

THE STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

RFP #TC-5-0734-039-20657  
ORDINANCE # \_\_\_\_\_  
CONTRACT # \_\_\_\_\_

## I. PARTIES

### A. Address

**THIS AGREEMENT FOR PROGRAMMING SERVICES** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation, and **HOUSTON MEDIASOURCE** ("Contractor"), a Texas non-profit corporation doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

<u>City</u>	<u>Contractor</u>
City Purchasing Agent City of Houston P. O. Box 1562 Houston, Texas 77251	Houston MEDIASOURCE 2302 Texas Houston, Texas 77003 Phone: 713-524-7700 Fax: 713-524-3823

The Parties agree as follows:

### B. Table of Contents

This Agreement consists of the following sections:

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**EXHIBITS**

- A. MediaSource Rules and Procedures**
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- D. Drug Policy Compliance Agreement**
- E. Certifications of No Safety Impact Positions**
- F. Drug Policy Compliance Declaration**
- G. HMS Programming Contract**

C. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original.

ATTEST/SEAL

HOUSTON MEDIASOURCE

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS  
Signed by:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Mayor

APPROVED:

\_\_\_\_\_  
City Purchasing Agent

\_\_\_\_\_  
Director, Finance and Administration

COUNTERSIGNED BY:

\_\_\_\_\_  
City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

\_\_\_\_\_  
Sr. Assistant City Attorney  
L.D. File No.

\_\_\_\_\_

## II. DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Access Channel" means a PEG Channel assigned by the City to Contractor for operation and management by Contractor.

"Adult Programming" means language or material that includes Indecent, Sexually Explicit, and/or Profane Material or material that depicts graphic and persistent violence.

"Agreement" means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"Contract Term" means the period commencing on the December 15, 2005 and ending six months thereafter.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means the date shown as the date countersigned on the signature page of this Agreement.

"Director" means the Director of the Department of Finance and Administration, or the person he or she designates.

"Documents" mean notes, manuals, notebooks, plans, computations, databases, tabulations, exhibits, reports, underlying data, charts, analyses, maps, letters, models, forms, photographs, the original tracings of all drawings and plans, and other work products (and any modifications or improvements to them) that Contractor prepares or provides under this Agreement.

"Effective Date" means December 15, 2005.

"Indecent" means material, which includes a description or depiction of sexual or excretory activities or organs in a manner patently offensive as judged in context by contemporary community standards.

"Parties" mean all the entities set out in the Preamble who are bound by this Agreement.

"PEG Channels" means the channel space for the carriage of public, educational and government access programming required to be provided by the City's cable television franchises.

"Profane Material" is defined as including language that denotes certain of those personally reviling epithets naturally tending to provoke violent resentment or denoting language so grossly offensive to members of the public who actually hear it as to amount to a nuisance.

"Public Access Payments" mean 50 percent of the total ongoing, present and future Public, Educational and Government Access Payment to support Public Access Programming under this Agreement pursuant to Article III below.

"Houston MediaSource Channel" means one PEG Channel assigned by the City to Contractor for operation and management by Contractor pursuant to the terms hereof

"Public Access Programming" means the services to be provided by Houston MediaSource relating to the designated PEG Channels as more fully described in this Agreement, including without limitation those services described in Article IV below.

"Public and Educational and Government Access Payments" means payments made to the City by cable operators under the City's cable franchises with respect to the annual support of the PEG Channels for the support of public, educational, and government access programming.

"Purchasing Agent" means the City Purchasing Agent, or the person he or she designates.

"Sexually Explicit Programming" means language or material that depicts or describes sexual contact, actual or simulated sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.

### III. DUTIES OF CONTRACTOR

#### A. Scope of Services

- (1) Scope, generally. Contractors will manage and operate the functions and activities involved in developing, producing and providing Public Access Programming. Such terms will include all services and facilities reasonably necessary to:
  - (a) Manage and operate the Access Channel and associated facilities.
  - (b) Provide a means of production and delivery of Public Access Programming for the Access Channel to cable systems and/or the City's playback facility either by means of tape or live feed.
  - (c) Provide all programming, facilities, equipment, materials and personnel necessary to fulfill Contractor's obligations under this Agreement.
  - (d) Implement effective internal, financial and operating controls to ensure efficient use of all funds and other resources provided hereunder, including channel space. Operational Controls shall include staff review of programming labeled as Adult, Sexually Explicit, or Indecent by a producer, prior to transmittal via cablecast, to ensure compliance with all applicable laws, contracts, City Ordinances and the City's cable franchise

agreements. The Operational Controls shall be at least as stringent as those set out in Exhibit A, attached hereto and incorporated herein.

- (e) Make diligent efforts to secure outside funding, including soliciting contributions, to augment Public Access Payments, including without limitation solicitation of public membership subscriptions.

(2) Development of access strategies. As further service to be provided hereunder, Contractor shall develop and implement strategies to achieve the following goals and objectives:

- (a) to ensure that top quality public access programming is available that reflects the activities, culture, concerns and interests of the citizens of the City and promotes a free exchange of ideas, information and understanding within the community;
- (b) to involve the community in the development and production of public access programming including educational institutions located within the service area; and
- (c) to improve the viewership of public access programming by improving the quality of public access programming.
- (d) a plan of work to achieve the actions required herein shall be provided within 90 days of execution of this agreement.

(3) Local programming. Contractor shall abide by the following programming requirements throughout the Contract Term:

- (a) Contractor shall cablecast a minimum of 18 hours per day of eligible programming, excluding character-generated programming;

- (b) A minimum of 51 percent of the total hours programmed on the Access Channel shall be locally produced in the Houston metropolitan area;
  - (c) Contractor shall make available a minimum of 61 hours per week of community interest programming developed by community groups, organization and other local institutions.
- (4) Policies and procedures. In connection with the performance of its obligations hereunder, Contractor shall establish, implement and enforce quality control and other procedures for programming and Playback Facility in compliance with the Policies and Procedures contained in Exhibit A. Public Access Programming must be consistent with the goals, objectives and the scope of services stated in this Agreement throughout the Contract Term. Contractor will require all producers to label all as such programs containing Adult or Sexually Explicit material. Contractor will prescreen all such programs. Programs containing Adult or Sexually explicit, or Indecent material shall not be cablecast between the hours of 6:00 a.m. and 9:59 p.m., Sunday through Thursday, or between the hours of 6:00 a.m. and 1 a.m. on Fridays and Saturdays. The Policies and procedures shall incorporate the Rules and Procedures attached as Exhibit "A". Contractor shall require its Producers to complete and execute Exhibit "G", attached hereto, prior to submission of material for broadcast.
- (5) Development and implementation of public participation.
  - (a) Houston MediaSource shall develop and implement strategies for assuring broad public participation in public access by actively soliciting and using the diverse resources available in the community.

- (b) Without limiting the generality of the foregoing, the above includes, at a minimum:
  - (i) Providing training to members of the general public for use of production facilities and equipment, including making Contractor's personnel available to train the public in the use of Contractor's production facilities and equipment and publicizing and conduction at least 12 training courses per year.
  - (ii) Providing to local individuals, institutions and organizations, on a non-discriminatory bases, the necessary resources to produce public access programs. This includes facilities, materials, equipment and personnel.
- (6) Use of Access facilities for personal purposes. Contractor, its board members, officers or employees shall not engage in programming or other activities that use Contractors resource, including channel space, for personal gain or otherwise to promote the personal interests of those individuals not consistent with the goals and objectives described herein. In addition, neither the Access Channel nor the Public Access Payments shall be used for commercial purposes.
- (7) Contractor shall provide written strategic plan within 60 days of the execution of this contract to include fundraising goals and objectives.

B. Reports and Records

- (1) Rules, regulations and policies. Contractor shall, within 60 days of the approval of this Agreement by the City Council, provide the Director with a complete copy of all of Contractor's rules, regulations and policies

relating to the subject matter of this Agreement. Contractor shall provide the Director with a copy of any changes to such rules, regulations and policies within 10 days of their adoption. Contractor shall not change the Rules and Procedures attached as Exhibit "A" without the consent of the City Council.

(2) Quarterly report. Within 60 days of the close of each calendar quarter during the Contract Term, Contractor shall provide to the Director a written report of its activities under this Agreement during the preceding calendar quarter. The quarterly report shall include:

- (a) Quarterly financial statements prepared in accordance with generally accepted accounting principles; and
- (b) A summary of training activities for the quarter; and
- (c) A summary of use of access facilities by public.

