

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: WMFE Capacity Grant

DEPARTMENT: County Manager Office **DIVISION:** _____

AUTHORIZED BY: Cynthia A. Coto **CONTACT:** Don Fisher **EXT.** 7212

Agenda Date <u>2/13/07</u> Regular <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Work Session <input type="checkbox"/> Briefing <input type="checkbox"/> Public Hearing – 1:30 <input type="checkbox"/> Public Hearing – 7:00 <input type="checkbox"/>

MOTION/RECOMMENDATION:

Approve and authorize the Chairman to execute the WMFE Capacity Grant Agreement between Seminole County Government and Community Communications, Inc. (WMFE) in the amount of \$30,000 a year for the next three years to produce and provide new programs on WMFE-TV and WMFE-FM about issues that are important to the citizens of Central Florida.

Countywide

BACKGROUND:

At the July 20, 2006 Budget Worksession a request for \$30,000 for three years was presented to the Board by Mr. Steven McKinney Steck, CEO for WMFE for the WMFE – Capacity Grant Program to provide new programming about issues that are important to the citizens of Seminole County and Central Florida.

Item was added to the Budget for consideration and approved at the budget public hearing on September 13, 2006 for \$30,000 for three years for air time and programming.

Attachment
WMFE Contract
Capacity Grant Programming Update

Reviewed by:	_____
Co Atty:	<u>AM</u>
DFS:	_____
Other:	_____
DCM:	<u>AD</u>
CM:	<u>CAC</u>
File No:	<u>CMO 6</u>

CAPACITY GRANT AGREEMENT

This Agreement made and entered into this _____ day of _____ 20____, by and between the Seminole County Government, Florida (COUNTY) and Community Communications, Inc. (WMFE).

WITNESSETH:

WHEREAS, WMFE seeks funding to expand its production and programming "capacity" to develop, produce, and program new and current local programs on WMFE; and

WHEREAS, with this additional capacity the locally produced programs developed by WMFE will provide relevant and important information that will address issues within the COUNTY and the Central Florida region; and

WHEREAS, the COUNTY and WMFE desire to enter into an agreement whereby the COUNTY shall provide WMFE with a "capacity" grant of no less than \$30,000 per year for a period of three consecutive years;

NOW, THEREFORE, in consideration of the promises contained herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Term and Termination.** The term of this agreement shall begin on April 1, 2007 and shall continue through March 31, 2010. However, either party may terminate this Agreement, without cause, at the end of each twelve-month period upon providing the other party a written notice of termination no less than ninety (90) days before the end of the current twelve-month period. Said notice of termination shall be delivered by certified mail or in person to the address specified in the section regarding Notice herein.
2. **COUNTY's Obligations.** The COUNTY shall provide WMFE with a capacity grant (GRANT) of \$30,000 (Thirty Thousand Dollars) each year for a minimum of three consecutive years, beginning on April 1, 2007 and ending on March 31, 2010, for a total GRANT of \$90,000 (Ninety Thousand Dollars) unless this Agreement is terminated pursuant to the section *Term and Termination* above. Each annual payment shall be by check made payable to Community Communications, Inc. and mailed to the address indicated in the section regarding Notice herein.
3. **WMFE's Obligations.**
 - A. WMFE shall develop, produce and schedule locally produced programs as described in the Capacity Grant Request Related to WMFE's *Vision for Our Future* document dated July 7, 2006 as presented to the COUNTY, with a copy of said document attached to and incorporated herein as Attachment "A". These programs are scheduled to begin on WMFE by May 31, 2007. WMFE shall provide topic coverage of issues about or related to the COUNTY as conceptually described within said document.
 - B. WMFE retains exclusive editorial and content control of any programs resulting from the additional capacity that this Agreement makes possible. WMFE will give the County right of review and approval in the event WMFE makes editorial or content changes to any of the programs produced and/or provided by the County pursuant to

this Agreement which affect the integrity or content of the County message. WMFE shall own the copyright to said programs, including the right to make recordings of the programs and to use and re-use such recordings, in whole or in part, for radio and television broadcasting, cablecasting, audiovisual and closed circuit exhibition and other electronic and mechanical distribution of whatever kind throughout the world in perpetuity.

