizations designated by the County to manage public access which shall at the time qualify as a tax exempt organization(s) under Section 501(c)(3) of the Internal Revenue Code (or the corresponding provisions of any future United States Internal Revenue Law).

SECTION 10 FUNDING AND OTHER RESOURCES. The County agrees to make the following funds and resources available to Contractor:

- A. One-third the initial grant provided by Charter Communications during the first 12-months of operation under the Cable Franchise Agreement (\$330,000 total received).
- B. 100 percent of the supplemental PEG support fee collected monthly by Charter (at 20-cents per subscriber).
- C. One-third of the PEG support fee collected monthly by Charter (at 23-cents), after the initial grant is recovered.
- D. One hundred percent of the additional fees generated when URTV reaches 26 percent and 52 percent of non-repetitive.

SECTION 11 FUNDING FROM OTHER SOURCES. Contractor may, during the course of this Agreement, receive supplemental funds from other sources, including, but not limited to fundraising activities. All such funding received will be reported to the County as is consistent with the reporting requirements as outlined in this agreement.

SECTION 12. INDEMNIFICATION. Contractor shall indemnify, defend, and hold harmless the County, its officers, agents, and employees from and against any and all claims, suits, actions, causes of action, losses, damage, or liabilities of any kind, nature or description, including payment of litigation costs and attorneys' fees, brought by any person or persons for or on account of any loss, damage or injury to person, property or any other interest, tangible or intangible, sustained by or accruing to any person or persons, howsoever the same may be caused, directly or indirectly arising or resulting from

any alleged acts or omission of Contractor, its officers, employees, agents or subcontractors arising out of or resulting from the performance of this Agreement.

Contractor shall indemnify and hold harmless the County, its officers, agents, employees from and against any and all claims or other injury, including costs of litigation and attorney's fees, arising from or in connection with claims or loss or damage to person or property arising out of the failure to comply with any applicable laws, rules, regulations or other requirements of local, state or federal authorities, for claims of libel, slander, invasions of privacy, or infringement of common law or statutory copyright, for breach of contract of other injury or damage in law or at equity which claims, directly or indirectly, result from Contractor's use of channels, funds, equipment, facilities or staff granted under this Agreement or franchise agreement.

SECTION 13. INSURANCE. Contractor shall maintain in full force and effect at all times during the term of this Agreement insurance as required by this Section. The cost of such insurance shall be borne by Contractor and may be included in the Contractors annual budget.

- A. **COMPREHENSIVE LIABILITY INSURANCE.** Comprehensive liability insurance, including protective, completed operations and broad form contractual liability, property damage and personal injury coverage, and comprehensive automobile liability including owned, hired, and non-owned automobile coverage. The limits of such coverage shall be: (1) bodily injury including death, \$1,000,000 for each person, each occurrence and aggregate; (2) property damage, \$1,000,000 for each occurrence and aggregate.
- B. **EQUIPMENT INSURANCE.** Insurance shall be maintained on all equipment and facilities, including fixtures, funded in whole or in part under this Agreement to full replacement cost. The insurance shall include, at a minimum, insurance against loss or damage beyond the user's control, theft, fire or natural catastrophe.
- C. **WORKERS' COMPENSATION.** Full Workers' Compensation Insurance and Employer's Liability with limits as required by North Carolina law with an insurance carrier satisfactory to the County.
- D. **COUNTY AS CO-INSURED OR ADDITIONAL INSURED.** The County shall be named as a co-insured or additional insured on all aforementioned insurance coverage. The policies shall provide that no cancellation, major change in coverage or expiration maybe affected by the insurance company or Contractor without first giving the County thirty (30) days written notice prior to the effective date of such cancellation or change in coverage. Any insurance or self-insurance maintained by the County, its officers, agents, employees, or volunteers shall be in excess of the Contractor's insurance and shall not contribute to it.
- E. **Notification OF COVERAGE.** Contractor shall file with the County proof of insurance coverage as follows: (1) Comprehensive Liability and Workers' Compensation upon commencement of the employment of the General Manager; (2) equipment insurance upon the acquisition of any equipment.

SECTION 14. NON-DISCRIMINATION IN EMPLOYMENT AND SERVICE. In carrying out the services described or referred to in this Agreement, the Contractor shall adhere to the spirit and letter of

federal, state, and local laws, ordinances, and regulations promulgated. This, in turn, guarantees equal access opportunities to all persons.

- A. Contractor shall not discriminate against any person, employee or applicant for employment or subcontractor on the basis of race, color, religion, sex, marital status, national origin or disability.
- B. Contractor shall not discriminate in the delivery of services on the basis of race, color, religion, sex, marital status, national origin or disability.

SECTION 15. INDEPENDENT CONTRACTOR. It is understood and agreed that Contractor is an independent contractor and that no relationship of principal/agent or employer/employee exists between the County and Contractor. If in the performance of this Agreement Contractor employs any third persons, such persons shall be entirely and exclusively under the control, direction and supervision of Contractor. All terms of employment, including hours, wages, working conditions; discipline, hiring and discharging or any other term of employment shall be determined by the Contractor and the County shall have no right or authority over such persons or terms of employment.

SECTION 16. ASSIGNMENT AND SUBLETTING. Neither this agreement nor any interest herein shall be assigned or transferred by Contractor, except as expressly authorized in writing by the County.

