

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (Agreement) is made effective as of May 18, 2022 (the "Effective Date") by and between the San Diego County Superintendent of Schools, a public entity (SDCSS) and the City of San Diego, a California, municipal corporation (City).

Hereinafter individually referred to as a "Party" and collectively referred to herein as the "Parties."

WHEREAS, the City of San Diego desires to provide and support public, educational, and government access television (PEG) channels for video service provider subscribers pursuant to state and federal law, and

WHEREAS, under the City's original cable television franchise agreements, public access television production and origination was provided by and managed by the local franchised video service providers; and

WHEREAS, state law allows for incumbent video service providers to abrogate their local cable television franchise agreement with a state video service provider contract in accordance to provisions of the California Public Utilities Code; and

WHEREAS, the Instructional Television Division of the San Diego County Superintendent of Schools has expressed a willingness to serve the community by entering into an agreement to partner with the City to host and support public access programming origination that is no longer supported by state franchised local video service providers;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

1. **SCOPE OF SERVICES.** In exchange for funding and services provided by the City to SDCSS, pursuant to this agreement, SDCSS shall provide the following services related to the support of Public Access channel origination:
 - 1.1 Public Access Playback/Telecast: Provide and operate the playback/telecast of public access video programming on the designated public access cable television channel(s) carried by the state franchised video service provider, Cox Cable Inc. All playback shall be conducted in a manner which adheres to the specifications and standards that are outlined in this Section.
 - 1.2 Programming Review: All public access user programming submitted for playback on the public access channel shall be reviewed for content genre categorization and technical specification adherence by SDCSS. All user-submitted programming, which is compliant with the content and specification requirements set forth in this agreement shall then be scheduled for playback on the public access channel. The programming content and technical specifications of each user-submitted program shall meet the content and technical specification requirements as outlined in this agreement. Non-compliant programming shall be documented by SDCSS and issued back to the public access user with written

notice on the reasons why the individual program does not meet the content and technical specifications for public access playback and information on how each program can be altered to meet the specifications and/or content requirements.

- 1.3 Operate Playback/Telecast: Consistent with its own policies and procedures, operate, manage, and maintain the playback/telecast facilities and equipment for public access television programming for public access shows provided directly to SDCSS by individual public access users. The system shall be capable of public access user video programming ingest by SDCSS staff and programming playback/telecast that is consistent with playback standards that are typical for PEG channel operations as carried by video service providers in the San Diego region. SDCSS will provide regular maintenance and repair of the playback/telecast equipment as to ensure consistent operation with system downtime no longer than 24-hours unless specifically approved in writing by the City.
- 1.4 Equal Access: Provide access for the direct delivery and playback/telecast of non-commercial public access programming to individual, group, and organization users on a first-come, first-serve, non-discriminatory basis. The ability of individual, group, or organizational users to submit non-commercial public access programming shall be provided in a manner consistent with the public access guidelines contained in this agreement and as specified by council policy, or other guidelines approved by the Mayor or his designee. Physical access to SDCSS facilities shall be consistent with SDCSS standard policies and security procedures.
- 1.5 Technical Specifications: Establish reasonable standards for incoming public access user video programming that includes video data files as specified by SDCSS. Establish programming playback specifications that adhere to NTSC standards for the playback/telecast of video programming for carriage by local multi-channel video service providers. Standards shall include public access user programming parameters including acceptable standard show lengths, audio channel designation, producer identification, acceptable signal-to-noise ratio, etc.
- 1.6 Programming Logs: Maintain comprehensive written and/or data logs for all public access programming received and telecast on the playback system. Data logs shall, at a minimum, list the programming producer identifiable information, title, and genre of public access program as well as the length and playback time of each individual show. SDCSS will maintain the public access user and channel playback logs for the duration of the term of this Agreement and will provide the City access to view these logs upon request.
- 1.7 Programming Hours: Designated hours for public access user programming playback shall be a minimum of six (6) hours per day, seven days per week and shall include evening "prime-time" viewing hours between 6:00pm and 10:00pm daily. Programming hours shall be increased as to accommodate first-run qualified public access user programming submitted for playback up to a maximum of eight (8) hours per day. Designated hours for the telecast of legislative programming

provided by the State of California shall also be accommodated between the hours of 9:00 am and 3:00 pm or according to the part-time telecasts provided by the State of California legislative programming entity.

