

EXHIBIT A

AGREEMENT BETWEEN THE CITY OF NAPERVILLE AND NAPERVILLE COMMUNITY TELEVISION

THIS AGREEMENT (“**Agreement**”) entered into this _____ day of _____, 2020 (“**Effective Date**”), between the City of Naperville, an Illinois municipal corporation and home rule unit of local government under the Constitution and laws of the State of Illinois, with offices located at 400 South Eagle Street, Naperville, IL 60540 (hereinafter the “**City**”), and Naperville Community Television, an Illinois not-for-profit corporation with offices located at 127 Ambassador Drive, Suite 103, Naperville, IL 60540 (hereinafter “**NCTV17**”). The City and NCTV17 are together hereinafter referred to as the “**Parties**” and individually as “**Party**”.

RECITALS

1. WHEREAS, three cable companies currently provide cable television services within City limits, either as a state license holder under the Cable and Video Competition Law of 2007 (220 ILCS 5/21-100 *et seq.*), or through a cable franchise agreement (“**Cable Companies**”); and
2. WHEREAS, each of the Cable Companies pays the City certain fees, including a fee for public, education, and government access (“**PEG Fees**”); and
3. WHEREAS, the franchise agreement entered into between the City and Comcast of Illinois/West Virginia, LLC on October 20, 2020 (“**Comcast Agreement**”), and the Cable and Video Competition Law of 2007 which is applicable to holders of State-issued authorizations to offer or provide cable or video service, include provisions related to certain community access television services and payments of PEG Fees; and
4. WHEREAS, the Parties hereto wish to set forth their agreements and understandings concerning NCTV17’s administration of the community access provisions, including, but, not

limited to employment related matters, the administration of programming, funding sources, access of the City to the community access facilities, and provision of certain services to the City as generally described herein; and .

5. WHEREAS, the Parties mutually desire that full-time employees of NCTV17 should be provided health care benefits and life insurance by the City the same as full-time City employees.

NOW, THEREFORE, in consideration of the mutual promises contained herein, it is agreed by the Parties as follows:

Section 1: Recitals

1.1. The above Recitals are substantive and are incorporated in this Section 1 in their entirety by reference.

Section 2: Community Access

2.1 NCTV17 shall be the City's agent for the administration of the community access provisions under the Comcast Agreement and pursuant to state-issued authorizations for WideOpenWest, Illinois LLC and Illinois Bell Telephone Company, LLC [AT&T] to provide cable service pursuant to the Cable and Video Competition Law of 2007.

Section 3: NCTV17's Power and Authority

3.1 NCTV17 is to remain an autonomous not-for-profit corporation governed by an autonomous board of directors, which shall have the following power and authority to:

3.1.1 Solely determine the content of programming to be cablecast on Channel 17.

3.1.2 Select its personnel, employees, executive director and agents for the administration of the community access program. At all times NCTV17 employees shall remain employees of NCTV17 and not the City.

3.1.3 Expend all funds assigned to NCTV17 by the City and all funds received from other sources, pursuant to the provisions set forth in this Agreement.

3.1.4 Establish policies for the use of the community access facilities and equipment.

Section 4: The City's Obligations

4.1 In order to assist NCTV17 in providing effective community access programming for the residents of the City of Naperville as described herein, the City shall:

4.1.1 Allocate to NCTV17 a portion, or all, of the PEG Fees, or an amount equal thereto, as deemed appropriate by the City Council during the City's annual budget review process. If NCTV17 requests additional funds from the City above and beyond the PEG Fees, the request must be submitted through the City's annual budget review process and shall be subject to approval by the City Council. Nothing herein prohibits NCTV17 from seeking funding for special events and cultural amenities (SECA funding) through the City's SECA Grant Fund Program.

4.1.2 Provide NCTV17's employees who work at least forty (40) hours per week and NCTV17's executive director the same life insurance and group medical and dental coverage, and options for coverage as are provided City employees, as specified in the City of Naperville Employee Handbook. Such coverage and options for coverage shall be for life insurance and medical and dental benefits only and shall not include social security, IMRF, or other City benefits and compensation. The costs for life insurance and group medical and dental coverage, and options for coverage, shall be the sole responsibility of NCTV17. NCTV17 employees shall not be deemed City employees, nor shall they be under the control or supervision of the City.

4.1.3 Recognize NCTV17's unlimited and unrestricted use of Channel 17.

4.1.4 The Mayor will name, and the City Council will appoint, two City Council members to serve on the NCTV17 Board.

Section 5: NCTV17's Obligations

5.1 In return for the agreements and services set forth above to be performed by the City, NCTV17 shall:

5.1.1 Provide noncommercial public access programming on cable channel 17 for Naperville residents, including but not limited to local news, current and community events such as parades and concerts, local election coverage, local school sports, educational programming, programming for Seniors, and other specialized programming. Administer the community access system pursuant to this Agreement and in accordance with all applicable

laws without regard to the race, religion, creed, national origin, sex, physical or mental handicap, or political background of those wishing to use the system.