(3) Report. Within 60 days of the end of this Agreement, Contractor shall provide to the Director a written annual report. The report shall include:

- (a) A summary of activities related to the City's goals and objectives for public access programming, including progress toward compliance with the goals set out in Section A above;
- (b) Annual financial statements certified by an independent certified public accountant. In the alternative, annual financial statements may be submitted within 90 days of the conclusion of the Contractor's fiscal year if such fiscal year does not coincide with the end of the Contract Term;

- (c) An annual capital and operating budget for the Contract Term. As an alternative, the annual capital and operating budget may be submitted not less than 90 days prior to the commencement of the fiscal year, if the fiscal year does not coincide with the end of the Contract Term.
- (4) Final report. A final report comprised of all items in Section B.(3) since the last quarterly report to the end of the Contract Term above shall be submitted no more than 60 days after the end of the Term and shall also include a summary for the entire Term.
- (5) Miscellaneous reporting. Contractor shall promptly report to the Director in writing any conditions, transactions, situations or circumstances of which Contractor is aware that would impede or impair the proper and timely performance of this Agreement.
- (6) Audit. Contractor shall cause a financial audit to be performed of its books and records once at the end of Contractor's fiscal year by an independent certified public accounting firm, and shall provide the Director with five copies of the final audit report within ten days after its issuance.
- (7) Reporting forms. Any report or other documentation required to be provided by Contractor to the City shall be made on a form promulgated by the Director. If the Director has not provided a form, Contractor shall submit its reports or documentation in a manner reasonably capable of setting forth the required information in a comprehensible and concise form.

C. **RELEASE**

CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

D. **INDEMNIFICATION**

CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (1) CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 1-3,

"CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;

- (2) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND
- (3) THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR'S INDEMNIFICATION IS LIMITED TO \$500,000 PER OCCURRENCE. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.

**E. INDEMNIFICATION PROCEDURES**

- (1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances, which could give, rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:
  - (a) a description of the indemnification event in reasonable detail,
  - (b) the basis on which indemnification may be due, and
  - (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10-day period, it does not waive any right to

indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

(a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim.

If Contractor does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

F. Insurance

Contractor shall maintain in effect certain insurance coverage, which is described as follows:

(1) Risks and Limits of Liability. Contractor shall maintain the following coverages and limits of liability:

<u>(Coverage)</u>	<u>(Limit of Liability)</u>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	Bodily Injury by accident \$500,000 (each accident) Bodily Injury by Disease \$500,000 (policy limit) Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Including Broad Form Coverage,	\$2,000,000 aggregate for other than Products and Completed Operations
Combined Single Limit for Bodily Injury and Property Damage,	\$1,000,000 each occurrence
Personal Injury Protection, Combined limits of	\$1,000,000 each occurrence
Products and Completed Operations	\$2,000,000 aggregate
Umbrella Liability Policy	\$2,000,000 each occurrence \$2,000,000 aggregate, Excess Underlying Coverage
Automobile Liability Insurance (for vehicles Contractor uses in performing under this Agreement, including Employer's Non-Owned and Hired Auto Coverage)	\$1,000,000 combined single limit Each Accident
Media Professional Liability Coverage	

Defense costs are excluded from the face amount of the policy.  
Aggregate Limits are per 12-month policy period  
unless otherwise indicated.

- (2) Form of Policies. The Purchasing Agent may approve the form of the insurance policies, but nothing the Director does or fails to do relieves Contractor from its duties to provide the required coverage under this Agreement. The Purchasing Agent's actions or inactions do not waive the City's rights under this Agreement.

- (3) Issuers of Policies. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide.
- (4) Insured Parties. Each policy, except those for Workers' Compensation, Employer's Liability, and Professional Liability, must name the City (and its officers, agents, and employees) as Additional Insured parties on the original policy and all renewals or replacements.
- (5) Deductibles. Contractor shall be responsible for and pay any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.
- (6) Cancellation. Each policy must state that it may not be canceled, materially modified, or nonrenewed unless the insurance company gives the Purchasing Agent 30 days' advance written notice. Contractor shall give written notice to the Purchasing Agent within five days of the date on which total claims by any party against Contractor reduce the aggregate amount of coverage below the amounts required by this Agreement. In the alternative, the policy may contain an endorsement establishing a policy aggregate for the particular project or location subject to this Agreement.
- (7) Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.
- (8) Endorsement of Primary Insurance. Each policy, except Workers' Compensation and Professional Liability (if any), must contain an endorsement that the policy is primary to

any other insurance available to the Additional Insured with respect to claims arising under this Agreement.

- (9) Liability for Premium. Contractor shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.
- (10) Subcontractors. Contractor shall require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements except amount. The amount must be commensurate with the amount of the subcontract, but in no case less than \$500,000 per occurrence. Contractor shall provide copies of insurance certificates to the Purchasing Agent. Subcontractors shall not include Contractor's program producers.
- (11) Proof of Insurance.
  - (a) On the Effective Date and at any time during the Term of this Agreement, Contractor shall furnish the Purchasing Agent with Certificates of Insurance, along with an Affidavit from Contractor confirming that the Certificates accurately reflect the insurance coverage maintained. If requested in writing by the Purchasing Agent, Contractor shall furnish the City with certified copies of Contractor's actual insurance policies.
  - (b) Contractor shall continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If Contractor does not comply with this requirement, the Purchasing Agent, at his or her sole discretion, may
    - (1) immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default, or
    - (2) purchase the required insurance with City funds and deduct the cost of the premiums from amounts due to Contractor under this Agreement.

The City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

(12) Other Insurance. If requested by the Purchasing Agent, Contractor shall furnish adequate evidence of Social Security and Unemployment Compensation Insurance, to the extent applicable to Contractor's operations under this Agreement.

G. Maintenance of records

At all reasonable times during the term of this Agreement and for three years thereafter, the Director and City Council Members shall have access to all books and records of Contractor related to the performance of this Agreement.

Contractor shall make all information related to this Agreement available in Houston, Texas, to the Director and City Council Members upon request.

H. Licenses and permits.

Contractor shall obtain and pay for all licenses, permits and certificates required by any statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the conduct of Contractor's operations and performance hereunder.

I. Compliance with Equal Opportunity Ordinance

Contractor shall comply with City's Equal Employment Opportunity Ordinance as set out in Exhibit "B".

J. MWBE Compliance

Contractor shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances. Contractor shall make good faith efforts to award subcontracts or supply agreements in at least 11% of the value of this Agreement to MWBEs. Contractor acknowledges

that it has reviewed the requirements for good faith efforts on file with the City's Affirmative Action Division and will comply with them. Contractor shall require written subcontracts with all MWBE subcontractors and shall submit all disputes with MWBEs to binding arbitration to be conducted in Houston, Texas, if directed to do so by the Affirmative Action Division Director. MWBE subcontracts must contain the terms set out in Exhibit "C". If Contractor is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000 or less, the attorneys of the respective parties must also sign the subcontract.

K. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

(2) Before the City signs this Agreement, Contractor shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- (a) a copy of its drug-free workplace policy,
- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "D," together with a written designation of all safety impact positions and,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "E."

If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of this Agreement or on completion of this Agreement if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "F." Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this Agreement. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.

(3) Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.

(4) Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

#### **IV. PAYMENT**

A. Public Access Payments.

As payment for the services provided by Contractor to the City under this Contract, the City shall pay to Contractor 100 percent of the Public Access Payments, being 50 percent of the Public, Educational and Governmental Access Payments during the Contract Term.

B. Manner of payment.

The Public Access Payments shall be due and payable in quarterly installments, at the end of each quarter of the Contract Term, within 30 days of receipt by the Director of an invoice therefore from Contractor; provided that, the City is not responsible for making any payments under this Contract except in proportion to the actual Public, Educational and Government Access Payments that have been received by the City. The City shall provide to Contractor an

estimate of amounts expected to be available to Contractor hereunder as soon as practicable upon completion of the City's annual budget.

## V. TERM AND TERMINATION

### A. Contract Term

This Agreement is effective on December 15, 2005 and remains in effect for six months, unless sooner terminated under this Agreement.

### B. Default and Termination

(a) The City may terminate this Contract in the event of a default by Contractor and a failure to cure such default within 30 days of receiving notice of default from the City. Contractor acknowledges and agrees that any such services it provides to the City after the termination of this Contract will be deemed to be gratuitously provided, and the City shall have no obligation to pay for such services unless the City Council of the City agrees to do so in its sole discretion.