- 1.8 Programming Extension: If first-run public access user programming exceeds an average of eight (8) hours per day as measured on a quarterly basis, the City shall be notified regarding the need to make arrangements for an additional public access channel to be allocated by the state franchised video service providers.
- 1.9 Programming Extension: If first-run public access user programming exceeds an average of eight (8) hours per day as measured on a quarterly basis, the City shall be notified regarding the need to make arrangements for an additional public access channel to be allocated by the state franchised video service providers.
- 1.10 Connection to Video Service Providers: Video/audio programming output from the public access playback system shall be connected with an upstream link and associated equipment to the video service providers for carriage on the designated public access television channels. Video/audio programming output to the video service providers for channel carriage shall be provided in a manner consistent with technical specifications and standard industry practices for the carriage of PEG channel programming. SDCSS is not responsible for transporting the programming between the SDCSS Master Control Room and video service provider's headend.

2. CITY RESPONSIBILITIES

- 2.1 Dispute Review: Disputes between SDCSS and individual public access users regarding programming playback activities shall be addressed in a manner consistent with the public access channel policies attached as Exhibit A to this Agreement.
- 2.2 City Authority: City shall maintain its full authority as the local entity responsible for all regulatory and compliance matters with regard to the State franchised multichannel video service providers. Any conflicts, requests, or needs associated with regulatory or compliance matters identified by SDCSS or the State franchised video service providers shall be directed to the City for consideration.

3. COMPENSATION

- 3.1 P.E.G. Fee: The City shall pay SDCSS an amount equal to Two Hundred Thousand dollars (\$200,000) annually. The payment for the initial one-year term shall be due and payable thirty (30) days after the Effective Date. Payments for any subsequent one-year term shall be due and payable thirty (30) days after the annual anniversary of the Effective Date. The funds are to be used in a manner consistent with State and Federal law. SDCSS agrees to use funds received under this Agreement for capital costs in accordance with 47 U.S.C. 542(g)(C) or other applicable laws.

4. TERM

- 4.1 Term: The Term of this Agreement shall be for five (5) years from the Effective Date, unless the Agreement is otherwise terminated as provided for herein.
- 4.2 Termination: Either party may elect to terminate this Agreement, without cause, by providing written notice Sixty (60) days prior to the desired termination date. Unless otherwise mutually agreed upon by the Parties, compensation as outlined under this Agreement shall be provided up to the termination date. SDCSS shall have no obligation to return/reimburse any portion of any payment received prior to the effective date of termination.

5. ASSIGNMENT

- 5.1 Assignment: The Parties shall not assign this Agreement or any interest therein and shall not sublet the services or any part thereof, or any right or privilege appurtenant thereto, without the prior written consent of the other Party. Except as otherwise provided herein, all of the terms, covenants, and conditions of this Agreement shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.

6. INDEMNIFICATION

- 6.1 Indemnification:
- 6.1.1 SDCSS agrees to defend, indemnify, protect, and hold the City, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for bodily injuries, including death, to any person including injury to City's employees, invitees, guests, agents, or officers, and tangible property damage, which arise out of or result from the negligent acts, omissions or willful misconduct of SDCSS and all expenses of investigating and defending against same; provided, however, that SDCSS's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, reckless conduct or willful misconduct of the City, its agents, officers, or employees
- 6.1.2 City agrees to defend, indemnify, protect, and hold SDCSS, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for bodily injuries, including death, to any person including injury to SDCSS's employees, invitees, guests, agents, or officers, and tangible property damage, which arise out of or result from the negligent acts, omissions or willful misconduct of City and all expenses of investigating and defending against same; provided, however, that City's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, reckless conduct or willful misconduct of the SDCSS, its agents, officers, or employees.

7. GENERAL PROVISIONS

- 7.1 Notices. Any notice, required to be given hereunder shall be in writing, and may be served either personally or by USPS/commercial carrier, postage prepaid, addressed to SDCSS at:

San Diego County Superintendent of Schools
Instructional Television Division
6401 Linda Vista Road
San Diego CA 92111

Or at such address designated in writing by SDCSS, and to the City as follows:

City of San Diego
Communications Department
202 C St. Fourth Floor
San Diego CA 92101

Or to any security holder, or beneficiary, as applicable a designated in writing. Anyparty is entitled to designate a different address to which notices shall be sent.

