

**FIFTH AMENDMENT TO RESTATED AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
SAN JOSE COMMUNITY MEDIA ACCESS CORPORATION
FOR
MANAGEMENT OF PUBLIC AND EDUCATIONAL ACCESS CHANNELS AND
COMMUNITY MEDIA CENTER**

This FIFTH AMENDMENT TO RESTATED AGREEMENT is entered into on the date that it is fully executed by the City of San José (“City”), a California chartered municipal corporation, and San Jose Community Media Access Corporation, a California nonprofit corporation (“SJCMAC”).

RECITALS

WHEREAS, on January 29, 2008, City and SJCMAC entered into an agreement entitled “Management of Public and Educational Access Channels and Community Media Center” (“Original Agreement”); and

WHEREAS, on December 16, 2014, City and SJCMAC entered into a First Amendment to the Original Agreement to extend the term; and

WHEREAS, on June 17, 2015, City and SJCMAC entered into a Second Amendment to the Original Agreement to further extend the term; and

WHEREAS, on September 10, 2015, City and SJCMAC entered into a Third Amended and Restated Agreement (“Restated Agreement”) to modify terms and further extend the term; and

WHEREAS, on March 2, 2016, City and SJCMAC entered into a Fourth Amendment to the Restated Agreement to correct the Commencement Date; and

WHEREAS, City and SJCMAC desire to further amend the Restated Agreement to further extend the term, eliminate additional term extension periods, revise the individuals in Section 27 “Notices”, and add a new Section 33 “Electronic Signatures”; and

NOW, THEREFORE, the parties agree to amend the Restated Agreement as follows:

SECTION 1. SECTION 20, “TERM AND EXTENSION OF AGREEMENT” is amended to read as follows:

“SECTION 20 TERM AND EXTENSION OF AGREEMENT

- A. The term of this Restated Agreement shall commence on January 29, 2008 and ends on December 31, 2032, inclusive, subject to the provisions of **Section 11** of this Restated Agreement.
- B. Intentionally Omitted.”

SECTION 2. SECTION 27, “NOTICES” is amended to read as follows:

“SECTION 27. NOTICES

All notices and other communications required or permitted to be given under this RESTATED AGREEMENT shall be in writing and shall be made via e-mail, personal service or United States mail, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To City	Walter Lin Deputy Director Department of Public Works 200 East Santa Clara Street, 17 th Floor San José, CA 95113
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To SJCMAC	Chairperson of the Board of Directors 38 South 2 nd Street San José, CA 95113 executive@creatvsj.org
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Chad Johnston
Chief Executive Officer
38 South 2nd Street
San José, CA 95113

chad.johnston@creativsj.org

A notice or other communication that is e-mailed is effective when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or other written acknowledgement). A notice or other communication that is personally served is effective on the date personally delivered. A notice or other communication that is mailed is effective three (3) calendar days after deposit in the United States mail.”

SECTION 3. A new SECTION 33, “ELECTRONIC SIGNATURE” is added to read as follows:

“SECTION 33. ELECTRONIC SIGNATURES

Unless otherwise prohibited by law or City policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the City.”

SECTION 4. All of the terms and conditions of the Restated Agreement not modified by this Fifth Amendment shall remain in full force and effect.

[remainder of page intentionally left blank]

WITNESS THE EXECUTION HEREOF on the day and year first written above.

“CITY”

City of San José,
a California chartered municipal corporation

TONI J. TABER, MMC
City Clerk

“SJCMAC”

San Jose Community Media Access Corporation,
a California nonprofit corporation

CHAD JOHNSTON
Chief Executive Officer

APPROVED AS TO FORM

NEELAM NAIDU
Senior Deputy City Attorney