(b) Default may result from Contractor's failure to perform under the terms of the Agreement or from Contractor becoming insolvent, having a substantial portion of its assets seized for the benefit of creditors, or having a receiver or trustee appointed. Termination of this Contract shall not act to limit the right of the City to any other remedy in law or otherwise. The City Attorney shall have the right to enforce all legal rights and obligations under this Contract without further authorization. Contractor covenants to provide to the City Attorney all documents and records that the City Attorney deems necessary to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or state law or regulation.

(c) Performance review. To assure that Contractor is complying with the terms of this Agreement, the City shall conduct a review of Contractor's performance under this Agreement

upon completion of the first 60 days. If the City finds that Contractor is not in material compliance with all provisions of this Agreement, the Purchasing Agent shall notify Contractor in writing of all deficiencies. Contractor shall have 30 days to cure any such deficiencies, unless the Purchasing Agent provides otherwise. If Contractor does not cure all deficiencies in a timely manner to the satisfaction of the Director, the Purchasing Agent shall commence action to terminate this Agreement pursuant to Article V. B. above.

## **VI. MISCELLANEOUS**

### **A. Independent Contractor**

Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

### **B. Force Majeure**

1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult,

expensive or impractical. Force Majeure does not entitle Contractor to extra Reimbursable Expenses or payment.

2. This relief is not applicable unless the affected party does the following:
  - (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
  - (b) provides the other party with prompt written notice of the cause and its anticipated effect.
3. The Purchasing Agent will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within 14 days. The decision of the Purchasing Agent is final.
4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.
5. If the Force Majeure continues for more than 10 days from the date performance is affected, the Purchasing Agent may terminate this Agreement by giving 7 days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**
6. Contractor is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Contractor shall employ only fully trained and qualified personnel during a strike.

C. Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

D. Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

E. Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

F. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Agreement is Harris County, Texas.

G. Notices

All notices required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the

preamble of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

H. Captions

Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

I. Non-Waiver

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement. An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

J. Inspections and Audits

City representatives may have the right to perform, or have performed, (1) audits of Contractor's books and records, related to this Agreement, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 3 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

K. Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City

Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

L. Ambiguities

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.

M. Survival

Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

N. Risk of Loss

Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for each Product passes from Contractor to the City upon acceptance by the City.

O. Parties In Interest

This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

P. Successors and Assigns

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This Agreement does not create any personal liability on the part of any officer or agent of the City.

Q. Business Structure and Assignments

Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in §9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee. Contractor shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.

R. Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies, which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

S. Contractor Debt

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT

FUNDS IN AN AMOUNT EQUAL TO THE DEBT FOR ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR.

EXHIBIT "A"



**Houston  
MediaSource**

*Building Community Through Media!*

# **RULES & PROCEDURES**

**2302 Texas ~ Houston, Texas ~ 77003**

**(713) 524-7700**

**[www.houston-mediasource.org](http://www.houston-mediasource.org)**

Houston MediaSource, a non-commercial 501(c)(3) arts-service organization, receives funding from the cable franchise corporations through the City of Houston. The Texas Commission on the Arts and the Education Foundation of Harris County provide special project funding.

## **Preamble**

Freedom of speech, as guaranteed by the First Amendment to the United States Constitution is a basic, defining principle of democracy at the community level, both for the general citizenry and for the leaders of local government. Robust and open discourse, through public access to media, promotes the social health of the community.

Houston MediaSource ensures content-neutral programming and fair and equitable opportunity for all users of the service.

All rules and procedures for the use of community media resources fortify the principle that each program's creator (producer) assumes personal responsibility for his or her expression that this is the best means of guaranteeing individual freedom of speech rights. The producer alone, therefore, not the City of Houston, its officials, or the managers of the community media resources, assumes complete responsibility for the exercise of his or her free speech rights, and any legal consequences arising therefrom.

A court of law ultimately decides the legality of any given speech or expression. Because of this, and the First Amendment concerns above, the City does not make any regulations concerning the content of speech cablecast through use of the community media facilities, other than requiring its legality. The City provides a conduit for the exercise of individual, non-profit, free speech, and the City, therefore, assumes no responsibility for the content of such expression.

Community access to television and other media protects and enhances producers' free speech rights. A producer should never take the responsibilities inherent in the right of free expression lightly. It is the producer who must analyze the effect of his or her program on the community and determine the appropriateness of the material to be cablecast, and who must weigh and understand his or her liability.

This is the price we, as free citizens, pay for the opportunity of free speech in America.

**Rules and Procedures  
For Use of Houston Media Source Resources**

**We The People Television (WTP-TV)** is the community television venue for Houston Media Source, a 501(c)3 service organization that receives funding through the City of Houston cable franchise agreement. The Rules and Procedures are designed to meet City of Houston Contract compliance and to provide equitable use of HMS facility and resources. HMS services are for the sole purpose of providing television programming for the citizens of Houston.

I. Facility Use

A. Eligibility

Eligibility for use of Houston Media Source (HMS) managed resources is limited to any adult resident (or authorized minor) of the City of Houston, or any authorized representative of a Houston organization, or of a Houston Metropolitan Area organization, provided that:

1. The individual produces community access programs for the HMS channel.
2. Resources will not be used to produce programs that are commercial in content or for any other commercial purpose.
3. The producer has provided a local street residence address and a local contact telephone number along with two valid identification documents (one to establish personal ID and one to establish residency).
4. Resources will be used only within the Houston area, unless special permission for other use is granted.
5. The individual who operates the equipment has on file a certification for specific equipment use. (To become certified, an individual must successfully complete a production workshop or a proficiency test conducted by HMS staff.)
6. All producers attend at least one orientation session annually to remain in good standing. Orientations are offered weekly, except holidays, free of charge to the public. Orientation is required prior to enrollment as a producer.
7. The producer is in good standing (Current on fees, orientation and not otherwise barred from services.)
8. An individual residing outside of the City of Houston pays an additional user fee. (Harris County or contiguous counties constitute the Houston Metropolitan Area)
9. Each producer will take a course in Media Literacy prior to scheduling their first program on the public access channel

NOTE: Producer use of a post office box as a resident address for Houston Media Source purposes, including information provided on equipment and program forms, is not acceptable.

B. Reservation procedures

1. Reservations for resources are available on a first-come, first-served basis; as advance series reservations; for allotted showcases; and by special request. All reservations are awarded without favoritism.
2. Reservations may be made or canceled only by the certified producer of record.
3. Reservations must be made in advance of equipment use.
4. Reservations may be made in person or by telephone during regular business hours. Requests for reservations may be made by voice, mail, e-mail or US mail, but are not considered confirmed until you actually speak to an HMS staff member.
5. Reservations for all resources and channel space may be made up to 21 days in advance of actual use.
6. A reservation may be made to check out equipment for up to 2 days.
7. A producer may hold only one reservation for resource use at any given time. Once a reservation is claimed or canceled, that reservation is considered used and another reservation may be made.
8. Special requests for reservations may be submitted in writing for the following:
  - a. use of equipment outside the Houston area
  - b. equipment use longer than 2 days in succession
  - c. reservations made more than 21 days in advance
  - d. use of more than one resource at a time
  - e. any other resource use exceeding stated limitsSpecial requests may be granted with the following contingencies:
  - a. impact on other users
  - b. amount of programming to be produced
  - c. safety and care of the equipmentA production plan is required as part of the special request. Special request forms are available in the Equipment Room. Two (2) special requests per producer may be made per year although additional requests may be granted at a lower priority.
9. Staff will attempt to notify the holder of a reservation should the equipment malfunction or adversely affect the reservation.
10. Edit reservations may be made for up to four (4) hours at one time.
11. A producer may reserve edit equipment for a maximum of twelve (12) hours total per week.
12. Prior to processing producers' reservation requests, HMS reserves the right to reserve any equipment in advance for maintenance, training, production or outreach purposes.

### C. Cancellations

1. The producer must notify the HMS staff of any cancellation of reserved equipment or facilities twenty-four (24) hours prior to the time requested, unless otherwise stated.
2. Forty-Eight (48) hours prior notice is required for HMS Studio and live show cancellations.
3. Frequent cancellations place a burden on daily operations. Within any 30 day period, a producer may cancel only two reservations with less than a week's notice; additional cancellations of less than a week will constitute a minor violation.

### D. Series Reservations

1. Producers with series programs scheduled on Houston's community access channel may request and be given priority use of edit and production equipment and facilities. Series producers (tape and live) will be allowed a regular reserved time slot of up to four hours per week for edit.

## II. Channel Programming

### A. Resources and Eligibility

1. Channel space is available on a non-commercial basis to any Houston or Houston Metropolitan Area resident or a representative thereof. Houston's community access channel is available on a content neutral basis. All program producers, whether or not they are certified technical producers, must pay an annual fee, attend orientation annually and show proof of residence.

