

ORDINANCE NO. 90-49 AC CMS

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO
AN AGREEMENT WITH OBERLIN CABLE CO-OP, INC., FOR
THE LEASE OF CABLE TELEVISION EQUIPMENT

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, a majority of all members elected thereto concurring:

SECTION 1. That the City Manager is hereby authorized and directed to enter into a lease agreement with Oberlin Cable Co-op, Inc., for the lease of certain cable television equipment for a term of five (5) years, a copy of said lease agreement being attached hereto, marked "Exhibit A", and incorporated herein by reference.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance shall take effect at the earliest date allowed by law.

PASSED: 1st Reading - July 16, 1990
2nd Reading - August 20, 1990 (Emergency)
3rd Reading -

ATTEST:


CLERK OF COUNCIL


CHAIRMAN OF COUNCIL

POSTED: August 22, 1990

EFFECTIVE DATE: August 20, 1990

LEASE

August

This Lease is made this 22nd of ~~JUNE~~, 1990, by and between the CITY OF OBERLIN, OHIO, a municipal corporation, hereinafter referred to as "Lessor", and OBERLIN CABLE CO-OP, INC., of Oberlin, Ohio, hereinafter referred to as "Lessee". In consideration of the mutual promises herein contained, the parties hereto agree as follows:

EQUIPMENT LEASED

1. The LESSOR hereby leases to LESSEE, and the LESSEE hereby leases and hires from the LESSOR, the following personal property, along with their associated accessories, and such additional personal property as the parties may from time to time make subject to this Lease Agreement.

See Exhibit A attached.

2. Said personal property and its accessories are hereinafter called "EQUIPMENT".

TERM

3. The term of Lease respecting each item of equipment and its accessories commences on June 1, 1990, and expires at midnight (12:00 a.m.) on May 31, 1995.

RENT

4. The rent for the equipment described herein shall be One Dollar (\$1.00) per year, due on or before the 1st day of each year, except the first year's rent shall be payable upon execution of this Lease Agreement.

5. Said rent shall be payable to LESSOR at 85 South Main Street, Oberlin, Ohio, or to such other person or at such other place as the LESSOR may from time to time designate in writing.

6. If the LESSEE with regard to any item or items of equipment fails to pay any rent or other amount herein provided within ten (10) days after the same is due and payable, or if any execution or any other writ of process shall be issued in any action or proceeding against the LESSEE whereby said equipment may be ceased, taken, or distrained, or if a proceeding in bankruptcy, receivership, or insolvency shall be instituted by or against the LESSEE or its property, or if the LESSEE shall enter into any arrangement or composition with its creditors, or if LESSEE, with regard to any item of items of equipment, fails to observe, keep, or perform any other provision of this LEASE required to be observed, kept, or performed by the LESSEE, the LESSOR shall, if such default shall continue for five (5) days after written notice thereof, have the right to exercise any one or more of the following remedies:

- a. To declare the entire amount of rent hereunder immediately due and payable as to any or all items of equipment, without notice or demand to the LESSEE.
- b. To sue for and recover all rents and other payments then accrued or thereafter accruing, with respect to any or all items of equipment.
- c. To take possession of any or all items of equipment, without demand or notice, wherever the same may be located, without any Court order or other process of law. The LESSEE hereby waives any and all damages occasioned by such taking of possession. Any said taking of possession shall not constitute a termination of this Lease as to any or all items of equipment unless the LESSOR expressly so notifies the LESSEE in writing.
- d. To terminate this Lease as to any or all items of equipment.
- f. To pursue any other remedy at law or in equity.

7. Notwithstanding any said repossession, or any other action which the LESSOR may take, the LESSEE shall be and remain liable for the full performance of all obligations to be performed by the LESSEE under this Lease.

8. All such remedies are cumulative, and may be exercised concurrently or separately.

9. If the LESSEE fails to pay any part of the rent herein reserved or any other sum required by the LESSEE to be paid to the LESSOR within ten (10) days after the due date thereof, the LESSEE shall pay to the LESSOR, upon request of the LESSOR, interest on such delinquent payment from the expiration of said ten (10) days until paid at the rate of twelve percent (12%) per annum.

10. The LESSEE hereby waives, and agrees not to assert, any and all existing and future claims, defenses, and offsets against any rent or other payments due hereunder. The LESSEE agrees to pay the rent and other amounts hereunder regardless of any claim, defense, or offset which may be asserted by the LESSEE or on its behalf.