5.1.2 Allow the City free use, without deposit, of the equipment purchased for community access programming and the community access studio. Except in cases of emergency, City use of equipment and studio shall be subject to prior scheduling with NCTV17. However, NCTV17 agrees that it will not impose upon the City any limitations as to the number of hours which the City may use the equipment or studio. Further, NCTV17 agrees not to impose upon the City any penalties for cancellation of equipment or studio time.

5.1.3 Recognize the City's unlimited and unrestricted use of WCNC Channel 6 WOW, Channel 10-Comcast and Channel 99-AT&T, as said channel numbers and or providers may change from time to time.

5.1.4 Provide an annual audit conducted by an independent, certified public accounting firm.

5.1.5 Not amend its by-laws or charter as to representation by the City Council or the Board of Directors without the consent of the City Council of the City of Naperville.

5.1.6 Maintain the exemption in its by-laws which exempts the City Council members appointed to the Board of Directors from removal.

5.1.7 Submit a budget request during the City's annual budget review process.

5.1.8 Create videos and other presentations as requested by the City in order to communicate important City news and promote City business and services, including but not limited to producing (by taping and editing) the following: three two-to-five minute video programs annually, one per quarter not to include the Fall Quarter. Topics to be determined by the City Manager. or his designee to be rebroadcast on the City's government access cable TV channel: (WCNC), as mutually agreed between the NCTV17 Executive Director and the City Manager or his designee. The three videos, which are comparable to a public service announcement, will be educational in nature and feature city services. Communications Staff will work collaboratively with NCTV17 to produce these videos, write scripts, and transcribe interviews. NCTV17 will provide the technical crew for these videos. Communications Staff will work with the NC TV 17 technical crew to create the final product.

5.1.9 Broadcast all City Council meetings and workshops live and record to DVD, or such other method or medium as agreed upon, as well as the control room hard drive. Communications staff shall remain responsible for programming and re-broadcasting of City Council meetings.

5.1.10 Broadcast all other City meetings for purposes of the City channel WCNC, including the Planning and Zoning Commission, Transportation Advisory Board, Park District Board and other meetings as reasonably requested by the City, which meetings will be documented in a monthly broadcast schedule located in WCNC studios and created by Communications staff. Communications staff shall remain responsible for all programming and re-broadcasting of all other city meetings. Nothing contained herein shall be construed as a restriction on the ability of NCTV17 and the Park Board to mutually agree on compensation for the broadcast of Park Board meetings.

5.1.11 Assist and provide consultation services regarding maintaining, repairing and troubleshooting the City's audio-visual equipment. Also, as mutually agreed between the NCTV17 Executive Director and the City Manager or his designee, provide scheduled maintenance service on the City's audio-visual equipment. It is understood and agreed that the City may need to hire an Audio Video Engineer expert for certain technical problems such as large system failures.

5.1.12 Assist and provide consultation services regarding audio-visual system upgrade projects. It is understood and agreed that the City may need to hire an Audio Video Engineer expert for certain technical problems such as large system failures. It is also understood that NCTV17 and its designee is not liable or responsible in any way for results of such upgrades.

5.1.13 Produce and record annual City special events (e.g. the State of the City Address) on an as-needed basis as determined by the City Manager or his designee and agreed upon by the NCTV17 Executive Director. Related functions such as the creation of master DVD of the special event shall be determined before the start of the event. If NCTV is unable to provide services for any reason, NCTV17 will work with the City to procure alternate taping sources. This in no way financially obligates NCTV17. Should an alternate taping source be required, the specific City department requesting the video services could be required to provide monetary compensation for said services.

5.1.14 Provide assistance and support to the City's Communications staff relative to the functions and consultation services delineated herein. Specific functions include, but are not limited to, camera, lighting and sound support, meeting broadcast support, and new video technology support.

Section 6: **Term/Auto-Renewal**

6.1 This Agreement shall take effect on the Effective Date set forth on page 1 hereof and shall automatically renew on January 1st of 2022 and on January 1st of each year thereafter unless notice of termination is given as set forth in Section 7 below.

Section 7: Termination

7.1 Either Party may terminate this Agreement for any reason not later than October 31st of any year preceding the next auto-renewal date of January 1st. Termination shall be effective as of December 31st of that year unless a different termination date is agreed upon by the Parties in writing.

7.1.1. Notice of termination by either Party to this Agreement must be made in writing and mailed to the other Party by Fed Ex overnight mail, or similar service. Such mailing shall be deemed to be equivalent to personal notice and notice shall be deemed to have been given at the time of mailing.

7.2 Notwithstanding the provisions set forth in Section 7.1 above, should either Party breach any provision contained herein, the other Party shall give written notice of default to the defaulting Party. If the defaulting Party fails to correct the breach within thirty (30) days of receipt of the notice, the other Party may terminate this Agreement immediately. However, termination shall not be the exclusive remedy in the case of breach and the Parties reserve any remedy accorded by law.