### B. Procedures

1. Programs are scheduled as single play, as a series, as a special request, and as outreach programs. Series programs are given a regular, weekly time slot. Series time slots are awarded by application and are awarded in as equitable a manner as possible based upon available channel space. Priority will be given to first time applicants. Total series time will be less than 50% of total channel time.
2. The producer must be identified at least once at the end of the program material by a character generated name and address tag for at least 5 seconds. **The tag must include two points of contact information:** (the producer's name OR a 'pseudonym') and (a local P. O. Box, OR a local street address, OR a local telephone number.) Two examples: ("paper tiger," 713-430-6736) (Mary Smith, PO Box 38000000).
3. Each producer may have only one series. A certified producer may, by special request, act as the technical director for a non-profit organization

(provider) series in addition to the certified producer's one individual series.

4. Producers may request individual cablecast times as available. Once the program has shown, repeats may be scheduled as channel space allows.
5. Producers may request individual channel slots more than 21 days in advance through a Special Request. Special Requests are handled on a first-come, first-served basis dependent upon availability of channel space. Special request reservations for channel space will not be accepted more than three (3) months in advance.
6. In order to submit a program, the producer must complete and sign a Programming Contract. In signing the Programming Contract, the producer warrants that the program does not include:
  - a. Any material that is in violation of Subchapter B: Obscenity, of Chapter 43 of the Texas Penal Code.
  - b. Any material that violates local, state, or federal law.
  - c. Any material that is libelous, slanderous, defamatory or that constitutes an unlawful invasion of privacy.
  - d. Any product advertising (i.e. material that promotes any commercial product or service).
  - e. Any solicitation or appeals for funds
  - f. Any unlawful use of copyrighted material.
7. Producers will be asked to designate program categories to facilitate scheduling on the channel. In addition, producers will be asked to represent and warrant whether the programming contains Adult, Sexually Explicit, and/or Indecent material. Subject to the review procedure set forth in Paragraph II(c), programs containing any Adult, Sexually Explicit, or Indecent material will play only between 12:01 a.m. and 5:59 a.m. Monday through Friday and between 1:01 a.m. and 5:59 a.m. on Saturday and Sunday and shall contain appropriate viewer advisories or warnings. HMS may choose to make these time slots more restrictive.
8. Through the Programming Contract, the producer agrees in writing to indemnify and save harmless Houston MediaSource, its staff and Board of Directors, the City of Houston and Houston's franchised cable companies from all claims, demands, damages or other liabilities, including legal fees and expenses that may arise as a result of cablecasting the program.

#### C. Rules Violations and Loss of Privileges

1. HMS does not censor, judge or review programs before cablecast with the following exceptions: HMS will not knowingly permit any of the resources under its control to be used for the production or cablecasting of any material that is in violation of subchapter B: Obscenity, of Chapter 43 of the Texas Penal Code. In order to comply with its legal obligations, HMS will review programming which the producer represents to contain Adult, Sexually Explicit, and/or Indecent content and will seek appropriate legal input and guidance. HMS shall prohibit the cablecast of obscene material or shall suspend such programming in progress at the time when

HMS receives actual knowledge of the content and character of said programming. The community access channel is a public forum; specific guidelines will be followed to enforce this provision.

2. The Executive Director of HMS may suspend from play any material that appears to be in violation of the Texas Penal Code or other local, state or federal law. If such material is suspended from play, prior to or during the original cablecast, HMS will promptly advise the producer in writing and allow the producer the opportunity to edit and to resubmit the program for review. If the producer chooses not to edit and to resubmit the program and indicates that the producer wants the program broadcast as originally submitted, HMS will promptly file a declaratory judgment action in the district courts of Harris County, Texas to resolve the controversy.
3. If a producer submits a program that, after cablecast, appears to the Executive Director to violate any terms of the Programming Contract, the Executive Director may require that the program be suspended from future play over the channel for a period not to exceed 60 days. The Executive Director shall notify in writing the producer, the City of Houston Finance and Administration Department, the HMS Board of Directors of the action immediately (within 24 hours).
4. Within three (3) days, following the suspension of play of a program, the Executive Director shall confer with the responsible producer to seek voluntary compliance with the Program Warranties. The Executive Director will review such evidence as the producer wishes to present concerning intent in presenting the program and the legality of its content. The Executive Director shall immediately report the findings and resolutions of the conference to the HMS Board of Directors and the requisite City offices.
5. If there is agreement between the parties:
  - a. To remove the program from play or re-edit the program prior to replay or
  - b. That no violation had occurred (i.e. there was no actual breach of the Program Warranties), then no further action is necessary.
6. If there is no agreement, the program suspension shall be continued for a period of fifteen (15) days from the date of the conference, to allow sufficient time for any appeal to be filed with the HMS Board of Directors. If no appeal is filed within the 15 day period, then the Executive Director's decision regarding the suspended program becomes final.
7. If an appeal is filed with the HMS Board of Directors, a committee representing the Board will convene within one week to consider the appeal. If the committee overturns the decision of the Executive Director, then no further action is necessary and the producer may replay the program. If the decision of the Executive Director is upheld, the program will not replay.
8. If the program producer is found to have submitted material in violation of the law, she or he shall be subjected to immediate suspension from use of

HMS managed resources, including the right to submit programs for cablecast.

9. A suspension for the above conditions shall be immediate and for a minimum of one year. After one year the producer may apply for reinstatement which may be granted following a period of training in programming responsibilities and a review of applicable law, community standards or other material designated by HMS. A subsequent, similar violation by the same producer may result in a period of suspension not less than two (2) years or in open, indefinite suspension as determined by the Board of Directors.
10. A producer who is in litigation including criminal indictment or civil litigation of actions in any way related to the use of HMS resources or materials submitted for cablecasting on the HMS channel, may be placed on indefinite administrative suspension during the process of litigation. The suspension shall be from the use of the HMS resources as well as from the right to submit programs for cablecast.
11. Other violations of program warranties will be treated as major violations and are subject to disciplinary actions as defined in Section III. of the Rules and Procedures.

#### D. Scheduling Priorities

1. All programs must have a local producer (sponsor) to play on the HMS channel. In scheduling programs on the HMS community access channel, first priority is given to locally produced programs. Second priority is given to programs not produced by the local producer, but submitted, or sponsored, by a local producer. New local programs always receive priority.
2. Local programs are programs produced by the local certified producer. A minimum of 20% per show must be produced by the local certified producer to be considered a local program. All footage produced by the local certified producer is considered to be locally produced content. The addition only of credits, openings and closing tags to a non-locally produced program does not qualify as a locally produced program. Without the minimum of 20% local production, the show is considered non-local for scheduling priorities.
3. Local producers of non-locally produced programming take sole responsibility for the program's content under HMS Program Warranties.
4. The Community Bulletin Board (CBB) is an electronic service for non-commercial messaging. Adequate time for the CBB will be scheduled on the channel to meet the needs of the community. (See, I.I.S.)
5. Use of the HMS facility (whether or not one uses the equipment) is for the sole purpose of providing programming for the public access channel. Software, written specifically for public access management, tracks when a producer airs each show. In order to check out equipment, programming must be submitted on an on-going basis, generally monthly. See HMS staff for details.

#### E. Series Programs

1. Series time slots are available for shows that are cablecast on the same day and time of the week on a regular basis.
2. A series time slot is a privilege, not a right. A producer must submit (3) three programs that are in compliance with the provisions outlined in the series program agreement, at the time of application for the series period. Only one series will be permitted per producer. Programs that have previously been cablecast may not be submitted as part of the 3 programs required to obtain a regular series time slot. Series time slots are limited to one hour per week.
3. To keep a series time slot, the producer must maintain a 2:1 ratio of total to new programs (i.e., 50% of the programming for the series must be first-run programming).
4. Series program replay use is at the discretion of the Programming Coordinator.
5. Series may be granted for a set period of time (see programming staff for details) and may be granted contingent upon available space. Requests will be granted until all available time slots are used. The time slot chosen by the producer will be granted unless there is a conflict with a request already granted, in which case, other choice(s) of the applicant will be granted. In cases where requests cannot be filled, applicants will be notified and may reapply at the next scheduled renewal time.
6. Requests may be made for new series at any time by persons who do not have series reservations. New series will be granted as channel space is available. Producers who wish to make changes in the time or length of their current series may do so at any time. Such requests can be granted immediately, if no other conflicts exist.
7. Each series will be reviewed periodically throughout the series period to assess compliance. If sufficient new programming is not provided, the producer will be given an opportunity to come into compliance. Series that fail to maintain the 2:1 (total to new) ratio will be canceled.
8. Series producers must submit programs to play in their time slots no later than 10 days prior to cablecast date. Programs received after the deadlines are not guaranteed scheduled play, but will be cablecast in the following week's time slot.
9. Producers whose programs do not meet technical requirements, (e.g., those having time code "jumps", control track holes, etc) will be notified. If time permits, the producer may authorize staff to correct the problem or the producer may replace or correct the program. This is not a deadline extension. There is a fee for technical service performed by HMS staff.

