

AGREEMENT FOR CLOSED CAPTIONING SERVICES

This Services Agreement ("Agreement") is made as of the date of below, by and between the Lexington-Fayette Urban County Government ("LFUCG"), an urban-county government created pursuant to KRS 67A, located at 200 East Main Street, Lexington, KY 40507, and Caption Advantage, LLC ("Caption Advantage"), a domestic limited liability company organized under the laws of New York, located at 4440 Ashfield Terrace, Syracuse, NY, 13215.

1. Services to be provided by Caption Advantage.

In accordance with the terms and conditions set forth herein, Caption Advantage will provide LFUCG with closed captioning services for council meetings and other programming, as directed by LFUCG, subject to the specifications set forth in RFP 45-2015. Caption Advantage will use a phone line to the encoder and a phone line to a Gentner/Comrex audio unit provided by LFUCG for the captioning of all programming. An EEG-470 encoder, or an equivalent encoder, will be supplied by Caption Advantage. The Encoder will remain the property of Caption Advantage and may only be used by Caption Advantage for live captioning of programming.

2. Representations of Caption Advantage.

- (a) Caption Advantage agrees to maintain high-quality captioning services, which meet any applicable specifications of the Federal Communications Commission, the Individuals with Disabilities Education Act (IDEA), the Rehabilitation Act of 1973, the American with Disabilities Act (ADA), and any other applicable governmental authorities.
- (b) Caption Advantage will perform the captioning services and obligations set forth above in this Section in a timely, professional, and competent manner.
- (c) Caption Advantage will perform the captioning services and obligations under this Agreement with an accuracy rate of at least 98.6%, or at a rate determined by the state board overseeing court reporters, or at a rate set by the National Court Reporters Association, whichever is higher.
- (d) Caption Advantage will provide a written transcript of any meeting for which captioning services are performed within twenty-four (24) hours of said meeting.
- (e) Caption Advantage will provide captioning services for analog, digital, HD broadcast, as well as webcasts via Granicus, YouTube, and Livestream, as necessary.
- (f) Caption Advantage will properly install equipment and use reasonable efforts to troubleshoot any issues, including consulting with engineers and IT professionals, to resolve any issues that may arise under this Agreement.

- (g) Caption Advantage will provide an accounting of services, fees, and balances in the form of an itemized bill upon demand.
- (h) Caption Advantage will designate an internal point of contact or liason and identify the employees responsible for providing services to LFUCG pursuant to this Agreement.

3. Fees Charged by Caption Advantage.

Caption Advantage's fee schedule for realtime (live) captioning services is as follows:

Scheduled meeting:
\$110 per hour (minimum two-hour fee)
Pro-rated in 15-minute increments after two hours

Half-hour weekly programs:
\$75 per program

Technical support charge:
No charge

4. Representations of LFUCG.

- (a) If a scheduled event is preempted, rescheduled, or otherwise cancelled by LFUCG, LFUCG will verbally notify Caption Advantage within the twenty-four (24) hour period preceding the scheduled event. In the event that LFUCG fails to notify Caption Advantage within the above period, LFUCG agrees to pay Caption Advantage for that scheduled event pursuant to the fee schedule in Section 3 of this Agreement.
- (b) If Caption Advantage fails to provide services for a ~~any given~~ scheduled event due to a fault on its part, or due to circumstances not listed in subsection (a), LFUCG will not be obligated to pay Caption Advantage for said scheduled event.

5. Term and Termination.

- (a) This Agreement will become effective on the date of signature. Performance under this Agreement will commence on 15-Jan-2016.
- (b) LFUCG may terminate this Agreement without cause upon thirty (30) days' notice in writing to Caption Advantage.
- (c) In the event that this Agreement is terminated in violation of subsection (b), LFUCG will pay Caption Advantage for all captioning services provided under this Agreement.

6. Confidential Information.

Caption Advantage acknowledges that it may obtain access to confidential information in any form, including but not limited to, written, electronic, oral, overheard or observed, while rendering services for LFUCG pursuant to this Agreement. Caption Advantage agrees not to disclose any confidential information except as permitted by LFUCG policies or applicable law and as required to perform work duties for LFUCG. Caption Advantage agrees not to alter or otherwise use confidential information in any way, or to manufacture or test any product embodying confidential information except for the express purposes communicated by LFUCG pursuant to this Agreement. Caption Advantage acknowledges that all confidential information remains the property of LFUCG and may not be removed or kept after termination of this Agreement.

Caption Advantage further agrees to take all steps reasonably necessary to protect the secrecy of confidential information for the term of this Agreement and thereafter. Caption Advantage further acknowledges that violation of this Agreement may lead to adverse action, up to and including ineligibility for participation in future work opportunities with LFUCG. Caption Advantage understands that violation of this Agreement may also lead to criminal or civil penalties, including attorney's fees and costs in the event that a dispute regarding violation of this Agreement results in litigation.

Caption Advantage acknowledges that unauthorized use or disclosure of confidential information would cause irreparable injury and harm to LFUCG for which LFUCG would have no adequate remedy at law, and for which LFUCG shall be entitled to obtain *ex parte* equitable relief in any court of competent jurisdiction, in addition to pursuing other remedies at law or equity.

7. No Waiver.

All rights not expressly granted herein are reserved by the parties. No waiver of any term, covenant, or condition contained in this Agreement, or any failure to exercise any right hereunder, shall constitute a further waiver of the same.

8. Assignment.

Caption Advantage is prohibited from assigning or delegating its rights or obligations pursuant to this Agreement without the prior written consent of LFUCG. Any assignment or delegation in violation of this section shall be void.

9. Warranties.

Each party to this Agreement represents, warrants, and covenants to the other party that it has the full corporate right, power, and authority to enter into this Agreement and perform its respective obligations hereunder.

10. Choice of Law.

This Agreement shall be governed, construed, and enforced in accordance with the laws of the Commonwealth of Kentucky, without regard to its conflict of law rules.

11. Severability.

If any portion of this Agreement shall be held to be unenforceable, such portion shall be deemed canceled, but such cancelation shall not affect the enforceability of any of the other terms, conditions or provisions herein.


12. Indemnification.

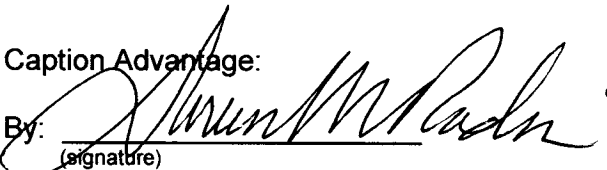
The indemnification and insurance responsibilities contained in RFP 45-2015 are fully incorporated by reference as if fully set forth herein.

13. General

This Agreement constitutes the entire agreement between the parties hereto with respect to the closed captioning services to be provided by Caption Advantage. No waiver, modification, alteration, or amendment of any of the terms or conditions of this Agreement will be effective unless and until set forth in writing and signed by the party to be bound thereby.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the effective date.

LFUCG: 
By: _____
(signature)
By: Jim Gray
Title: Mayor
Date: 19-Jan-2016

Caption Advantage: 
By: _____
(signature)
By: Doreen M. Radin
Title: President
Date: 11/16/15