SECTION 17. TERM OF AGREEMENT. This Agreement shall be for a period of five (5) years commencing on February 1, 2005 and ending on February 1, 2010 unless sooner terminated as hereinafter provided in Section 18 E or Section 18.5. This Agreement may be extended, by mutual agreement of the County and Contractor, in writing, for an additional period to be determined in accordance with Section 19 of this contract.

SECTION 18. TERMINATION OF AGREEMENT

- A. The County shall have the right, upon ninety (90) days notice, to terminate this Agreement for any of the following reasons:
 - 1. Material breach of or failure to comply with any provision of this Agreement by Contractor;
 - 2. Criminal misconduct or financial impropriety of any nature related to the performance or execution of this Agreement, including any misappropriation of public funds.
 - 3. Loss by Contractor of its non-profit status, or revocation or suspension of its Articles of Incorporation by any governmental agency
 - 4. Violation by Contractor or its agents or employees of any FCC rule or regulation.
 - 5. Failure by Contractor to pay any debt owed by Contractor to a third party, or to the County, other than a claimed debt which is the subject of a good-faith dispute by Contractor, provided that Contractor furnish the County with evidence that the debt is disputed and the grounds for the dispute.

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- B. Contractor shall have the right, upon ninety (90) days notice, to terminate this Agreement for material breach of any of its provisions by the County.
 - C. Upon notice of termination by one party pursuant to A. or B. above, the other party shall have a period of sixty (60) days in which to cure the alleged violation, if it is of a type subject to cure, and to provide proof of such cure to the noticing party, following which cure the Agreement shall continue in effect.
 - D. If necessary to protect the public interest, the County may, within a reasonable time after giving notice, suspend this Agreement while any of the matters listed in A., is under formal administrative review or investigation.
 - E. The County shall have no obligation to operate the public access channel, and if at any time the County determines that it is not in the public interest to continue with the operation of the public access channel, the County may, upon ninety (90) days notice to Contractor, cease said operation and terminate this Agreement.
 - F. In the event of termination of this Agreement pursuant to this Section 18, Contractor shall immediately, and in any event within thirty (30) days, relinquish to the County all facilities and assets acquired with funds received from the County, and shall surrender to the County all records and accounts of any kind relating to the operation of the public access channel.
 - G. In the event of termination prior to expiration of this Agreement, the County shall pay Contractor for any work performed, or reimburse Contractor for any expenses incurred pursuant to this Agreement up through the date of termination, provided that Contractor submits a statement for said costs to the County within thirty (30) days following the date of termination, and further provided that said work was performed or expenses incurred in good faith, and that said payment or reimbursement would otherwise be due under the terms of this Agreement.

18.5 **NON-APPROPRIATION.** The County's obligations under this Agreement are contingent on sufficient funds being allocated in the County's annual budget. Nothing herein shall be construed to require the County to appropriate sufficient funds for the public access channel or this Agreement, nor shall the failure or refusal to appropriate sufficient funds be a breach of the Agreement, but in said event, this Agreement shall terminate immediately.

SECTION 19. EXTENSION OF AGREEMENT This Agreement may be renewed or extended for an additional period pursuant to the following process:

- A. If Contractor seeks an extension of this Agreement; it shall on or before one hundred twenty (120) days prior to expiration of this agreement, submit to the County a letter of intent requesting extension.
- B. Within sixty (60) days of receipt of such extension request, the County shall respond to Contractor's letter of intent to request extension. If the County intends or decides to refuse to extend this Agreement, it shall so advise Contractor of the effective date for termination.

- C. If the County does not respond to the Contractor as specified in Section 19B or if a new Agreement is not in place at the expiration of this Agreement, it is understood by the County and the Contractor that this Agreement will remain in place until such time as a new Agreement is signed or the Contractor is terminated.

SECTION 20. APPLICABLE LAW This Agreement shall be interpreted and enforced under the laws of the State of North Carolina. Venue for any action arising under this Agreement shall be in Buncombe County, North Carolina.

SECTION 21. COUNTY COMMISSIONER'S LIAISON: At the County Commissioners's discretion, a member of the commission may be appointed as an official URTV Board liaison. This member of the County Commissioners may, at his/her discretion, attend all URTV Board of Directors and participate as a non-voting participant, in an effort to insure on-going communication and dialogue exists between the County of Buncombe and the URTV Board.

SECTION 22. NOTICES All notices and other communications to be given by either party shall be given in writing, depositing the same in the United States mail, postage prepaid and addressed to the appropriate party as follows:

To the County of Buncombe
County Manager
205 College Street, Suite 300
Asheville, NC 28801
828-250-4100

To Contractor:

(URTV mailing address) *P.O. Box 1063, Asheville, N.C. 28802*

Any party may change its address for notices by written notice to the other party at any time.

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SECTION 23. ENTIRE AGREEMENT. This Agreement is the entire agreement of the parties and supersedes all prior negotiations and agreements whether written or oral. This Agreement may be amended only by written agreement and no purported oral amendment to this Agreement shall be valid.

SECTION 24. HEADINGS. All articles and descriptive heading or paragraphs in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day hereinabove first written.

COUNTY OF BUNCOMBE, NORTH CAROLINA, a body corporate and politic

By: Wanda Greene 2/1/2005
Wanda Greene, County Manager

ATTEST Kathy Hughes 2/1/05
Kathy Hughes, Clerk to the Board

URTV, INC. a nonprofit corporation By:

BY: Maryanna Bailey President, URTV INC.

ATTEST: [Signature] Secretary, URTV Inc.