#### F. Live and Non-Series Programs

1. All live programs, series or non-series, must be accompanied by a completed HMS Programming Contract.

2. Live series program applicants must also submit 3 pre-taped programs in order to apply for a live series. These pre-taped programs should not have been cablecast on the access channels.
3. The certified producer must give the HMS Equipment Department at least 48 hours advance notification of cancellation of a live program. Cancellations with less than 48 hours notice, except in the case of a documented emergency, will result in a major violation. An “emergency” is determined at the discretion of the Executive Director. Loss of any privileges regarding reservation of live series time under the previous two items in no way affects the right of a producer to reserve channel space for non-series live cablecasts.
4. All live series producers must maintain in the Programming Department an emergency back-up tape to be played in the event of a cancellation prior to 24 hours of a scheduled cablecast.
5. Taped repeats of live programs including emergency back-up tapes as specified above must comply with all rules and technical requirements governing tape submission to HMS.
6. A live show will not replay if the tape contains a call-in phone number that does not specify the live cablecast date.
7. Review copies of live programs (recorded as cablecast on the channel) are maintained at the HMS facility for (7) seven days after the program is cablecast live.
8. Live programs are covered by the Programming Contract regarding representation and warranties and other obligations concerning content.

#### G. Showcase Program Scheduling

1. A Showcase is a collection of shows scheduled and promoted around a particular theme or topic. A showcase usually plays throughout a day, or may be spread over the course of a week or month and portrays the diversity in local production.
2. In addition to the showcases organized and sponsored by HMS (Black Heritage, International Women’s Day, Cinco de Mayo, etc.), community producers may schedule and promote individual showcases on a space available basis.
3. Community producers should request showcases in writing to HMS staff as early as possible before the desired cablecast date. All tapes must be received by programming staff no later than 3 weeks prior to the scheduled cablecast date. Note: Additional guidelines are available from programming staff.

#### H. Picking Up Tapes

1. Program tapes should be picked up from HMS within 4 weeks of the last scheduled cablecast. HMS is not responsible for tapes left after the 4 week period. HMS reserves the right to remove unclaimed tapes from storage

and dispose of the tape at HMS' discretion. This may include recycling or disposal of the tape.

2. Tapes may only be retrieved by the person who owns the tape. No other person will be permitted to pick up tapes. Signature and identification are required at the time that tapes are picked up.

I. Subsequent Sale or Distribution of Programs

1. Community producers are required to file a report with HMS staff on all compensation received from subsequent sale or rental of public access programs within 10 working days of receiving such compensation.

J. Public Review of Access Programming

1. Houston's public access channel is recorded as a courtesy to the public and may be viewed by the public at the HMS center for a period of seven days after cablecast. Such tapes may not be available for copying and may be viewed only by prior arrangement. Only the producer of a show may give permission for copies.

K. Program Content Feedback

1. Houston's public access channel will periodically carry announcements advising viewers who have questions or comments about any community access program to call or write to HMS. Producers and other members of the general public may make comments about community access programming by telephone, or in person on a customer feedback form. Staff will send a copy of the viewer response form to the program provider and will also keep a record of same at the HMS facility.

L. Program Content Complaints

1. HMS staff will document program content complaints in writing and maintain files of same. In the event that the complaining party threatens litigation, the program will be reviewed for Programming Contract compliance.

M. Technical Standards and Production Requirements

1. Programs submitted for playback on Houston's community access channel must conform to the technical standards and production requirements established by the City of Houston for cablecast. This information is available in writing at the HMS facility.

N. Promotion and Credits

1. Program credits have the following limitations:

- a. HMS or City of Houston telephone numbers may not be used in the credits without permission or be listed as contacts for the community access producer, unless the aforementioned is the program provider or a “grant” requires such listing.
- b. The producer may not list private phone numbers or addresses without prior consent. For additional information about sponsorship credits see the Sponsorship Guidelines available from HMS staff.

O. Archives

1. An archive of exemplary community programming will be maintained at the HMS Center for subsequent channel playback.
  - a. Criteria for selection
    - i. Producers may voluntarily offer their programs for archive use by checking the appropriate statement on the Programming Contract.
    - ii. Programs funded by HMS or other city related organizations will automatically be available for use in the archives.
    - iii. Award winners, theme night/special events, promotional, informational, historical or model programs within a format, selected by staff and made available through written producer permission.
  - b. Use of Archives
    - i. The archives will be used for playback on Houston’s community access channel and promotion of HMS resources. Copies of archive programs may also be made available for viewing in the HMS facility. Use of archival material for other purposes requires permission of the applicable copyright holder.

P. Channel Identification

1. Producers are encouraged to run a program slate at the beginning of each program. The slate is for channel identification purposes and is run as a service to the community. The identification helps new viewers find the same type of programming again.
2. Producers may encode a channel identifying “bug” within their program if they desire.

Q. Funding Access Programs and Sponsorship

Producers are encouraged to seek funding for the production of community access programs. Likewise, community groups are encouraged to develop supportive relationships with certified producers to promote the development of community

programming. No access resources may be used for commercial purposes or for personal gain.

There are two categories of allowed funding of programs: sponsorship and non-commercial contracts. Any other receipt of funds by producers for community access production shall be considered commercial and not allowed.

1. Sponsorship

- a. Sponsorship is defined as financial or in-kind support given to a producer to facilitate expression and use of the access channel. Sponsorship is permitted with the understanding that it constitutes a donation to support the producer's work and is not compensation for use of cablecast time or access resources.
- b. Funding sources may be credited within access programs according to the sponsorship guidelines. Any individual, business or institution that helps defray production costs may be given sponsor credits.
- c. Credits may be placed at the opening, logical mid-breaks and/or ending of programs with a maximum of two credit sequences per half hour programming and a maximum of four credit sequences per hour programming.
- d. Total credit time per half hour programming for all sponsors may not exceed 60 seconds.
- e. Producers are encouraged to use the following audio and/or video credit format: "The (following/preceding) community program is possible in part by a grant from (name, address)
- f. The video portion of the credit may include 2 slides, pictures, signs with character-generated graphics and/or logo, not to include product representations.
- g. The audio portion of the credit may include music.

Note. See HMS staff for the complete Sponsorship Guidelines handout.

R. Non-commercial Contracts

1. Non-commercial contracts, or "Grants," are defined as two-way agreements, or relationships, wherein a certified producer performs production services on behalf of a non-commercial provider producer as a volunteer or in return for compensation (for example, a foundation grant). In essence, the certified producer facilitates the expression of the provider producer.
2. Such contracts are permissible, if the following conditions are met:
  - a. The provider producer is a not-for-profit entity as demonstrated by IRS tax exemption and/or recognition of non-profit status by another federal agency or the State of Texas.
  - b. The provider has registered with HMS as a community access "provider" by giving evidence as to their non-profit status, has paid

the annual fee, has attended an access orientation session and has listed one or more certified producers as its agent.

- c. Individual certified producers are sponsored by a tax-exempt agency that acts as a fiscal agent on their behalf.
  - d. Provider producers accept all responsibilities of the Programming Contract in exchange for individual expression on the channel. The provider producer's use of the channel, and the certified producer acting as their agent, are both subject to the Rules and Procedures for programming and use of the HMS facility and resources. With regard to series time, a certified producer is limited to acting as such an agent for one (1) series slot, in addition to their one (1) regular series slot. (See section II.E.2.) The certified producer remains responsible for resource obligations and both the certified producer and the provider producer are subject to normal disciplinary actions under the programming and equipment contracts.
3. Producers must state on equipment contracts whether or not each use is on behalf of a community provider and, if so, designate a registered provider. Allegations of commercial use of resources or content will be determined by HMS on a case-by-case basis. Taped programs that receive complaints about alleged advertising or other commercial issues will be pulled for review by the Executive Director until such allegations can be substantiated or disproved.
  4. Any breach of the rules concerning funding or sponsorship shall be treated as a major violation.

#### S. Community Bulletin Board

The HMS Community Bulletin Board (**CBB**) is available for public service announcements (PSAs), non-commercial messages and the promotion of programs scheduled on the HMS channel. Houston organizations and individuals may submit PSAs to promote non-commercial events and services. (For CBB eligibility, see eligibility for facility use under Section I.) HMS staff reserves the right to edit announcements to fit the CBB space. Messages must be limited to one CBB page.