- C. WMFE will provide the COUNTY a written report at mid-year and at the end of each full GRANT year containing a list of topics and issues covered that relate to the COUNTY.
- D. WMFE acknowledges that it is seeking additional funding from other sources to support additional programming capacity. Prior to accepting the COUNTY'S first GRANT payment, WMFE shall certify to the COUNTY that WMFE has sufficient funds to carry out its obligation to the COUNTY.
- E. WMFE shall do all things legally necessary to maintain its corporate, not-for-profit status in the state of Florida throughout the term of this GRANT Agreement. If WMFE should lose its corporate status, it shall immediately notify the COUNTY and the COUNTY reserves the right to immediately terminate this GRANT Agreement.
- F. WMFE shall comply with all applicable federal, state and local laws, rules and regulations (including all fire, health and other applicable regulatory codes) and obtain, and possess throughout the term of this GRANT Agreement, all required licenses and permits applicable to its operations.
- G. WMFE shall comply with Title VII of the Civil Rights act of 1964, as amended, and not discriminate against any person with regard to race, color, creed, religion, gender, age, national origin, marital status, sexual orientation or disability.

4. Central Florida Alliance Network Participation:

- A. WMFE will provide each week starting in January 2007 and for a period of not less than three consecutive years, at no additional grant expense to the COUNTY, an exclusive block of airtime for programming to be provided by the COUNTY for broadcast on WMFE's *Central Florida Alliance Network (CFAN)* channel. At least one block each week will be scheduled within primetime hours (7PM – 11PM). The length and quantity of the airtime block will be as described within Attachment "A".
- B. Said block of airtime is provided as an added value to the COUNTY in exchange for the capacity GRANT. If said GRANT is no longer made available by the COUNTY to WMFE, the block of airtime offered to the COUNTY may be terminated by WMFE at its sole discretion.
- C. The COUNTY's programming for said airtime shall be provided by the COUNTY to WMFE through the Government Cable Channel or directly by the COUNTY. The COUNTY shall provide the delivery method and format for the programming will be mutually agreed upon by both parties to assure compatibility with available playback methods.

- D. The COUNTY will promote its *CFAN* offerings within its own programming and other COUNTY publications. WMFE will promote the block of programming within programming breaks of WMFE *CFAN*, and via other promotional materials of WMFE.
 - E. Programming provided by the COUNTY will comply with WMFE's production guidelines and adhere to FCC Rules and Regulations for telecast on Public Television, including closed captioning.
 - F. The block of programming from the COUNTY will include a WMFE *CFAN* logo electronically inserted by WMFE from the WMFE facility. This logo will not interfere with an appropriate logo as may be inserted by the COUNTY.
 - G. WMFE reserves the right to preempt any or all parts of the block of programming for unique or exceptional "public service" instances which might lead to WMFE's different use of the *CFAN* channel during that period.
5. **Errant or Excess Disbursement.** WMFE expressly understands and agrees that the GRANT amount constitutes the total amount to be paid by the COUNTY under this Agreement. WMFE shall be liable for repayment of any funds which have been disbursed in error or are in excess of the GRANT amount.
6. **Indemnification.**
- A. WMFE shall defend, indemnify, and hold harmless the COUNTY, its officials, agents, and employees from and against any and all claims, suits, judgments, demands, liabilities, damages, cost and expenses (including attorney's fees) of any kind or nature whatsoever arising directly or indirectly out of or caused in whole or in part by any act or omission of WMFE or its subcontractors (if any), anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable.
 - B. Likewise, the COUNTY shall defend, indemnify, and hold harmless WMFE, its board, officials, and staff from and against any claims, suits, judgments, demands, liabilities, damages, cost and expenses (including attorney's fees) of any kind or nature whatsoever arising directly or indirectly out of or caused in whole or in part by any act or omission of the COUNTY or its subcontractors (if any), anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable. Notwithstanding, the COUNTY's indemnification of WMFE is limited to "the extent as allowed by Florida law" as provided in Florida Statutes Section 768.28.
 - C. Each party certifies that any and all materials furnished by them for the programming produced or aired under this Agreement are either owned by them or otherwise authorized for such use without further obligation to any third party. If, by a reason related to the content of any program produced or broadcast pursuant to this Agreement, there is any claim or litigation involving any charge by third parties of a violation or infringement of their rights, each party to this Agreement shall be solely responsible for the content that they directly provided for the program and accordingly, each party shall indemnify and hold harmless the other party from any liability, loss or expenses arising from such claim or litigation.
7. **No Third Party Beneficiaries.** This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person or entity other than the parties to this Agreement.

