

CITY OF LONGMONT, COLORADO SERVICES CONTRACT
PROPOSAL # RFP-VS-19065
PUBLIC, EDUCATIONAL, AND GOVERNMENTAL (PEG) ACCESS TELEVISION SERVICES

THIS CONTRACT, made this _____ day of _____, 20____, at the City of Longmont, Colorado, by and between the **City of Longmont, Colorado** (City), a municipal corporation, and the **Longmont Observer** (Contractor), a Colorado non-profit corporation, whose address is 356 ½ Main Street, Suite 6, Longmont, Colorado 80501.

1 RECITALS:

- 1.1 The City desires to use the services of the Contractor for the purposes of providing public, educational, and governmental television services for the residents of the City.
- 1.2 The Contractor has agreed to provide the services outlined in the Contractor's Proposal, upon the terms and conditions set forth in this Contract. The Contractor will perform no service under this Contract until direction from an authorized City employee is issued and received by Contractor.
- 1.3 The Longmont Observer as a news agency in the community will remain separate from the services to be provided under this contract. Services under this contract will be conducted under a new corporate identity specific to the provision of public, educational, and governmental television access services and branded as such. The new corporate identity shall be created before the term of this Contract begins. This Contract shall be automatically assigned to the new corporate identity specific to the provision of public, educational, and governmental television access services upon creation of the new corporate identity.

- 2 **STATION OF WORK:** The Contractor shall provide and furnish at its own proper cost and expense all materials, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to provide services in strict accordance with the conditions and prices stated in the Contract and other documents; the Contractor shall do everything required by the Contract.
- 3 **TERM:** The services to be provided under this Contract shall commence as of January 1, 2020, and shall continue through December 31, 2020, and may be renewed for successive one year terms if the parties mutually agree to do so.
- 4 **PRICE:** The City will pay the Contractor annually for the performance of this Contract an amount equal to twenty-five percent (25%) of the City's General Fund's 2020 budgeted cable television franchise revenues (the Contract Price). Fifty percent (50%) of the Contract Price shall be paid by the City within thirty (30) days of January 1, 2020. Twenty-five percent (25%) of the balance of the Contract Price shall be paid by the City by August 1, 2020, and the remaining twenty-five percent (25%) of the Contract Price shall be paid by November 30, 2020. Notwithstanding the foregoing, if the actual cable television franchise revenue collected by the City is greater than ten percent (10%) less than the City's General Fund's budgeted cable television franchise revenues, then the Contract Price shall be twenty-five percent (25%) of the actual cable television franchise revenue collected by the City, and the final payment shall be adjusted accordingly to reflect the revised Contract Price, and shall instead be paid by January 31, 2021. The City will name Contractor as Designated Access Provider pursuant to the City's cable franchise agreement for the purpose of allocating the "PEG Contribution" for capital costs related to Public, Educational, and Governmental Access.
- 5 **FINANCIAL OBLIGATIONS OF CITY:** This Contract does not create a multiple fiscal year direct or indirect debt or other financial obligation. Each request for service shall incur a concurrent debt for that

request only. All financial obligations of the City under this Contract are contingent upon appropriation, budgeting, and availability of specific funds to discharge such obligations.

- 6 CONTRACT DEFINED: This Contract incorporates, herein by reference, the terms and conditions of the following documents. If there is a conflict among the documents, their terms and conditions shall prevail in the following order:

- 6.1 Change Orders
- 6.2 Services Contract
 - 6.2.1 Exhibit A, Scope of Services
- 6.3 Request for Proposals
- 6.4 Contractor's Proposal
- 6.5 Certificate of Insurance naming the City of Longmont as additional insured
- 6.6 Workers' Compensation Certificate

- 7 SERVICE OF NOTICES: All required notices shall be deemed to have been validly given if delivered in person or by first class mail to the City at the following address:

CITY OF LONGMONT
Purchasing & Contracts Division
350 Kimbark Street
Longmont, CO 80501

LONGMONT OBSERVER
356 ½ Main Street Suite 6
Longmont, CO 80501

- 8 COMPLIANCE WITH THE LAW: This Contract shall be governed and construed in accordance with the laws of the State of Colorado. Venue and jurisdiction for any court action filed regarding this Contract shall be in either Boulder County Colorado or the United States District Court for Colorado. The Contractor will perform all obligations under this Contract in strict compliance with all federal, state, and municipal laws, rules, statutes, charter provisions, ordinances, and regulations.