1. Procedures
  - a. CBB announcement submission forms are available at the HMS facility. Completed forms may be mailed, faxed or delivered to HMS.
  - b. CBB announcements should be received by noon on Wednesday of the week prior to scheduled cablecast.
  - c. The person submitting an announcement must provide their name, phone number and (if applicable) the name of the organization that they represent.
  - d. Each individual and/or organization is limited to a maximum of (4) four submissions per month.

- e. Messages will not be accepted for events more than 60 days in advance of the date of receipt.
  - f. Producers may use the CBB services at no additional charge
  - g. Houston area residents are eligible to use the community bulletin board at no charge.
2. Content Requirements
- a. The announcement text should include: who, what, where, when and a “For more information” phone number (unless it is promoting a specific public access program).
  - b. In cases where a phone number or address of any individual or organization is used, written permission for such use must be given by the individual or organization involved.
  - c. Announcements must include a start and stop date. Ongoing announcements must be resubmitted monthly.
  - d. Announcements may not include ticket prices but may state “For ticket information, call \_\_\_\_\_.”
  - e. Announcements may not solicit funds or mention prices in any way.
  - f. With the exception of staff-generated CBB announcements, community generated announcements may not include the HMS or WTP-TV name or logo.
  - g. All CBB announcements are subject to the Warranty Agreement provisions.

T. HMS Center Bulletin Boards and Flyer Racks

- 1. The staff at HMS will provide information about services and related activities on the bulletin boards and in the flyer racks at the facility. Producers may submit their own information for display, subject to the same content guidelines for programming.

III. Rules Violations and Loss of Privileges

A. Definitions and Limitations

- 1. To ensure that the facility, resources and channel are available to the public in an equitable manner, this document provides detailed descriptions of major and minor infractions of the rules and procedures. In addition, any activity that is not in compliance with any of the rules and procedures is considered a violation. **No one may use another person or agent to circumvent any of the HMS Rules and Procedures governing content, facility, resources and channel space. All violations remain part of the permanent client record, unless otherwise stated.**
- 2. Upon verification that any violation has occurred, staff will issue in writing a statement of disciplinary action, including an explanation of the appeal process and the possibility of offering volunteer service to HMS in

compensation. Such notification shall be made within (15) fifteen days of the finding of a violation.

3. Any producer who engages in activities in the HMS facility that are harassing, threatening, purposefully detrimental or damaging to another producer, HMS staff member, or HMS resources will be asked to leave the building. The Houston Police Department may be called for assistance.

## B. Disciplinary Action

### 1. Major Violations

- a. A major violation results in immediate suspension from the use of equipment, facilities and channel space. Where there is damage to or loss of equipment and/or facilities, the suspension is also in effect until compensation for damages is fulfilled.
- b. The length of an initial suspension from equipment and facility use is 30 days. Subsequent suspensions are for 90 days and one year respectively. One year or longer suspensions may require re-certification.

### 2. Minor Violations

- a. Some minor violations have fines attached to them. In some cases one may substitute 4 hours of community service at HMS for the fine.
- b. In the case of minor violations one must clear the violation before further use of the HMS facility.

### 3. Contract Violations

- a. Giving false information on an HMS Programming Contract will be considered an attempt to undermine Houston Media Source's contract with the city, and will result in a one year suspension.

## C. Violations of the Rules and Procedures

### 1. The following are considered major violations:

- a. Abuse, vandalism or failure to safeguard equipment and facilities and, any and all abusive treatment to HMS staff as stated in Section IIIA.3. of this document.
- b. Return of equipment in damaged or non-working condition.
- c. Failure to return equipment for any reason.
- d. Late return without notifying HMS staff where other producers are affected or more than 24 hours after scheduled check-in.
- e. Use of equipment and facilities for any purpose not related to the production of programs for cablecast on Houston's public access channel.
- f. Removal or use of equipment from the equipment storage area, post production equipment or studio without proper check-out procedures and/or without signing an equipment contract.

- g. Checking out or turning in equipment by a non-certified person—one whose name does not appear on the contract or for a producer on suspension.
  - h. Owing funds to HMS due to failure to pay for damaged equipment or unpaid fees.
  - i. Failure to conform with the provision requiring initial play of community access programs on Houston's community access channel.
  - j. Failure to report funds received from subsequent sale or rental of community access programs.
  - k. Accumulation of three (3) minor violations within a twelve-month period. A minor violation remains on a client's record for a twelve-month period.
2. The following are considered minor violations:
- a. Failure to cancel or claim a reservation of equipment and/or facilities. (Also incurs a fine equal to editing time reserved or one day ENG check-out)
  - b. Arriving more than fifteen (15) minutes late for editing time, equipment check-outs or returns without prior notification and approval by HMS staff.
  - c. Late return of equipment without authorized extension.
  - d. Failure to vacate editing facilities by the end of the reservation time without authorized extension.
  - e. Causing slight cosmetic damage or making equipment dirty during check-out.
  - f. Operation of equipment or use of facilities in an incorrect, unsafe or inappropriate manner which might result in damage.
  - g. Improper packaging of equipment for another producer unless otherwise approved.
  - h. Attempted equipment maintenance or disassembly.
  - i. Reserving or checking out equipment for another producer unless otherwise specified and approved.
  - j. Failure to submit a program for cablecasting on the HMS channel within production schedule limits.
  - k. Listing private phone or addresses on a program without the consent of the individual(s).
  - l. Phoning or visiting in-person Houston's access playback facility (Houston Municipal Channel facilities) without prior arrangement. All contact with master control staff regarding playback of shows at the Municipal channel is prohibited.
3. Any other violation pertaining to the written Rules and Procedures will be addressed with an informal oral or written notification

#### D. General Appeal and Grievance Procedure

- 1. A producer may make a grievance or appeal any disciplinary action by making a written statement to the HMS Executive Director. Any

restrictions in equipment use resulting from a disciplinary action remains in effect throughout the appeal or grievance process.

2. The Executive Director will investigate the circumstances surrounding the incident in question and return a written report and judgment to the producer within 10 working days. In disciplinary cases, the Executive Director may choose to reinstate the producer's right to use HMS resources following a term of volunteer services of no less than fifteen (15) hours.
3. The producer may, within 10 working days following the judgment of the Executive Director, continue the appeal or grievance with a written statement to the HMS Board of Directors.

#### IV. Amendments to the Rules and Procedures

- A. The HMS Executive Director is the responsible person for implementation of the HMS Rules and Procedures. Recommended amendments to the Rules and Procedures may be submitted in writing to the HMS Executive Director. The Executive Director may consider changes to the Rules where such amendments are deemed necessary to protect the availability of media resources for the residents of Houston.
- B. The HMS Board of Directors monitors the operation of HMS and makes recommendations for change only in circumstances where existing rules and procedures are not protecting the access to the media by Houston residents, the resources of Houston Media Source or the City of Houston.
- C. Normally, rule changes will take effect 30 days after notification to Producers (public posting and/or mailed notification) unless the changes require immediate action.

Effective: August 2005  
04/12/99  
02/02/02  
08/01/05

## **Addendum to Exhibit "A"**

### **POLICIES AND PROCEDURES**

Policies and procedures shall be established by Contractor which at a minimum should include the following:

1. Playback Facility Policies and Procedures

- (a) A community or public service message bulletin board must be provided on videotape upon the delivery of videotapes each week to air in place of a missing or damaged tape or in the event of any other technical failure. This tape must be at least one hour long.
- (b) Tapes must be scheduled and turned in by 2:00 p.m. each Thursday for playback commencing the following Sunday to Saturday. An exception may be made for no more than four (4) tapes per day that may be submitted by 5:00 p.m. for a time delay playback with a minimum of one (1) hour lead time.
- (c) Any video tapes submitted for playback must be accompanied by a complete and fully executed form and copyright release as may be reasonably adopted by the current operator of the playback function. Programming information shall be transmitted to the City for delivery to the playback facility operator via ASCII text file before actual delivery of tapes for playback. Any videotape submitted for playback pursuant to these policies and procedures shall also include a type written schedule for the channels for the coming week.
- (d) Programming information shall be transmitted to the City for delivery to the playback facility operator via a 3M high Density 1.44 MB disk or higher density Compact Disk and include the program schedule information for the programs that are delivered for playback.
- (e) Videotapes which do not meet those requirements set forth above may be rejected for cablecast and the playback operator may clear the program schedule of the time slots reserved for that program and provide alternative access programming.
- (f) The playback operator reserves the right to substitute alternative access programming in the event of a missing tape, scheduling error, technical difficulty, failure to provide any necessary release or for other similar reasons, including but not limited to, failure to provide a complete playback form.
- (g) Videotapes rejected for technical reasons will be returned to the party

submitting the tape for playback together with a brief explanation for the refusal to playback.