Section 8: NCTV17 Equipment and Assets

8.1 Upon termination of this Agreement as set forth above, all equipment and assets of NCTV17 shall become the property of the City.

Section 9: Notices

9.1 Any notice required to be given by this Agreement shall be deemed sufficient if made in writing and sent by Fed Ex overnight mail, or similar service, or personal service to the persons and addresses indicated below or to such addresses and persons as either party hereto shall notify the other party of in writing pursuant to the provisions of this subsection:

For the City:
City Manager
City of Naperville
400 South Eagle Street
Naperville, IL 60540

For NCTV17:
Executive Director
NCTV17
127 Ambassador Dr. Suite 103
Naperville, IL 60563-8965

9.2 Mailing of such notice as provided shall be equivalent to personal notice and shall be deemed to have been given at the time of mailing.

Section 10: General Release and Covenant not to Sue

10.1 NCTV17 forever releases and discharges the City, its officials, agents, representatives, and employees from all claims, demands, damages, actions or causes of action, which may arise as a result of the City's performance of any services pursuant to this Agreement.

10.2 NCTV17 covenants not to sue or otherwise bring any action in law or equity against the City, its officials, agents, representatives, or employees for any claims, loss, damage, expense, debt or liability of any nature whatsoever, which NCTV17 may have sustained or may hereafter sustain as a result of the City's performance, of failure to perform, any services pursuant to this Agreement.

10.3 The provisions of Section 10 and each subsection shall survive the expiration or termination of this Agreement.

Section 11: Insurance

11.1 At its own expense NCTV17 shall carry the following insurance, and shall name the City of Naperville and its officers, agents, and employees as additional insureds on all policies, except Workers Compensation, for the duration of this Agreement:

Workers Compensation		Statutory limits
Comprehensive Automobile Liability . Including owned, Non-owned and hired		\$1,000,000.00
Commercial General Liability	General Aggregate -	\$2,000,000.00
Personal injury	Each Occurrence -	\$1,000,000.00
Umbrella	Aggregate -	\$1,000,000.00
	Each Occurrence -	\$1,000,000.00

11.2 All insurance policies shall be written with insurance companies licensed to do business in the State of Illinois and having a rating of not less than A IX, according to the latest edition of A.M. Best Company; and, unless otherwise approved in writing by the City Attorney, shall include a provision preventing cancellation of the insurance policy unless fifteen (15) days prior written notice is given to the City. Said cancellation provision shall be so stated on each Certificate of Insurance. NCTV17's insurance coverage shall be primary insurance with respect to the City of Naperville, its officers, officials, employees and volunteers; any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the NCTV17's insurance and shall not contribute with it. In addition, NCTV17 agrees to waive subrogation rights which any insurer of NCTV17 may acquire by virtue of the payment of any loss, and shall obtain any endorsement that may be necessary to effect this waiver of subrogation. Further, NCTV17's Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by NCTV17 and its employees, agents, subconsultants and subcontractors.

11.3 NCTV17 shall provide the City with the required Certificate of Insurance, and a copy of the additional insured endorsement therefor, within ten (10) days after execution of this

Agreement, and shall also provide confirmation of compliance with the requirements set forth in Section 11.2 above

Section 12: Entire Agreement

12.1 This Agreement sets forth all the covenants, conditions and promises between the parties. There are no covenants, promises, agreements, conditions or understandings between the parties, either oral or written, other than those contained in this Agreement. .

Section 13: Amendments and Modifications

13.1 This Agreement may be modified or from time to time by the City and NCTV17, provided, however, that no such amendment or modification shall be effective unless reduced to writing, duly authorized, and signed by the City Manager and the President of NCTV17.

Section 14: Savings Clause

14.1. If any provision of this Agreement, or the application of such provision, shall be rendered or declared invalid by a court of competent jurisdiction, or by reason of its requiring any steps, actions or results, the remaining parts or portions of this Agreement shall remain in full force and effect.

Section 15: Non-Waiver of Rights

15.1. No failure of either Party to exercise any power given to it pursuant to this Agreement or to insist upon strict compliance by the other Party with its obligations pursuant to this Agreement, and no custom or practice of the parties at with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. .

Section 16: Captions and Paragraph Headings

16.1. Captions and paragraph headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.

Section 17: Governing Law

17.1 This Agreement shall be governed by the laws of the State of Illinois both as to interpretation and performance. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

Section 18: Ambiguities

18.1 If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

Section 19: Authority

19.1 The undersigned warrant and represent that they have been lawfully authorized to execute this Agreement and to bind their respective Parties.

IN WITNESS THEREOF, the Parties have signed below, effective as of the Effective Date set forth on page 1 hereof, by their duly authorized representatives.

/SIGNATURES ON FOLLOWING PAGES/

CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

ATTEST

By: _____
Name: Pam Gallahue, Ph.D.
Its: City Clerk

Date: _____

NAPERVILLE COMMUNITY TELEVISION

By: _____
Elizabeth B. Spencer
Executive Director NCTV17

Attest: _____

By: _____
[Printed Name]

[Its]

Date: _____