- 9 INSURANCE: The Contractor shall not begin any work until the Contractor proves to the City's Purchasing and Contracts Division that it has obtained, at Contractor's own expense, all required insurance as specified below. Liability insurance must be of the occurrence form. Deviations from the requirements listed below must be submitted to and approved by the City's Risk Manager.

- 9.1 COMMERCIAL GENERAL LIABILITY insurance must cover bodily injury, property damage and personal injury with limits of no less than \$1,000,000 per occurrence. The Contractor shall cause the City to be named as an "Additional Insured". Contractor does not own any vehicles and Commercial Automobile Liability coverage is waived unless Contractor purchases or otherwise acquires any vehicle(s) at a future date while this contract is still in effect, whether the Initial Term or any extension thereof. After acquisition of such vehicle(s), if any, Contractor will be required to obtain commercial auto liability coverage and shall cause the City to be named as and "Additional Insured".

- 9.2 WORKERS' COMPENSATION coverage is waived as Contractor does not have any employees. If employees are hired at a future date while this contract is still in effect, whether the Initial Term or any extension thereof, Worker's Compensation must be provided, as statutorily required for persons performing work under this Contract. After employees are hired, if at all, Contractor must provide City with proof of Employer's Liability coverage with limits of at least \$500,000. Contractor shall require any subcontractor hired by the Contractor to carry Workers' Compensation and Employer's Liability coverage.

- 9.3 CERTIFICATE OF INSURANCE: As evidence of the insurance coverages required by this Contract,

prior to the effective date of this Contract, the Contractor and their subcontractors, shall furnish a certificate of insurance to:

CITY OF LONGMONT
Purchasing and Contracts Division
350 Kimbark Street
Longmont, CO 80501

- 9.4 The Certificate shall include the City of Longmont, its officers, agents and employees as “Additional Insureds” on all General Liability and Automobile Liability policies. Insurance coverages shall be obtained from insurance companies authorized to do business in the State of Colorado. If the Contractor or their subcontractors are qualified self-insureds under the laws of the State of Colorado appropriate declarations of self-insurance may be substituted.
- 9.5 CONTINUATION OF COVERAGE: The Contractor shall not cancel, materially change or fail to renew insurance coverages. The Contractor shall notify the Purchasing and Contracts Division of any material reduction or exhaustion of aggregate limits. Any insurance bearing on adequacy of performance (warranty or guarantee) shall continue after completion of the contract for the full guaranteed period. If any policy lapses or is canceled before final payment by the City to the Contractor and if the Contractor fails immediately to procure other insurance as specified, the City may deem such failure to be a breach of this Contract.
- 9.6 RESPONSIBILITY FOR PAYMENT OF DAMAGES: Nothing contained in these insurance requirements shall limit the Contractor's responsibility for damages resulting from Contractor's operations under this contract.
- 10 INDEMNITY: The Contractor hereby releases and agrees to indemnify, defend and save harmless the City and its agents from and against all claims, actions, causes of action, demands, judgments, costs, expenses and all damages of every kind and nature, incurred by and on behalf of any person or corporation whatsoever, predicated upon injury to or death of any person or loss of or damage to property of whatever ownership, including the parties to this Contract and their employees, and arising out of or connected with, in any manner, directly or indirectly, the Contractor's operations.
- The Contractor shall hold and save harmless the City from all claims for infringement, by reason of fee use of any patented design, device, material, process, or trademark or copyright and shall indemnify the City for any costs, expenses, and damages, including court costs and attorney fees, incurred by reason of actual or alleged infringement during the prosecution or after completion of Services.
- 11 STATUS OF CONTRACTOR: The Contractor shall perform all work under this Contract as an independent contractor and not as an agent or employee of the City. The Contractor will not be supervised by any employee or official of the City nor will the Contractor exercise supervision over any employee or official of the City. The Contractor shall not represent that the Contractor is an employee or agent of the City in any capacity. The Contractor shall supply all personnel, buildings, equipment and materials at Contractor's sole expense. **The Contractor is not entitled to City Workers' Compensation benefits and is obligated to pay federal and state income tax on money earned pursuant to this Contract.**
- 12 PROVISIONS CONSTRUED AS TO FAIR MEANING: The provisions of this Contract shall be construed as to their fair meaning, not for or against any party based upon any attributes to such party of the source of the language in question.

