

**A RESOLUTION APPROVING AN AGREEMENT WITH THE PEOPLE'S CHANNEL
Draft Resolution No. 173/2011-12**

WHEREAS, The Town of Carrboro was granted use of Time Warner Cable channel 4 as a Public, Education, or Government (PEG) channel; and

WHEREAS, the Town has allowed The People's Channel to utilize channel 4 to operate a public access channel and provide programming to Carrboro residents; and

WHEREAS, the Town has the ability to certify channel 4 as an official PEG channel and receive PEG revenues for that channel; and

WHEREAS, any PEG revenues received for channel 4 would be required to be paid to The People's Channel as the channel operator; and

NOW THEREFORE BE IT RESOLVED that the Town Manager is hereby authorized to execute on behalf of the Town of Carrboro an agreement with The People's Channel.

CONTRACT FOR THE PROVISION OF PUBLIC, EDUCATION AND GOVERNMENT CABLE TELEVISION SERVICES

This contract is made and entered into as of the 1st day of July, 2012, by the Town of Carrboro ("Town"), a North Carolina municipality, and The People's Channel, Inc., (hereinafter TPC) a non-profit corporation organized and existing under the laws of North Carolina.

Section 1. Background and Purpose. The purpose of this service agreement is for TPC to provide the production and transmission of video content to be aired on the public access cable television ("PACTV") channel currently located at Channel 4 on the Time Warner cable menu of channels within the Town of Carrboro.

Section 2. Services and Scope to be Performed. TPC will be responsible for providing equipment, technical expertise and support to the public to broadcast video content and information on the PACTV channel allocated to the Town. Specifically, TPC will be responsible for accepting, digesting, programming, editing and uploading video productions for broadcast on the designated PACTV channel. TPC will operate a facility, with all necessary equipment and supporting technical expertise to effectuate the provision of broadcast services on the PACTV channel. In this contract, "Work" means the services that TPC is required to perform pursuant to this contract and all of TPC's duties to the Town that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of TPC.

TPC may require those who submit programming to certify that the programming complies with all applicable laws. TPC will accept and play back programming submitted by those who certify that it complies with TPC's policies and procedures and with all relevant State and federal laws. 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 State and Federal laws concerning public access programming. TPC reserves the right to establish reasonable technical standards for submitted programming, and to establish the rules for length, frequency and scheduling of programming.

Section 3. Compensation from the Video Service Competition Act.

As compensation for services provided under this Contract the Town agrees to pay TPC within thirty (30) days of receiving funds distributed according to the State of North Carolina Video Service Competition Act an amount equal to the total amount received by the Town for Public, Education, and Government Channel (PEG) distribution for the Channel allocated for use by TPC. The Town will not be obligated to pay TPC any other additional amounts as consideration for this Agreement.

Section 4. Funding from Other Sources. TPC may, during the course of this Agreement, receive supplemental funds from other sources, including, but not limited to fundraising activities.

Section 5. Insurance. TPC shall comply with the North Carolina Workers' Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. TPC shall supply the Town with certification of insurance for workers' compensation coverage with North Carolina statutory limits.

TPC shall maintain, at its expense, the following minimum insurance coverage:

POLICY	COVERAGE
<p>Workman's Compensation/Employer Liability</p> <p>Comprehensive General Liability Bodily Injury</p>	<p>Statutory Limits</p> <p>\$250,000 per accident \$250,000 per person</p>

Property Damage	\$250,000 each occurrence \$250,000 general aggregate
Automobile Liability Insurance	\$250,000 each accident (combined single limit)
Professional Liability Insurance	\$1,000,000 each claim \$1,000,000 annual aggregate

TPC agrees to furnish the Town proof of compliance with the insurance coverage requirements of this contract prior to commencing work. TPC shall furnish the Town a certificate of insurance from an insurance company, licensed to do business in the State of North Carolina and acceptable to the Town verifying the existence of any insurance coverage required by the Town. The certificate will provide for thirty (30) days advance notice in the event of termination or cancellation of coverage.