8. **Notice:** Other than matters relating to production and telecasting activities related to this Agreement, any notices hereunder shall be in writing and will be deemed received when delivered in person (with proof of delivery), by facsimile transmission (with transaction report), or upon receipt if sent by overnight express mail or certified mail (return receipt requested), postage prepaid and properly addressed to the other party at the following addresses (or such other address as either party shall have specified by written notice to the other party in accordance herewith):

As to COUNTY:

Name _____
Title _____
Address _____

As to WMFE:

Name José A. Fajardo
Title President & CEO
Address Community Communications, Inc.
11510 East Colonial Drive
Orlando, FL 32817

9. **Relationship.** Nothing contained in this Agreement is intended, or shall be construed, as in anyway creating or establishing a partnership, joint venture or any other form of legal association or relationship between the parties hereto or as to deem WMFE as the agent or representative of the COUNTY for any purpose or for any manner whatsoever.
10. **Force Majeure.** Neither party to this Agreement shall be liable to the other for failure to perform due to acts of God, fire, flood, epidemic, labor dispute, civil commotion, act of government (other than the COUNTY), or any other cause or event beyond the control of and without the fault of either party.
11. **Assignment.** Neither party shall assign any rights or duties under this Agreement without the prior written consent of the other party. Failure to comply with this section may result in immediate termination of this Agreement by notice to the original party. This section shall not prohibit WMFE from entering into any subcontracts for the provision of services agreed to herein.
12. **Relief.** If at any time after the execution of this Agreement it is reasonably believed that any party has violated the terms of this Agreement, the other party shall have the right to seek appropriate relief including, but not limited to, a permanent injunction restraining further violations, recovery of amounts paid pursuant to the terms of this Agreement and/or damages, as appropriate, and reasonable attorneys' fees.
13. **Waiver.** The continued performance by either party hereto, pursuant to the terms of this Agreement, after a breach or default of any of the terms, covenants or conditions herein shall not be deemed a waiver of any right to terminate this Agreement for any subsequent breach or default. Any expressed or implied waiver of any breach or default of any of the terms, covenants or conditions herein shall not be construed or act as a waiver of any subsequent breach or default and shall not be construed to be a modification of this Agreement.

- 14. **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to principles of conflicts of laws and, in the event of litigation in connection with this Agreement, venue shall lie in Orange County, Florida.
- 15. **Severability.** Any covenant, condition or provision contained in this Grant Agreement that is held by any court of competent jurisdiction to be invalid, illegal or unenforceable shall not affect the validity, legality or enforceability of any other covenants, conditions or provisions herein contained.
- 16. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof; any representations or statements heretofore made with respect to such subject matter, whether verbal or written, are merged herein. This Agreement shall supersede any other prior agreements, whether verbal or written, regarding the subject matter.
- 17. **Amendment.** Any amendments, alterations, modifications or waivers of provisions of this Agreement shall be valid only when made by written instrument, specifically referencing this Agreement, and duly signed by both parties.
- 18. **Signatory.** Each signatory below represents and warrants that he or she has full power and is duly authorized by their respective party to enter into and perform this Agreement. Such signatory also represents that he or she has fully reviewed and understands the above conditions and intends to fully abide by the conditions and terms of this Agreement as stated.

IN WITNESS WHEREOF, the parties have duly signed, sealed and delivered this Agreement as of the date first above written.

COUNTY

By:

Signature:

Printed Name:

Title:

WMFE

By:

Signature:

Printed Name:

Title:

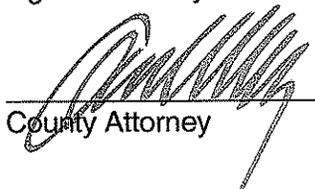


 Jose A. Fajardo

 President & CEO

For the use and reliance of Seminole County only.

Approved as to form and legal sufficiency.



 County Attorney