- 13 HEADINGS FOR CONVENIENCE: All headings, captions and titles are for convenience and reference only and of no meaning in the interpretation or effect of this Contract.
- 14 NO IMPLIED REPRESENTATIONS: No representations, agreements, covenants, warranties, or certifications, express or implied, shall exist as between the parties, except as specifically set forth in this Contract.
- 15 NO THIRD PARTY BENEFICIARIES: None of the terms or conditions in this Contract shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person other than the City or the Contractor receiving services or benefits under this Contract shall be only an incidental beneficiary.
- 16 WAIVER: No waiver of any breach or default under this Contract shall be a waiver of any other or subsequent breach or default.
- 17 TERMINATION: Either party may terminate this Contract by giving the other party thirty days written notice of such termination. The Contractor will then be paid for satisfactory work up to the date of termination. The City may terminate this Contract without cause; the Contractor may terminate this Contract only for cause.
- 18 TRANSFERENCE AND AMENDMENTS: Neither Party may transfer this Contract to a third party nor in any way amend this Contract without prior written consent of the other Party.
- 19 GRATUITIES:
- 19.1 It is unlawful and unethical for any person to offer, give or agree to give any City employee, City official or former City employee, or for any City employee, City official or former City employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.**
- 19.2 It is unlawful and unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor of any person associated therewith, as an inducement for the award of a subcontract or order.**
- 20 INTEGRATION: This Contract completely integrates all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment shall have any force or effect unless part of this Contract. No later novation, renewal, addition, deletion, or other amendment shall have any force or effect, except in a written supplemental document the parties duly sign. Except as specifically stated in this Contract, no representations, agreements, covenants, warranties, or certifications, express or implied, exist between the parties.
- 21 COUNTERPART SIGNATURES: This Contract shall become effective only when the City receives one or more copies duly signed by all parties. Parties may sign separate duplicates of this agreement. So long as all parties sign, the signed duplicates shall constitute one Contract, and the Contract shall be effective

as to all parties.

- 22 **RESERVATION OF RIGHT TO BAR PERSONS FROM THE WORK AND SITE:** The City reserves the right to bar any person, including employees of the Contractor and Subcontractors, from the City's Work site. This shall not be treated as a request for the employee's termination but a request that the employee not be assigned to work on the City Work site. No increase in contract time or price is authorized.
- 23 **UNLAWFUL EMPLOYEES, CONTRACTORS AND SUBCONTRACTORS:** Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor shall not knowingly contract with a subcontractor that (a) knowingly employs or contracts with an illegal alien to perform work under this Contract or (b) fails to certify to the Contractor that the subcontractor will not knowingly employ or contract with an illegal alien to perform work under this Contract.
- 24 **VERIFICATION REGARDING ILLEGAL ALIENS:** Contractor has confirmed the employment eligibility of all employees newly hired for employment to perform work under this Contract through participation in either the E-verify program administered jointly by the United States Department of Homeland Security and the Social Security Administration or the employment verification program of the Colorado Department of Labor & Employment.
- 25 **LIMITATION REGARDING E-VERIFY PROGRAM:** Contractor shall not use either E-verify or Colorado Department of Labor & Employment program procedures to undertake pre-employment screening of job applicants while performing this Contract.
- 26 **DUTY TO TERMINATE A SUBCONTRACT; EXCEPTIONS:** If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, the Contractor shall, unless the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien:
 - 26.1 notify the subcontractor and the City within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
 - 26.2 terminate the subcontract with the subcontractor if, within three days of receiving notice that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien, the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- 27 **DUTY TO COMPLY WITH STATE INVESTIGATION:** Contractor shall comply with any reasonable request of the Colorado Department of Labor and Employment made in the course of an investigation pursuant to C.R.S. 8-17.5-102 (5).
- 28 **DAMAGES FOR BREACH OF CONTRACT:** In addition to any other legal or equitable remedy the City may be entitled to for a breach of this Contract, if the City terminates this Contract, in whole or in part, due to Contractor's breach of any provision of this Contract, Contractor shall be liable for actual and consequential damages to the City.
- 29 **MATERIALS DELIVERED FOR CITY USE:** All programming and materials peculiar to the Services of Contractor or Contractor's consultants delivered for City use under this Contract are property of City, for its exclusive use and re-use at any time without further compensation and without any restrictions.

