

**Grant Agreement between Arlington County and Arlington Independent Media for Use of
Public, Educational, and Governmental Funds**

This Grant Agreement (“Agreement”), is entered into this _____ day of _____ 2023 by and between the Arlington County Board of Supervisors of Arlington County, Virginia, a political subdivision of the Commonwealth of Virginia (“Arlington County”) and Arlington Community Access Corporation dba Arlington Independent Media (“AIM”), who may be referred to individually as a “Party” and together are referred to as the “Parties.”

SECTION I: RECITALS

WHEREAS, under a Certificate of Public Convenience and Necessity for Cable Television granted by Arlington County (“Franchise Agreement”) to Verizon Virginia Inc (“Verizon”). And Comcast of Potomac, LLC (“Comcast”), Verizon and Comcast provide an annual grant to Arlington County for the Use of Public, Educational, and Governmental programming (“PEG Capital Grant” or “PEG Capital Funds”); and

WHEREAS, AIM is listed a provider of a public access channel under the Franchise Agreement for both Verizon and Comcast; and

WHEREAS, since AIM is listed as a provider of a public access channel under the Franchise Agreement, AIM is eligible for a portion of the PEG Capital Grant as determined by Arlington County (“AIM Capital Grant”); and

WHEREAS, while AIM is eligible to receive the AIM Capital Grant, AIM is not guaranteed access to the AIM Capital Grant; and

WHEREAS, Arlington County will make the sole decision as to whether AIM receives any portion of the PEG Capital Grant or AIM Capital Grant; and

WHEREAS, the AIM Capital Grant is only to be used for capital purposes by AIM which generally includes the acquisition of PEG access equipment and renovation or construction of PEG access facilities (The Federal Communications Commission (FCC) has provided in the First, Second and Third Order for the Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 (collectively referenced as “FCC Orders”)), and

WHEREAS, the Parties desire to memorialize the request and use of the AIM Capital Grant funds by AIM; and

NOW, THEREFORE, IN CONSIDERATION of the foregoing and the following covenants, warranties, and agreements of the Parties hereto, as are hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each Party hereto, the Parties hereby agree as follows:

SECTION II: REQUEST, USE AND REPAYMENT OF PEG FUNDS

1. Eligibility. AIM is eligible for the AIM Capital Grant due to being listed as a provider of a public access channel under the Franchise Agreement. However, this eligibility does not

guarantee access to the AIM Capital Grant. Access to the AIM Capital Grant shall be determined solely by Arlington County

2. Capital Budget for AIM. AIM shall maintain at all times a capital budget detailing planned capital expenditures for the current and future two (2) fiscal years. Furthermore, AIM shall present this capital budget to the Arlington County each year during the County's capital budgeting season by November 30 of each calendar year. The November 30 submission is for use of the AIM Capital Grant for items or work for the upcoming fiscal year to begin on July 1.
3. Annual Request and Proposal for AIM Capital Grant. AIM will request use of the AIM Capital Grant as a part of the Arlington County's annual budget process discussed in Section II (2) above. AIM shall make a request for the AIM Capital Grant to the Arlington County Manager's Office and along with that request shall provide all the following ("AIM's Capital Grant Proposal"):
 - a. at least two competitive / market rate quotes for the specific capital goods and services to be purchased. Such quotes are solely for the substantiation of the market value of the goods and services to be purchased and the determination of the amount of the capital grant support requested; and
 - b. an invoice from AIM to Arlington County, and
 - c. a project description, and
 - d. a detailed equipment list to be purchased with the annual AIM Capital Grant, and
 - e. a detailed list of other fees and project costs to be procured with the annual AIM Capital Grant.
4. Emergency Request and Proposal for AIM Capital Grant. In the event AIM has an emergency request for the AIM Capital Grant, AIM shall provide the following ("AIM's Emergency Capital Grant Proposal"):
 - a. at least one competitive / market rate quote for the specific capital goods and services to be purchased. Such quotes are solely for the substantiation of the market value of the goods and services to be purchased and the determination of the amount of the emergency capital grant support requested; and
 - b. an invoice from AIM to Arlington County, and
 - c. a project description, and
 - d. a detailed equipment list to be purchased with the emergency AIM Capital Grant, and
 - e. a detailed list of other fees and project costs to be procured with the emergency AIM Capital Grant.
5. Approval of Emergency Request and Proposal for AIM Capital Grant. Arlington County will review, approve and disburse AIM's emergency request for the AIM Capital Grant as described in Section II (7) within 30 days.
6. AIM's Capital Grant Proposal. AIM's failure to provide any of the items described in Section II (3) or (4) of this Agreement as a part of AIM's Capital Grant Proposal or AIM's Emergency Capital Grant Proposal shall mean that said Proposal may be rejected by Arlington County.
7. Payment of AIM Capital Grant. Arlington County will review each properly submitted AIM Capital Grant Proposal and determine, in its sole discretion, whether to approve the proposal as submitted or with alterations. Arlington County will also determine and communicate the timing of the distribution of the AIM Capital Grant to AIM. Arlington County will work in good faith with AIM to distribute the AIM Capital Grant by the beginning of the fiscal year.

