

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATION**

CC: IOC
Amend No. _____

Date Prepared: June 3, 2009

Council Meeting Date: July 7, 2009

TO: Carl Swenson, City Manager

THROUGH: Susan J. Daluddung, Deputy City Manager

FROM: J.P. de la Montaigne, Community Services Director

PREPARED BY: Grady Miller, Deputy Community Services Director

SUBJECT: Intergovernmental Agreement Granting Use of the Education Channel on Cox Cable by the Peoria Unified School District

RECOMMENDATION:

Discussion and possible action on an intergovernmental agreement granting use of the education channel by the Peoria Unified School District.

BACKGROUND:

In 1995 the City Council approved a cable television license agreement between the City of Peoria and Cox Communications. In addition to providing license fees and a cable grant to the City, the license agreement also grants a governmental access channel, a public safety channel, and an education channel to the City. The cable television license agreement essentially allows the City to actively manage these channels so long as the channels provide for a public purpose.

The attached intergovernmental agreement allows the Peoria Unified School District to utilize the education channel to broadcast educational programming and district-related information while it protects the City's right to manage the education channel. The term of the intergovernmental agreement is from July 1, 2009 through June 30, 2010. The City Attorney's Office has reviewed the intergovernmental agreement and has determined that it is in compliance with state law.

ATTACHMENT:

1. Intergovernmental Agreement

CITY CLERK USE ONLY:

Consent Agenda
 Carry Over to Date: _____
 Approved
 Unfinished Business (Date heard previous: _____)
 New Business

ORD. # _____ RES. # _____
LCON# 05909 LIC. # _____
Action Date: _____

INTERGOVERNMENTAL CABLE CHANNEL USE AGREEMENT

This Intergovernmental Cable Channel Use Agreement (the "Agreement") is made and entered into this 1st day of July, 2009, by and between the City of Peoria, Arizona, an Arizona municipal corporation (the "City"), and the Peoria Unified School District No. 11 of Maricopa County, a political subdivision of the State of Arizona (the "District"), collectively referred to herein as the "Parties."

RECITALS

WHEREAS, the Parties are legally authorized to enter into Intergovernmental Agreements for services or for the exercise of joint or common powers, pursuant to Arizona Revised Statutes §§ 11-951, *et seq.*;

WHEREAS, the City is further authorized to enter such Agreements pursuant to Article I § 3 of the City of Peoria Charter;

WHEREAS, the District is further authorized to enter such agreements pursuant to Arizona Revised Statutes § 15-342(13);

WHEREAS, the City has entered into that certain Cable Television License Agreement (the "License Agreement") with Cox Cable Phoenix, Inc., an Arizona corporation ("Cox"), as of the 1st day of July, 1995, whereby the City acquired the right to operate two (2) educational Access Channels, one of which (the "K-12 Channel") has been dedicated by the City to provide programming designed for students in the kindergarten to high school age range;

WHEREAS, Peoria City Code § 6-30(e) empowers the City to share use of the K-12 Channel;

WHEREAS, the City has determined that it is necessary and appropriate to share the use of the K-12 Channel with the District, and the District has agreed to so use the K-12 Channel; and

WHEREAS, such use will result in both economic and operational benefits to both Parties.

NOW THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the Parties agree as follows.

AGREEMENT

1. Purpose. The purpose of this Agreement is to maximize the effective use of the K-12 Channel. The District will operate the K-12 Channel subject to the restrictions of the License Agreement, Chap. 6 of the Peoria City Code, 47 U.S.C. § 621 *et seq.*, A.R.S. §§ 9-501 to 9-510, and any other federal or state requirements governing cable communications.

885045.2

1.1. Scope of Content. The District will provide mutually agreed to hours of educational programming content for the K-12 Channel as determined by the District and the City.

1.2. Programming. The District may schedule any programming reasonably calculated to provide an educational benefit to students in the kindergarten to high school age range. The City nevertheless retains the right to block programming that is inconsistent with the best interests of the City or not reasonably calculated to provide an educational benefit to students in the kindergarten to high school age range, as determined by the City's Manager.

1.3. Resources. The City will provide no staffing, equipment, or any other City resource, and, except as provided in this Section 1.3, the District will pay no fee to the City for the use of the K-12 Channel. However, to the extent that the District realizes revenues, from whatever source, in excess of its direct costs, and proximately derived from the use of the K-12 Channel, the District will deliver 50% of such revenues to the City on a quarterly basis. Each Party will bear all of its own expenses and each Party will establish and maintain a budget for the payment of such expenses.

2. Definitions. All terms that are not defined herein have the meaning assigned to them in the License Agreement.

3. Term. The term of this Agreement commences on July 1, 2009, or the date that this Agreement is filed with the Maricopa County Recorder; and shall end on June 30, 2010.