USE

11. The LESSEE shall use the equipment in a careful and proper manner in accordance with its proper and intended use, and shall comply with the laws, ordinances, and regulations relating to the possession, use, or maintenance of the equipment.

12. If at any time during the term of this Lease, the LESSOR supplies the LESSEE with labels, plates, or other markings, stating the

equipment is owned by the LESSOR, the LESSEE shall affix and keep the same in an prominent place on the equipment.

INSPECTION

13. The LESSEE agrees and stipulates that it has fully inspected the equipment after delivery and acknowledges that the equipment is in good condition and repair, and that the LESSEE is satisfied with and accepts the equipment in such good condition and repair.

14. The LESSOR shall, at any and all times during business hours, have the right to enter into and on the premises where the equipment may be located for the purpose of inspecting the same or observing its use. The LESSEE shall give the LESSOR immediate notice of any attachment or other judicial process affecting any item of equipment and shall, whenever requested by the LESSOR, advise the LESSOR of the exact location of the equipment. The equipment shall not be removed from the business premises of the LESSEE, without the prior written consent of the LESSOR.

ALTERATIONS AND REPAIRS

15. Without the prior written consent of the LESSOR, the LESSEE shall not make any alterations, additions, or improvements to the equipment. All additions and improvements of whatsoever kind or nature made to the equipment shall belong to and become the property of the LESSOR on the termination of this Lease.

16. The LESSEE, at its own cost and expense, shall keep the equipment in good repair, condition, and working order and shall furnish any and all parts, mechanisms, and devices required to keep the equipment in good mechanical and working order.

LOSS AND DAMAGE

17. The LESSEE hereby assumes and shall bear the entire risk of loss and damage to the equipment from any and every cause. No loss or damage to the equipment or any part thereof shall impair any obligation of the LESSEE under this Lease which shall continue in full force and effect.

18. In the event of loss or damage of any kind to any item of equipment, the LESSEE, at the option of the LESSOR, shall:

- a. Repair the same to good repair, condition, and working order; or,
- b. Replace the same with like equipment in good repair, condition, and working order.

19. If the equipment is determined by the LESSOR to be lost, stolen, destroyed, or damaged beyond repair, the LESSEE shall pay the

LESSOR therefore, upon demand, in cash, the true value of the piece of equipment so destroyed, lost, stolen, or otherwise damaged upon repair immediately prior to its destruction, loss, or theft. On such payment this Lease shall terminate with respect to that piece of equipment and the LESSEE thereon shall become entitled to such equipment as-is-where-is without warranty, express or implied, with respect to any matter whatsoever.

SURRENDER

20. On the expiration or earlier termination of this Lease, with respect to any item of equipment, the LESSEE shall (unless Paragraph 19 hereinbefore is applicable) return the same to the LESSOR in good repair, condition, and working order (ordinary wear and tear resulting from proper use thereof alone excepted) in the following manner as may be specified by the LESSOR:

- a. By delivering such item of equipment at the LESSEE'S cost and expense to such place the LESSOR shall specify; or,
- b. By loading the item of equipment at the LESSEE'S cost and expense on board such carrier as the LESSOR shall specify and shipping the same, freight collect, to the destination designated by the LESSOR.

INSURANCE AND TAXES

21. The LESSEE shall keep the equipment insured against all risks of loss or damage from every cause whatsoever for not less than the full replacement value thereof as determined by the LESSOR. The LESSEE shall carry Public Liability and Property Damage Insurance covering the equipment. All said insurance shall be in the form and amount and with companies approved by the LESSOR, and shall be in the joint names of the LESSOR and LESSEE. The LESSEE shall pay the premiums therefore and shall deliver said policies or duplicates thereof, to the LESSOR. Each insurer shall agree, by endorsement on the policy issued by it or by independent instrument furnished to the LESSOR, that it will give the LESSOR thirty (30) days written notice before the policy in question shall be altered or cancelled. The Proceeds of such insurance, at the option of the LESSOR, shall be applied:

- a. Toward the replacement, restoration, or repair of the equipment; or,
- b. Toward payment to LESSOR in the amount of the true value of the equipment at the time of the casualty, in which instance the Lease as to said piece of equipment shall terminate. The LESSEE hereby appoints the LESSOR as the LESSEE'S Attorney-In-Fact to make claim for, receive payment of, and execute and endorse all documents,

checks, or drafts for loss or damage under any said insurance policy.