- 7.2 Compliance with Law. SDCSS shall at all times comply with all applicable laws, statutes, ordinances, and regulations of the City, county, state, and federal government at SDCSS's sole cost and expense. In addition, SDCSS shall comply withany and all notices issued by the City under the authority of any such law, statute, ordinance, or regulation.
- 7.3 City Approval. The approval or consent of City, wherever required in this Agreement, shall mean the written approval or consent of the Mayor or designeeunless otherwise specified, which approval or consent shall not be unreasonably withheld, conditioned, or delayed.
- 7.4 Nondiscrimination. SDCSS agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, gender expression, gender identity, sexual orientation, medical status, national origin, age, marital status,or physical disability in SDCSS's enjoyment of its rights and performance of its obligations under this Agreement, and the obtaining and holding of employment in connection therewith.
- 7.5 Equal Opportunity Contracting. SDCSS acknowledges and agrees that it is aware of, and will comply with, City Manager or designee Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein.

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect. Section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement.
- 7.7 Drug-free Workplace. SDCSS shall comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by City of San Diego Resolution R-277952 and incorporated into this Agreement by this reference.
- 7.8 Disabled Access Compliance. SDCSS agrees to comply with applicable regulations within the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA), City Council Policy 100-04, adopted by San Diego Resolution R-282153; and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. SDCSS's compliance shall include, but not necessarily be limited to, the following:
- (A) SDCSS shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
 - (B) No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of SDCSS.
 - (C) SDCSS shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
 - (D) Where required by law, SDCSS shall comply with City's disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of SDCSS.
 - (E) SDCSS understands that the failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Agreement.
- 7.9 Agency Authority. Each individual executing this Agreement on behalf of SDCSS represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of said agency, in accordance with a duly adopted resolution of the San Diego County Superintendent of Schools, and that this Agreement is binding upon the agency in accordance with its terms.

- 7.10 Governing Law. This Agreement and its performance and all suits under this Agreement shall be construed in accordance with the laws of the State of California. In any action, special proceeding, or other proceeding that may be brought arising out of, under, or because of this Agreement, the laws of the State of California shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which the action or special proceeding may be instituted. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a party elects to file an action in federal court) courts located in the County of San Diego.
- 7.11 Annual Appropriation of Funds. SDCSS acknowledges that the term of the Agreement may extend over multiple City fiscal years, and that work and compensation under this Agreement is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Agreement may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay SDCSS for any amounts not duly appropriated and authorized by City Council.
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8. SIGNATURES

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor or designee, authorizing such execution, and by SDCSS, acting by and through its lawfully authorized officers

THE CITY OF SAN DIEGO

By: 

Name: Claudia C. Abarca

Title: Director, Purchasing & Contracting

Date: August 15, 2022

I HEREBY CERTIFY I can legally bind San Diego County Office of Education, that I have read and agreed to all of this Agreement, this ___ day of _____, 2022.

SAN DIEGO COUNTY
SUPERINTENDENT OF
SCHOOLS

By:  Digitally signed by Michael Simonson
Date: 2022.04.25 14:26:09 -07'00'

Name: Michael Simonson

Title: Deputy Superintendent, CBO

Date: _____

Approved as to form this 23 day of August, 2022.

MARA W. ELLIOTT, City Attorney

By: 
Deputy City Attorney

EXHIBIT A

PUBLIC ACCESS POLICIES

Goal of Public Access Programming

1. The goal of public access programming is to offer an inexpensive and practical opportunity for City of San Diego citizens, community organizations, and non-profit groups to participate in a community dialogue through video programming.