- (h) In connection with the performance of its obligations hereunder, Contractor shall establish, and implement quality control procedures for and monitoring of programming contract compliance.
2. Presentation of the following material on the access channels shall be prohibited;
- (a) Any material designed to promote and/or sell products, services, trade, businesses or persons; provided, however, such prohibition shall not prevent public officials or candidates from appearing on shows to report or discuss current issues.
  - (b) Material, which identifies any product, service, trade mark, or brand name with the intent of promoting for commercial purposes a product, service, trade, business or person; provided, however, that sponsors and their logos may be accepted in brief acknowledgments of funding source.
  - (c) Any material, which is intended to defraud the viewer or designed to obtain money by false pretenses, representations, or promises.
  - (d) Direct or indirect solicitation of funds; except for fund raising conducted for public and educational access television.
  - (e) All advertisements of (or information concerning) any lottery, gift enterprise, or similar scheme offering prizes dependent, in whole or in part, upon lot or chance; or any list of the prizes drawn or awarded by means of such lottery, gift, enterprise, or scheme whether said list contains any part of all such prizes.
  - (f) Libelous or slanderous material.
  - (g) Material that is Obscene as defined in Chapter 43 of the Texas Penal Code or is otherwise illegal.

Special Note: Any tapes violating any of the above-mentioned restrictions shall be pulled and sent to the contractor with a brief explanation for refusal to cablecast. A copy of the refusal will also be sent to the Regulatory Affairs Section for monitoring purposes.

3. A commercial business may underwrite the cost of an access program or provide props and other assistance. A sponsor may be recognized with a brief video/and or audio sponsorship identification.
4. The playback of unduly repetitive programming is prohibited. Playback of programming shall be at the discretion of the Director, but subject to the following minimum requirements.
- (a) Single programs shall be limited to not more than twelve (12) playbacks during any thirty (30) day period and sixteen (16) playbacks in any

ninety (90) day period.

- (b) A weekly series shall be limited to four (4) cablecasts per week, no more than twelve (12) in a thirty (30) day and sixteen (16) in a ninety (90) day period. For the purposes of the rules and procedures, a series shall mean a regular installment of new programming over a predetermined period.
5. Each Channel shall be continuously programmed with active video (non-character generated alphanumeric information) for an average of eighteen (18) hours per day. This does not preclude character-generated programming.
6. All tapes submitted for playback shall be subject to the following:  
Audio on channel 1 and 2;  
Betacam SP Metal Tape;  
At least thirty (30) second leader;  
A continuous time code throughout the program, including the leader;  
All tapes submitted for playback shall meet the following technical standards:
- |       |   |                 |   |        |
|-------|---|-----------------|---|--------|
| (i)   | Sync                                    | 40 IRE          | ± | 10 IRE |
| (ii)  | Burst                                   | 40 IRE          | ± | 10 IRE |
| (iii) | Burst Cycles                            | $9 \pm 1$ and   |   |        |
|       | Frequency                               | $3.57945 + 1\%$ |   |        |
| (iv)  | Reference white and black levels, i.e., |                 |   |        |
|       | White                                   | 100 IRE         | ± | 15 IRE |
|       | Black                                   | 7.5 IRE         | ± | 10%    |
| (v)   | Noise broadband and impulse minimal     |                 |   |        |
| (vi)  | Signal to noise greater than 40 dB.     |                 |   |        |

(6) SMTE Bars and +4 tone beginning immediately after the leader and lasting not less than 30 seconds, but not more than 60 seconds.

7. All tapes must be clean and without any visible physical damage to the tape or the case. Tapes must not be spliced or otherwise tampered from their original state. Any tapes, which are found to be damaged, will be refused. A brief explanation of refusal to air the tape will be submitted to the contractor. The contractor must provide an alternate tape to the facility within 8 hours with a minimum one (1) hour lead-time. If the program is substituted with a different program, a new programming schedule must be provided. The playback facility chooses the right to substitute the program with the message or public service community bulletin board if a substitute program is made available within the required time frame.

8. Production of programming by organizations within the City of Houston will be encouraged. Programming produced by organizations within the City shall be given scheduling preference over programs outside the City.

## EXHIBIT "B"

### EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.

2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.

6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

**EXHIBIT "C"**  
**MWBE SUBCONTRACT TERMS**

Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers are clearly labeled **"THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT"** and contain the following terms:

1. \_\_\_\_\_ (MWBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director").

2. \_\_\_\_\_ (MWBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of subcontractor's books and records, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep its books and records available for inspection for at least 4 years after the end of its performance under this subcontract. Nothing in this provision shall change the time for bringing a cause of action.

3. Within 5 business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given under Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of the agent.

4. Any controversy between the parties involving the construction or application of any of the terms, covenants, or conditions of this subcontract must, upon the written request of one party served upon the other or upon notice by the Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 -- "the Act"). Arbitration must be conducted according to the following procedures:

a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within 30 days or the matter may be referred to arbitration.

b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with the American Arbitration Association on file in the City's Affirmative Action Division Office.

c. Each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.

d. If the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

e. All arbitrations shall be conducted in Houston, Texas unless the parties agree to another location in writing.

**EXHIBIT "D"**

**DRUG POLICY COMPLIANCE AGREEMENT**

I, \_\_\_\_\_ as an owner or officer of  
(Name) (Print/Type) (Title)  
\_\_\_\_\_(Contractor)  
(Name of Company)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug-testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**EXHIBIT "E"**

**CONTRACTOR'S CERTIFICATION  
OF NO SAFETY IMPACT POSITIONS  
IN PERFORMANCE OF A CITY CONTRACT**

I, \_\_\_\_\_, \_\_\_\_\_  
(Name) (Title)

as an owner or officer of \_\_\_\_\_ (Contractor)  
(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved

in performing \_\_\_\_\_.  
(Project)

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

EXHIBIT "F"

DRUG POLICY COMPLIANCE DECLARATION

I, \_\_\_\_\_ as an owner or officer of \_\_\_\_\_ (Contractor)
(Name) (Print/Type) (Title)
(Name of Company)

have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from \_\_\_\_\_ to \_\_\_\_\_, 20\_\_\_\_\_.

Initials A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

Initials Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

Initials Collection/testing has been conducted in compliance with federal Health and Services (HHS) guidelines.

Initials Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is \_\_\_\_\_.

Initials From \_\_\_\_\_ to \_\_\_\_\_ the following tests have occurred: (Start date) (End date)

Table with 5 columns: Random, Reasonable Suspicion, Post Accident, Total. Rows include Number Employees Tested, Number Employees Positive, Percent Employees Positive.

Initials Any employee who tested positive was immediately removed from the worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

Initials I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

Date (Typed or Printed Name)
(Signature)
(Title)

## Exhibit "G"

### HMS PROGRAMMING CONTRACT

PLEASE FILL IN ALL BLANKS AND ANSWER ALL QUESTIONS.

**Producer Name:** \_\_\_\_\_ **Producer ID:** \_\_\_\_\_  
**Organization sponsor (if applicable)** \_\_\_\_\_  
**Address** \_\_\_\_\_  
**Evening Phone:** \_\_\_\_\_ **Daytime Phone:** \_\_\_\_\_ **Program Providers(s)** \_\_\_\_\_  
**Who owns the tape?** \_\_\_\_\_

**Talent releases obtained, if needed?** Yes No **Copyright release(s) obtained if needed?** Yes No  
**Project #:** \_\_\_\_\_ **Project Name:** \_\_\_\_\_

**Start Time Code (HH:MM:SS:FF)** \_\_\_\_\_ **End Time Code (HH:MM:SS:FF)** \_\_\_\_\_ **Length (HH:MM:SS):** \_\_\_\_\_

**Title of Show:** \_\_\_\_\_  
**Episode Information:** \_\_\_\_\_

**Was this a Class Assignment?** Yes No **If "Yes" which class and instructor?** \_\_\_\_\_

**Is this program taped/produced locally (Houston)?** Yes No  
**If yes, which facility?** HMS TBH Houston Art Institute Other \_\_\_\_\_