8. Accounting for AIM Capital Grant. AIM agrees to create a dedicated General Ledger account solely for the receipt of AIM Capital Funds from Arlington County and the payment of PEG Eligible Capital Expenditures (“PEG GL”).
9. Use of AIM Capital Grant. AIM agrees that the AIM Capital Grant is only to be used for PEG Eligible Capital Expenses as defined in the FCC Orders. Eligible Capital Expenses shall also mean any future definition the FCC or the United States Congress provides in any future order, legislation or law. Eligible Capital Expenses does not include any Operational Expenses. Operational Expenses include but is not limited to salaries, rent, utilities, and other payments required to sustain the operation of the organization. Operational Expenses are also defined by generally accepted accounting principles (GAAP) as established by the Financial Accounting Standards Board (FASB) or the Government Accounting Standards Board (GASB).
10. Confirmation of Use of AIM Capital Grant. In order to confirm that the AIM Capital Grant is used for Eligible Capital Expenses, AIM will provide paid invoices (or timecards for items of labor) reconcilable to each of the items included in the specific AIM Capital Grant Proposal within thirty (30) days of completion of the project. If AIM fails to provide paid invoices for any of the items contained in the approved AIM Capital Grant Proposal then Arlington County will provide notice of such failure. AIM will then have thirty (30) days to either provide a paid invoice or return the Capital Grant money to Arlington County. Furthermore, in the event AIM does not use the AIM Capital Grant for Eligible Capital Expenses, AIM must repay the AIM Capital Grant. Section II (14) of this Agreement will control as to repayment of the AIM Capital Grant.
11. PEG Funds and Operational Expenses. PEG funds, including the AIM Capital Grant, must never be used for any form of Operational Expenses as defined above in Section II.9.
12. Future AIM Capital Grant Proposals. Arlington County will consider one (1) AIM Capital Grant Proposal at a time from AIM. After Arlington County funds one proposal and after approval of the AIM Capital Grant as described in Section II (10), AIM may submit a subsequent proposal.
13. Audit and Inspections. All of AIM’s records with respect to any matters covered by this Agreement shall be made available to Arlington County staff or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine and make excerpts or transcripts of all relevant data. Arlington County shall provide AIM at least 15 days notice of any audit or inspection of records. Failure of AIM to comply with the above required audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments.
 - a. Third-Party Audit. Subject to the above notice requirement, the County may, at its own expense, require an external, third-party, audit of AIM’s records, financial or otherwise, as often as deemed necessary, to examine and make excerpts or transcripts of all relevant data.
14. Failure To Use AIM Capital Grant For Eligible Capital Expenses. In the event that AIM does not use the AIM Capital Grant for Eligible Capital Expenses, AIM will be responsible for returning the AIM Capital Grant spent on non-Eligible Capital Expenses to Arlington County. Arlington County will send a notice to AIM stating that the AIM Capital Grant has been used for non-Eligible Capital Expenses. At which point, AIM will have thirty (30) days to return the AIM Capital Grant funds spent on non-Eligible Capital Expenses. In addition, AIM, within 30 days of the County’s request, will also be responsible to reimburse the

County for any reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees.