Contractor shall neither use any such material on other work nor disclose such material or information to any other party (including the Longmont Observer news agency) without City's prior written approval. Upon completion of Services, or at such other time as the City requires, Contractor shall deliver to the City a complete, reproducible set of all such materials. For copyright ownership under the Federal Copyright Act, Contractor conveys to City and waives all rights, title and interest to all such materials in written, electronic or other form, prepared specifically for City use under this Contract. City shall have worldwide reprint and reproduction rights in all forms and in all media, free of any claims by the Contractor or its consultants and subcontractors. The City's rights, granted above, in materials that are Contractor's standard documents for similar projects, and in Contractor's databases, computer software and other intellectual property developed, used or modified in performing Services under this Contract are not exclusive, but joint rights, freely exercisable by either the City or the Contractor.

- 30 **THIRD PARTY INTELLECTUAL PROPERTY:** Contractor will ensure all proper licensing and rights are obtained for third-party intellectual property used in the programming and materials Contractor produces under this Contract.
- 31 **INFORMATION AND COMMUNICATION TECHNOLOGY ("ICT"):** Information and communication technology means information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples include computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment; multifunction office machines; software; applications; Web sites; videos; and electronic documents.

Each information and communication technology (hereinafter referred to as "ICT") product or service furnished to the City under this Contract shall be accessible to and usable by individuals with disabilities in accordance with the Americans with Disabilities Act (hereinafter referred to as the "ADA") and other applicable Federal laws, including Section 508 of the Rehabilitation Act, and State laws and implementing regulations. For purposes of this clause, Contractor shall be considered in compliance with the ADA and other Federal and State laws if it satisfies the requirements (including exceptions) specified in the regulations [36 CFR Part 1194] implementing Section 508 of the Rehabilitation Act, including the Web Content Accessibility Guidelines (WCAG) 2.0 Level A and Level AA Success Criteria and Conformance Requirements (2008), which are incorporated by reference, and the functional performance criteria.

Contractor shall maintain and retain, subject to review by the City, full documentation of the measures taken to ensure compliance with the applicable requirements and functional performance criteria, including records of any testing or simulations conducted. For each ICT subject to the Contract, the documentation shall include a description of conformance with applicable federal and state laws by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request.

If Contractor claims its products or services satisfy the applicable requirement and standards specified above and it is later determined by the City that any furnished product or service is not in compliance with such requirements and standards, the City will promptly inform the Contractor in writing of the noncompliance. The Contractor shall, at no cost to the City, repair or replace the non-compliant products or services within the period specified by the City. If the repair or replacement is not completed within the specified time, the City may cancel the Contract or have any necessary changes made or repairs performed by employees of the City or by another contractor, and Contractor shall reimburse the City for any expenses incurred thereby. Contractor shall indemnify and hold the City harmless in the event of claims arising from inaccessibility.

CITY OF LONGMONT:

MAYOR

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY

DATE

PROOFREAD

DATE

APPROVED AS TO FORM AND SUBSTANCE:

ORIGINATING DEPARTMENT

DATE

APPROVED AS TO INSURANCE PROVISIONS:

RISK MANAGER

DATE

State of Colorado)
) ss.
County of Boulder)

I attest that the foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ as the Mayor of the City of Longmont.

Witness my hand and official seal.

City Clerk, Notary Public

My commission expires_____.

LONGMONT OBSERVER

By: _____
Scott Converse, Publisher/Co-Founder

State of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me by _____,
(Name of party signing)

as _____ of _____,
(Title of party signing) (Name of corporation)

a _____ corporation, on behalf of the corporation, this _____ day of
(State of incorporation)

_____, 20_____.

Witness my hand and official seal.

Notary Public

My Commission expires _____.