Section 6. Copyright and Ownership. TPC shall own the rights (copyright, creative commons, copyleft, etc.) of any programs that it may choose from time to time to produce. Rights of programming produced by the public shall be held by such person(s) who produces said programming.

Section 7. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the Town:

Town Manager

Town of Carrboro

301 W. Main St.

Carrboro, NC 27701

The fax number is (919) 918-4456

To TPC:

Chad A. Johnston - Executive Director

The Peoples Channel

300AC South Elliott Road

Chapel Hill, NC 27514

The fax number is (919) 960-0089

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Section 8. Indemnification.

(a) TPC shall indemnify and hold harmless Town, its officers, agents, employees and volunteers 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 of 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 or other injury or damage in law or at equity which claims, directly or indirectly, result from TPC use of channels or funds granted under this Agreement. In particular, TPC shall hold harmless and defend the Town against any claims arising from TPC'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 TPC.

(b) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the Town that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.

(c) Survival. The obligation created by this section shall survive the termination of this contract (whether by expiration of the term or otherwise) and termination of the services of TPC under this contract.

Section 9. Miscellaneous

(a) Choice of Law and Forum. This contract shall be deemed made in Orange County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Orange County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(b) Waiver. No action or failure to act by the Town or TPC shall constitute a waiver of any rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the Town from exercising or performing any regulatory, police, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment. Successors and Assigns. TPC shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract except with the Town's prior written consent. The Town Manager may consent to an assignment without action by the Town Board. Unless the Town otherwise agrees in writing, TPC and all assignees shall be liable for all of TPC's duties that arise out of this contract and all of the Town's claims that arise out of this contract. Without granting TPC the right to assign, it is agreed that the duties of TPC that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, TPC shall comply with all applicable law.

(g) Town Policy. TPC shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin, disability, or on the basis of sexual orientation or gender expression/identity. TPC shall take affirmative action to ensure that applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, disability, sexual orientation or gender expression/identity. In the event TPC is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be canceled, terminated or suspended in whole or in part by the Town and TPC may be declared ineligible for further the Town contracts.

(h) Independent Contractor. It is understood and agreed that TPC is an independent contractor and that no relationship of principal/agent or employer/employee exists between the Town and TPC. If in the performance of this Agreement any third persons are employed by TPC, such persons shall be entirely and exclusively under the control, direction and supervision of TPC. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment shall be determined by TPC and the Town shall have no right or authority

over such persons or terms of employment.

(i) No Third Party Rights Created. This contract is intended for the benefit of the Town and TPC and not any other person.

(j) Principles of Interpretation and Definitions. In this contract, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

(k) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the Town unless the Town Manager or designee signs it for the Town. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(m) Town's Manager's Authority. To the extent, if any, the Town has the power to suspend or terminate this contract or TPC's services under this contract, that power

may be exercised by Town Manager or designee without Board of Aldermen action.

(n) Cooperation. Each party agrees to execute all documents and do all things necessary and appropriate to carry out the provisions of this Agreement.

Section 10. Termination Procedures. This contract may be terminated by either party without cause upon 120 days written notice to the other party. This contract may be terminated for failure to perform services due or to meet other requirements of this contract following written notice of such failure as provided below. If a party to this contract believes that the other has failed to meet a material obligation under this contract, 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 contract for cause by giving written notice of termination and the reason therefore. Either party may terminate this contract 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 contract.

Section 14. Term of Agreement. This contract shall commence as of the date first written above, and shall extend for three years until and including June 30, 2015, unless terminated earlier as provided in this Agreement. This contract may be extended for up to three (3) additional years, by mutual written agreement of the Town and TPC.

IN WITNESS WHEREOF, the Town and TPC have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

THE PEOPLES CHANNEL, INC.

BY: _____

Chad A. Johnston, Executive Director

NORTH CAROLINA

COUNTY OF _____

I, a notary public in and for the aforesaid county and state, certify that _____, on behalf of The Peoples Channel, Inc., personally appeared before me this day and acknowledged the execution of the foregoing agreement with the Town of Carrboro. This the _____ day of _____, 20_____.

My commission expires:

Notary Public