15. Leftover AIM Capital Grant. In the event that there are leftover PEG Capital Funds after the completion of a project, AIM shall return the leftover PEG Capital Funds to Arlington County within ten (10) days of completion of the project.
16. Repurposing of AIM Capital Grant. In the event that AIM sells or disposes of property acquired using the AIM Capital Grant, all proceeds will be deposited into AIM's PEG GL for the future purchase of eligible capital equipment. Under no circumstances will the proceeds of a sale be deposited into an operational account, used for operational expenses, or used for non-Eligible Capital Expenses. If Arlington County discovers that AIM has used funds in violation of this section then Arlington County will send notice to AIM and AIM will be responsible for paying the full value of the funds back to Arlington County within thirty (30) days of receiving notice.
 - a. Notification for Sale of Capital Equipment When Value is over \$5,000. If AIM sells any capital equipment purchased by the AIM Capital Grant and the value is over \$5,000 then AIM shall notify Arlington County within two (2) business days of such sale.
 - b. Future Purchase of Eligible Capital Equipment. In the event AIM sells or disposes of property acquired using the AIM Capital Grant and intends to use the proceeds on PEG Eligible Capital Expenses then AIM will follow the procedure laid out in this Agreement beginning with Section II (2) and (3).
17. Recordkeeping. AIM shall maintain all books, records and other documents that are pertinent to the activities of AIM using PEG funds. AIM will maintain these records in a manner that will provide Arlington County with sufficient detail to review receipts and expenditures related to the AIM Capital Grant. AIM will make such records available for review by the County upon notice. Such records shall include but not be limited to: paid invoices, vendor quotations for capital equipment and services, and proposals submitted to Arlington County for the granting of capital funds.
 - a. Destruction of Records. In the event AIM wishes to destroy or dispose of any pertinent to the PEG funds used by AIM, AIM must give the County at least 30 days' notice and must not dispose of the documents if the County objects.
18. Insolvency. In the event AIM ceases operation or becomes insolvent and files a petition for bankruptcy, then AIM will list the County as a creditor due to the AIM Capital Grant(s) provided by Arlington County to AIM as well as any property purchased by AIM with the AIM Capital Grant(s).
 - a. Notice. In the event AIM intends to file for bankruptcy, AIM shall notify Arlington County thirty (30) days prior to filing the Petition for Bankruptcy. After notifying Arlington County of AIM's intention to file a Petition for Bankruptcy, AIM shall return to Arlington County any unused AIM Capital Grant funds as well as any property or assets purchased through AIM Capital Grant(s).
 - b. Claim. AIM understands and agrees that in the event of insolvency or bankruptcy of AIM, Arlington County will file a claim on any unused AIM Capital Grant funds, PEG GL balances, as well as any property or assets purchased through the AIM Capital Grant(s).

- c. Bankruptcy Proceedings. AIM shall advocate for Arlington County's claims at any bankruptcy proceeding and before any trustee that is appointed for the bankruptcy proceeding.
 - d. Priority. In the event Arlington County files a claim on any unused AIM Capital Grant funds and on property or assets purchased through AIM Capital Grant, Arlington County shall have first priority on the above stated funds and AIM agrees to support first priority for Arlington County's claim for the above items at any bankruptcy proceeding and before any appointed trustee.
19. Breach. In the event of a breach of AIM of the terms of this Agreement, the County may withhold future AIM Capital Grant payments or refuse to consider any Capital Grant Proposal until AIM cures the breach.