22. The LESSEE shall keep the equipment free and clear of all levies, liens, encumbrances, and shall pay all license fees, registration fees, assessments, charges, and taxes which may now or hereafter be imposed on the ownership, leasing, renting, sale, possession, or use of the equipment, excluding, however, all taxes on or measured by the LESSOR'S income.

23. In case of failure of the LESSEE to procure or maintain said insurance or to pay said fees, assessments, charges, and taxes, as hereinbefore specified, the LESSOR shall have the right, but shall not be obligated, to effect such insurance, or pay said fees, assessments, charges, and taxes, as the case may be. In that event, the cost thereof shall be repayable to the LESSOR with the next installment of rent, and failure to repay the same shall carry with it the same consequences, including interest at twelve percent (12%) per annum, as failure to pay any installment of rent.

WARRANTIES

24. THE LESSOR MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY MANNER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.

PERSONAL PROPERTY

25. The equipment is, and shall at all times be and remain, personal property, notwithstanding that the equipment or any part thereof may now be, or hereafter become, in any manner fixed or attached to, or embedded in, or permanently resting on real property or any building thereon, or attached in any manner to that which is permanent by cement, plaster, nails, bolts, screws, or otherwise.

OWNERSHIP AND ASSIGNMENT

26. The equipment is, and shall at all times be and remain, the sole and exclusive property of the LESSOR. The LESSEE shall have no right, title, or interest therein except as expressly set forth in this Lease.

27. Without the prior written consent of the LESSOR, the LESSEE shall not:

- a. Assign, transfer, pledge, or hypothecate this Lease, the equipment or any part of it, or any interest in it; or,
- b. Sublet or lend the equipment or any part of it, or permit the equipment or any part of it to be used by anyone other than the LESSEE or the LESSEE'S employees

or designated representatives, for authorized activities or programming of LESSEE only.

Consent to any of these prohibited acts applies only in the given instance, and is not a consent to any subsequent like act by the LESSEE or any other person.

INDEMNITY

28. The LESSEE shall indemnify the LESSOR against, and shall hold the LESSOR harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including attorney's fees, arising out of, connected with, or resulting from the equipment, including, without limitation, the manufacture, selection, delivery, possession, use, operation, or return of the equipment.

GENERAL PROVISIONS

29. The LESSEE shall pay the LESSOR all costs and expenses, including attorney's fees, incurred by the LESSOR in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions, or provisions hereof.

30. No right or remedy herein conferred on or reserved to the LESSOR is exclusive of any other right or remedy herein or by law or equity provided or permitted; but each shall be accumulative of every other right or remedy given herein or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

31. No covenant or condition of this Lease may be waived except by the written consent of the LESSOR. Forbearance or indulgence by the LESSOR in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the LESSEE to which the same may apply, and, until complete performance by the LESSEE of any covenant or condition, the LESSOR shall be entitled to invoke any remedy available to the LESSOR under this Lease or by law or in equity despite said forbearance or indulgence.

32. This Lease constitutes the entire agreement between the LESSOR and the LESSEE and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter. It shall not be amended, altered, or changed except by a written agreement signed by the parties hereto.

33. Time is of the essence in this Lease and in each and all of its provisions.

34. This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Lease.

35. The LESSOR shall have the right to terminate this Lease at any time during its term upon not less than ninety (90) days advance written notice to LESSEE.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

WITNESSES:

LESSOR:

THE CITY OF OBERLIN, OHIO

Julia A. Simonson
Suzanne M. Milewski

by: Deborah G. Kimble
Deborah G. Kimble, City Manager

LESSEE:

OBERLIN CABLE CO-OP, INC.

Vicky J. Jans
Ralph L. Votto

by: Gail A. Brubaker

Approved as to form:

Eric R. Severs
Eric R. Severs, City Solicitor

LEASE

{CITY OF OBERLIN/OBERLIN CABLE CO-OP, INC.}

Exhibit A

<u>Quantity</u>	<u>Description</u>
1	Panasonic AG-450 Camera ✓
1	Bogen Tripod ✓
1	Panasonic AG-1830 Deck ✓
1	Panasonic AGA 95 Edit Controller
1	Panasonic 13" Color Monitor