3.1. Extension. The parties may extend the term of this Agreement. Each such extension may be for a period of up to one year. The term-extension will be accomplished by execution of an addendum to this Agreement. In accordance with A.R.S. § 11-952.I, each extended term of this Agreement is effective on the later to occur of: (i) the filing with the Maricopa County Recorder of an extension agreement signed by both parties and covering the extended term; or (ii) the giving of notice of the extension to the State Board of Education. The District is responsible for accomplishing such filing with the Maricopa County Recorder and providing notice to the State Board of Education.

3.2. Termination. Either party for any or no reason may terminate this Agreement by giving six (6) months written notice. This Agreement terminates automatically upon the termination or renegotiation of the License Agreement by the City, unless the City otherwise agrees in writing. If the Deer Valley School District expresses to the City a desire to participate in the use of the K-12 Channel, the City reserves the right to terminate or renegotiate the elements of this Agreement upon four (4) weeks notice. Except as otherwise required by law, upon the termination of this Agreement, and within ten (10) working days of termination of this Agreement, the District shall return to the City all documentation, records or other property belonging to the City, and the City shall return to the District all documentation, records or other property belonging to the District.

3.3. Conflicts of Interest. This Agreement is cancelable pursuant to the provisions of A.R.S. § 38-511, the provisions of which are hereby incorporated herein.

4. Liability.

4.1. Joint Defense. In the event of any third party claim or legal action against both District and City, the parties to this Agreement agree to discuss and analyze the benefits of a common but mutual defense against such claim or legal action.

4.2. Hold harmless.

(a) The City shall hold harmless, to the extent permissible by Arizona law, the District, its officers and employees, from and against any and all claims, demands, suits, actions or proceedings of any kind or nature, for damages to property or injuries to or death of any person or persons, including employees or agents of the District, and including, but not by way of limitation, worker's compensation claims, resulting from or arising out of the negligent or wrongful acts, errors or omissions of the City, its employees or subcontractors.

(b) The District shall hold harmless, to the extent permissible by Arizona law, the City, its officers an employees, from and against any and all claims, demands, suits, actions or proceedings of any kind or nature, for damages to property or injuries to or death of a person or persons, including employees or agents of the City resulting from or arising out of the negligent or wrongful acts, errors or omissions of District, its employees or subcontractors.

5. Miscellaneous.

5.1. Notice. Whenever a notice is either required or permitted to be given, it shall be given in writing and delivered personally, or delivered by the postal service, certified mail, return receipt requested, to the other party at the address indicated below, or at such other address as may be designated by either Party.

If to the City:

City Manager
City of Peoria, Arizona
8401 West Monroe Street, Room 300
Peoria, Arizona 85345

With a copy to:

City Attorney
City of Peoria, Arizona
8401 West Monroe Street, Room 340
Peoria, Arizona 85345

If to the District:

Superintendent
Peoria Unified School District, No. 11
6330 West Thunderbird Road
Glendale, Arizona 85306

With a copy to:

Calderon Law Offices
2020 North Central Avenue
Suite 1110
Phoenix, Arizona 85004

5.2. Merger. This Agreement contains all of the Agreements, understandings and promises of the parties relating to the K-12 Channel. It may be modified only by written agreement, signed by the parties.

5.3. Severability/Reformation. The invalidity in whole or in part of any provision of this Agreement does not void or effect the validity of any other provision of this Agreement, since it is the intent of the parties to have this Agreement enforced to the fullest extent possible. To the extent that any provision deemed invalid can be made enforceable by deleting or limiting the invalid provision, each party agrees that this Agreement may be reformed and amended so that it may be enforced to the fullest extent possible.

5.4. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

5.5. Nondiscrimination. The Parties agree to comply with Executive Order 75-5, as amended by Executive Order 99-4, which is hereby incorporated into this Agreement, and to comply with all applicable state and federal laws, rules, regulations regarding equal opportunity, nondiscrimination and affirmative action.

5.6. Arbitration. In the event of a dispute under this Agreement, the Parties agree to use arbitration to the extent required under A.R.S. § 12-1518 and A.R.S. § 12-133.

5.7. Intentionally omitted.

5.8. Personnel. The personnel of the District will not for any purpose be considered employees or agents of the City, and the District assumes full responsibility for the actions of its personnel while performing services under this Agreement, and shall be solely responsible for their supervision, daily direction and control, payment of salary (including withholding income taxes and social security), worker's compensation and disability benefits.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement by signing their names on the day and date first written above.

CITY OF PEORIA, ARIZONA, an Arizona municipal corporation

By: Carl Swenson
Its City Manager

ATTEST:

Mary Jo Kief
Its City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp,
Its City Attorney

PEORIA UNIFIED SCHOOL DISTRICT, NO. 11

By: _____
Its: Governing Board

Pursuant to Arizona Revised Statutes § 11-952(D), I have reviewed the foregoing Intergovernmental Agreement and have determined that it is in the proper form and that it is within the powers and authority granted to the school district under the laws of this state.

By: _____,
Peoria Unified School District Attorney

DATED: _____