SECTION III: GENERAL CONDITIONS

1. Entire Agreement; Amendment. This Agreement constitutes the entire agreement among the parties as to the PEG Funds and may not be amended or modified, except in writing signed by each of the Parties. AIM may not assign or transfer its rights and interests in this Agreement to any other person, business or entity.
2. Assignment. AIM may not assign or transfer by operation of law or court order any of Grantee's rights or obligations under this Agreement with Arlington County's prior written approval. This Agreement will bind and benefit any permitted successors and assigns.
3. Third Party Beneficiaries. This Agreement is for the exclusive benefit of the AIM and Arlington County, and not for the benefit of any third party, including, without limitation, any partner, employee, or volunteer of the Grantee.
4. Governing Laws; Venue. This Agreement is made and is intended to be performed in Arlington County, Virginia, and shall be construed and enforced by the laws of the Commonwealth of Virginia. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the County of Arlington or in the United States District Court for the Eastern District of Virginia, and such litigation shall not be brought in any other court.
5. Severability. Each provision of this Agreement must be interpreted in a way that is enforceable under applicable law. If any provision is held unenforceable, the rest of the Agreement will remain in effect.
6. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and not for or against any Party by reason of the authorship or any other rule of construction that might apply. The Section headings are for purpose of convenience only and shall not be construed to limit or extend the meaning of this Agreement.
7. Non-Liability of Officials, Employees, and Agents. No member, official, employee, or agent of the County Board shall be personally liable to AIM in the event of any default or breach by the Arlington County Board for any amount that may become due to the Grantee or its successors or assigns under the terms of this Agreement.
8. Force Majeure. No Party will be held responsible for failing to perform its responsibilities

under this Agreement if the failure results from any act of nature, public health emergency, or other cause that is beyond the reasonable control of the Party and that makes performance impossible or illegal.

9. Singular and Plural. Wherever the singular is used in this Agreement, that expression is considered as including the plural meaning as well and vice versa.
10. Breach. If Arlington County determines that AIM submitted false information or otherwise has not complied with this Agreement, Grantee will be required to return any awarded PEG Funds in full upon request by the County.
11. Business Day Convention. If the date of any required action falls upon a weekend day or a holiday when the New York Stock Exchange is not open for business, the required action may be deferred to the next business day.
12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall be one and the same instrument. A facsimile, .pdf copy or other electronic signature (e.g., DocuSign) of this Agreement, when signed in compliance with this Section, is an enforceable, original agreement for all purposes.
13. Dispute Resolution. In the event an issue regarding or arising under this Agreement cannot be resolved by the parties, the issue will be brought to the County Manager for a final decision. For matters concerning Eligible Capital Expenses, if the County Manager and AIM are unable to reach an agreement, the Parties shall appoint an accountant independent of the County and AIM to render a final determination. For all other disputes arising under this Agreement that the Parties are unable to resolve, the parties may pursue legal action.
14. Hold Harmless. AIM shall indemnify, defend and hold the Arlington County Board and its respective officers, agents, successors and assigns harmless from and against: (1) any and all claims, liabilities and losses whatsoever (together with any expenses related thereto, including but not limited to, damages, court costs and attorney's fee) occurring to or resulting from any and all persons, firms, or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and (2) any and all claims, liabilities and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connecting with AIM's performance called for in this Agreement. AIM's performance n AIM's action or inaction and the action or inaction of AIM's officers, employees, agents, contractors and subcontractors. This provision shall survive the expiration or termination of this Agreement.

SECTION IV: NOTICES

1. Notices, Demands and Communications Between the Parties. Formal notices, demands, and communications between the Parties shall be given by (i) personal service; (ii) reputable document delivery service, such as Federal Express, with a receipt showing date and time of delivery; or (iii) certified or first-class United States mail, postage prepaid, with a receipt showing date and time of delivery.

To the County:

Arlington County
Office of the County
Manager 2100 Clarendon
Blvd, Suite 302
Arlington, Virginia 22201
Attn: Mark Schwartz
County Manager

With Copies to:

Arlington County
Office of the County
Attorney 2100 Clarendon
Blvd, Suite 403
Arlington, Virginia 22201
Attn: MinhChau Corr,
County Attorney

To AIM:

Arlington Independent Media
2701 Wilson Blvd, Suite C
Arlington, Virginia 22201
Attn: Whytni Kernoodle

THE COUNTY BOARD OF
ARLINGTON COUNTY,
VIRGINIA

By: _____
Name: _____
Title: County Manager

Approved as to form: _____
County Attorney

ARLINGTON COMMUNITY ACCESS CORPORATION DBA
ARLINGTON INDEPENDENT MEDIA

By: _____

Name: _____

Title: _____