**Cablecast Date: (MM/DD/YY)** \_\_\_\_\_ **Time: (am/pm)** \_\_\_\_\_

**For Taped Programs:**

**Was this tape mailed to you from outside Houston?** Yes No  
**Is this your first access program?** Yes No  
**Has this program played before?** Yes No  
**If yes, when did the program last air? (MM/DD/YY)** \_\_\_\_\_

**Does HMS have your permission to keep & use tape for promotional purposes? (initial)** \_\_\_\_\_ **HMS archives? (initial)** \_\_\_\_\_

**PROGRAM TYPE (Circle one)** **PROGRAM FORMAT (Circle one)**

- |                                  |                                      |                         |
|----------------------------------|--------------------------------------|-------------------------|
| 1. Art: Other                    | 16. News/Public Affairs-Local/State  | A. Ceremony/Sermon      |
| 2. Art: Visual                   | 17. News/Public Affairs-Ntl/Intntl   | B. Debate               |
| 3. Art: Performance              | 18. Foreign/International Interest   | C. Event                |
| 4. Art: Dance                    | 19. Political Candidate/Ballot Issue | D. Foreign Language     |
| 5. Art: Poetry                   | 20. Government-Assembly/Function     | E. Game Show            |
| 6. Art: Video Art                | 21. Social Service/Issue             | F. Educational/Children |
| 7. TV: Drama                     | 22. Minority Issues                  | G. Documentary          |
| 8. TV: Comedy                    | 23. Public Health                    | H. Lecture              |
| 9. TV: Action/Adventure          | 24. Educational-Instruction or ITV   | I. Stand-Up/Soapbox     |
| 10. TV: Horror                   | 25. Exercise                         | J. Talk/Interview       |
| 11. Folk/Tradition               | 26. Health-Personal                  |                         |
| 12. Hobby                        | 27. Alternative-New Age              |                         |
| 13. Music: Performance/Event     | 28. Religion                         |                         |
| 14. Music: Other-Montage/Doc/Exp | 29. Sports                           |                         |
| 15. Other Entertainment          | 30. Other-Experimental No Cat        |                         |

**For Live Studio Programs:**

1. Have you confirmed your cablecast date with programming? Yes No  
 2. Have you confirmed your crew? Yes No  
 3. Have you confirmed all needed equipment? Yes No

If you answered NO to any item, please indicate when you plan to confirm these requirements

**FAILURE TO COMPLETE THE ABOVE COULD DELAY PROCESSING OF YOUR APPLICATION**

\*\*\*\*\* READ BACK PAGE AND SIGN IT\*\*\*\*\*

# HMS PROGRAMMING CONTRACT

Please fill in all blanks and answer all questions as completely as possible on both sides of this contract.

**You must check yes or no in response to these statements.**

My program contains Adult material	YES	NO
My program contains Sexually Explicit material.	YES	NO
My program contains Indecent material.	YES	NO

**WARRANTY AGREEMENT:**

I am familiar with the definitions of the above terms that are contained in the Contract between the City of Houston and Houston MediaSource and have used those definitions in making the representations and warranties above. In addition to the above representations and warranties, I warrant and represent to Houston MediaSource (HMS) that the above program submitted by me contains none of the following:

1. Any material which is in violation of Subchapter B: Obscenity, of Chapter 43 of the Texas Penal Code.
2. Any material contrary to local, state, or federal laws.
3. Any material that is libelous, slanderous, in defamation of character, or an unlawful invasion of privacy.
4. Any advertising or material that promotes any commercial product or service.
5. Any solicitation or appeal for funds.
6. Any unlawful use of copyrighted material.
7. Any material, which has a reasonable probability of inciting an immediate danger or damage to property, inciting an injury to person(s), or creating a public nuisance.

I am aware that Section 639 of the FCC Policy Act of 1984 provides that: **“Whomever transmits over any cable system any matter which is obscene or otherwise unprotected by the Constitution of the United States shall be fined not more than \$10,000 or imprisoned not more than 2 years or both.”**

I agree to be bound by all of the terms of the HMS Rules and Procedures. I further represent and warrant that, within the past year, I have completed HMS-sponsored training which included training on cablecasters' legal obligations concerning obscene, adult, sexually explicit, and indecent programming material. I agree that HMS may cablecast viewer advisories or warnings alerting the viewers to adult, sexually explicit, or indecent programming material. I agree that a violation of this Programming Contract, including a violation of any warranty or representation, excuses HMS from performing any of its obligations under this Programming Contract.

I agree that any suspension imposed for violation of this Programming Contract is effective immediately. **I AGREE, FURTHER, TO THE EXTENT ALLOWED BY LAW, TO INDEMNIFY AND SAVE HARMLESS HMS, THE CITY OF HOUSTON, HOUSTON'S FRANCHISED CABLE COMPANIES, AND ANY OF THEIR EMPLOYEES, OFFICERS, BOARD OF DIRECTORS, STOCKHOLDERS, ETC., FROM ANY AND ALL CLAIMS, DEMANDS, DAMAGES OR OTHER LIABILITIES WHICH MAY BE MADE AGAINST OR ARISE OUT OF THE CABLECAST OF THE PROGRAM SUBMITTED BY ME WHETHER OR NOT THE PROGRAM HAS BEEN REVIEWED BY HMS PRIOR TO CABLECAST.**

Each and all of these warranties, representations, and agreements are made by me in order that this program be cablecast free of charge on Houston's Public Access Channels, and I understand that HMS has relied on these warranties, representations, and agreements.

**INSTRUCTIONS FOR PROGRAM SUBMISSION:**

1. Program **MUST** be accompanied by a signed Programming Contract and should be delivered to the Programming Department Office at least 10 days prior to the cablecast date, unless special arrangements are made with Programming Department staff.
2. Program must meet or exceed technical requirements and be properly labeled.
3. Final decisions regarding specific cablecast times are made by HMS programming staff, as per Rules and Procedures for Use of the Houston MediaSource.
4. Program may be retrieved by producer one week following its last cablecast.
5. In the event that HMS receives a complaint indicating that the Programming Contract has been violated, producer agrees to postpone playback until HMS can verify Programming Contract compliance.

Please fill out a **Promotion Form** if you want HMS to promote your show. (Forms are available on the Client Service desk.)

**All of the information provided in this form is true and accurate.**

Signature \_\_\_\_\_ Date \_\_\_\_\_

**FORM 132.M**  
**(Approving/Authorizing)**

Section 1. The City Council hereby approves and authorizes the contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

Section 4. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 14th day of December, 2005.

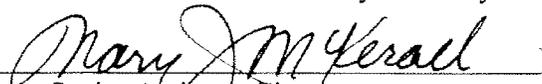
APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is DEC 26 2005.

  
\_\_\_\_\_  
City Secretary

(Prepared by Legal Dept.  
(MJM/DdC/11/16/05)

  
\_\_\_\_\_  
Senior Assistant City Attorney

(Requested by Judy Gray Johnson, Director, Finance & Administration)

(L.D. File No. 0340300142002)

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FORM 132.M  
(Approving/Authorizing)

Controller's Office

To the Honorable Mayor and City Council of the City of Houston, Texas:

I hereby certify, with respect to the money required for the contract, agreement, obligation or expenditure contemplated by the ordinance set out below that:

- ( ) Funds have been encumbered out of funds previously appropriated for such purpose.
- ( ) Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- () Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- ( ) No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- ( ) The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- ( ) A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.
- ( ) Other - Grant Funds Available

Date: 11-30-, 2005

*Annisa D. Parker*  
City Controller of the City of Houston, Texas

FUND REF: 208-65-3823

AMOUNT: \$ 0.00

*RF65032-06*

ENCUMB. NO.:

*REF: C52024*

City of Houston, Texas Ordinance No. 2005-1375

AN ORDINANCE APPROVING AND AUTHORIZING RENEWAL CONTRACT FOR PROGRAMMING SERVICES BETWEEN THE CITY OF HOUSTON AND HOUSTON MEDIASOURCE FOR PUBLIC ACCESS CHANNEL; CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

\* \* \* \*

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

**FORM 132.M**  
**(Approving/Authorizing)**

Section 1. The City Council hereby approves and authorizes the contract, agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 3. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

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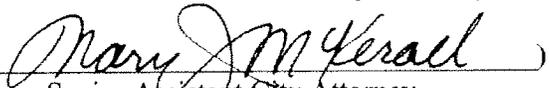
PASSED AND ADOPTED this 14th day of December, 2005.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is DEC 26 2005.

  
\_\_\_\_\_  
City Secretary

(Prepared by Legal Dept.   
(MJM/DdC/11/16/05) Senior Assistant City Attorney  
(Requested by Judy Gray Johnson, Director, Finance & Administration)  
(L.D. File No. 0340300142002)  
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