EXHIBIT A SCOPE OF SERVICES

Longmont Observer (Contractor) shall provide the following services at the indicated funding level from the City:

- 1. Broadcasting listed in the RFP.** Broadcast professional quality programming on the current cable stations (8, 14, 16, 888), on Layer 3 TV, YouTube and on Contractor's own website. Some programming should be streamed on social media (Facebook Live).
- 2. All required programming listed in the RFP.** Produce a variety of programming in a modern setting and in various locations and with various durations (30 seconds – several hours), including at a minimum:
 - a. Record City Council meetings, St. Vrain Valley School District Board meetings, Planning and Zoning meetings and a short, Council wrap up video which describes the outcomes of the Council meeting during the same week as the meeting.
 - b. High-quality local shows, including sports, arts, history and entertainment programs.
 - c. Regular news program with breaking news, traffic, local events and hot topics. Any news programming requires closed captioning.
 - d. "Around the town" style entertainment-style programs and documentary-style programs about local issues.
 - e. How-to classes – e.g. language classes (English and Spanish), cooking classes, painting classes, how to install a router, how to build a shelf.
 - f. Performing arts programs – poetry, music, cultural events.
 - g. Videos at the direction of City staff to assist with outreach and engagement. This includes up to 20 hours per week of videography time.
- 3. The following additional scope items listed in the RFP.**
 - a. Record the City's 17 advisory boards and commissions (video or audio only dependent on the circumstances of that board or commission) as referenced in Contractor's Proposal under Section 6. Additional Scope Programing – Additional Scope 1 – Suggested Alternative Option and make it available to the general public via a website - see 5.b below.
 - b. Using specialized artificial intelligence (AI) assisted voice to text software, convert all the government (City Council, Planning and Zoning, School Board, 17 boards and commissions meetings) to searchable text, as referenced in our original RFP response/proposal under Section 6. Additional Scope Broadcasting – Additional Scope and make it available to the general public via a website - see 5.b below.
 - c. Create regular audio podcasts of community interest as referenced in Contractor's Proposal under Section 6. Additional Scope Programing – Additional Scope 4 (new idea) – Provide regular podcasts.
 - d. Create an open to the public podcast studio as referenced in Contractor's Proposal under Section 6. Additional Scope 6 (new idea).
 - e. Create a live-streaming radio station (internet only) as referenced in Contractor's Proposal under Section 6 Additional Scope 7 (new idea).
- 4. Community Outreach listed in the RFP.** Coordinate a public access program, train residents on publicly-owned equipment and run appropriate programming produced by any video group in Longmont (Senior Center Film Group, Student Film Center, etc.) Work with various information

outlets in partnership for innovative programming/involvement. Includes all of section 7. “Innovative Collaborations with Other Community Groups” from Contractor’s Proposal.

5. **Marketing listed in the RFP.** Develop an ongoing marketing plan to communicate the programming created and broadcasted, including regular advertisement on social media platforms, with traditional and electronic news media, through electronic subscription and reminders for the public on various programming and other innovative strategies deemed appropriate by the Contractor. This will include:
 - a. All “Marketing Strategy” outlined in Contractor’s Proposal.
 - b. A “New Simple and Easy to Navigate Website” outlined in Contractor’s Proposal.
6. **Metrics listed in the RFP.** Appropriate metrics to measure success. This may include measures such as public knowledge of important issues and amount of civic engagement. The Contractor will propose/define the measures, collect the data, measure success and provide a quarterly report to the City Council. Metrics outlined in Contractor’s Proposal include (but may not be limited to):
 - a. Number of sessions
 - b. Number of users/viewers
 - c. Times a video has been loaded
 - d. Times video has been (fully) viewed
 - e. Drop off time if viewer didn’t finish the video (minutes viewed and % of video viewed)
 - f. Page views of associated articles
 - g. Most popular videos/shows
 - h. Least popular videos/shows
 - i. Ranked lists of shows
 - j. Feedback from users (via built-in feedback mechanisms) on videos/shows
 - k. Viewership numbers of usage on the various broadcast channels (Comcast and Layer3 TV) will be provided in a similar fashion, assuming the data is available

The City of Longmont’s Communications Manager shall:

1. Attend Longmont Observer production meetings, as needed, to help strategize future programming.