Eligibility to Distribute Programs via Public Access

In order to distribute programs on the public access system, the requesting entity must fulfill the following requirements:

1. Be a resident, property owner, nonprofit group, or entity which is housed or has an active branch within the City of San Diego.
2. Proof of eligibility will be required, if requested.
3. Be 18 years of age or sponsored by an eligible adult.
4. If under 18 years of age, have permission from a parent or guardian to distribute programming on the public access system.
5. Submit a completed and signed "Use Agreement" with the Public Access Administrator.
6. Submit a completed Telecast Agreement for each program or series of programs to be telecast.
7. Abide by the policies set forth in other parts of these policies.

A Playback Request Form must be submitted before any program may be telecast on the public access channel. Programs will not be telecast without prior receipt of this form.

Acceptable Programming for Public Access

Public Access Television Productions may be intended for any purpose and may include information, entertainment, or the expression of points of view, without limitation, unless prohibited elsewhere in this document.

Prohibited Programming

Any program requested to be cablecast may be rejected if, in the opinion of the Public Access Administrator, it is of poor technical quality or represents content including but not limited to:

1. Lotteries or any advertisements or information concerning lotteries or games of chance, gift enterprises or similar promotion is prohibited;

2. Presentation of advertising materials designed to promote the sale of commercial products or services;
3. Solicitation of funds;
4. Material soliciting or promoting unlawful conduct;
5. Sexually explicit material;
6. Statements, pictures, or sound which violate city, state, or federal laws, including those related to obscenity, defamation, slander, and libel;
7. Violation of the policies or rules set forth by the Public Access Administrator.

Restricted Programming

All Producer or Providers are required to inform the Public Access Administrator of any program content which contains the use of adult language, images or situations. At the sole discretion of the Public Access Administrator, this material may be cablecast during FCC defined "Safe Harbor" hours when children are less likely to constitute a significant portion of the viewing audience, typically between 10:00 p.m. and midnight. When possible, acceptable mature programming will be preceded by verbal and/or text information stating that the programming content is intended for a mature audience.

Copyright

Programs containing copyrighted material will not be telecast without proper copyright authorization. Producers or Providers submitting programming for telecast are responsible for obtaining all necessary copyright clearance and shall hold the City, the Public Access Administrator, and their officers and agents harmless in any case of copyright infringement.

All Producers and Providers are solely responsible for the content of the programming created/submitted for telecast on the public access channel.

Program Scheduling

All programming must be submitted for telecast at least two weeks before the requested telecast date. Exceptions must be pre-approved by the Public Access Administrator. Timeslots are allotted on a first-come, first-serve, nondiscriminatory basis following existing primary timeslots for recurring series. A series timeslot may be held as long as new programming is being delivered for a maximum of Six (6) consecutive months. Specific series timeslots may be scheduled beyond the maximum time if there are no other series programmers seeking the same desired time. If a Producer or Provider fails to supply new material according to the terms and conditions signed by the user, the program may be removed from the schedule at the discretion of the Public Access Administrator. Repeat programming will not be telecast for more than four consecutive weeks.

The Public Access Administrator will determine the appropriate timeslots for all restricted programming (mature audiences).

Live programming (if any) may pre-empt recorded programming, but not without prior notice. At the discretion of the Public Access Administrator, locally produced programming (programming that is substantially created, recorded, or otherwise produced in the City of San Diego) can pre-empt non-locally produced programming up to Two (2) weeks in advance of the timeslot of the non-locally produced programming.

Program Sponsorship

Any programming that is sponsored (in full or in part) by a commercial, civic or private entity may carry a brief sponsorship statement at the beginning, end or beginning and end which identifies the sponsor.

Technical Standards

All programs must include at least five seconds of black at the start of the recording before the program begins. A half-hour program must be no longer than 29:00 in length and an hour-long program must be no longer than 59:00 in length.

Programming must be submitted electronically on digital data formats only. Files with multiple programs or chapters will not be accepted. Program producers must provide the following information:

Name of production and episode number (if applicable)

Total running time of the production (written in format- 0:00:00)

Name of the user (producer or organization's representative producer)

Date produced (written in format - MM/DD/YYYY)

The public access playback facility is not responsible for the loss, destruction, theft or damage of files submitted.

Program audio must be audible with minimal noise levels when amplified.

Program video must be of adequate signal-to-noise ratio as determined by the Public Access Administrator

Programming Log

The Public Access Facility shall maintain a programming log of all programming telecast on the public access channel. Log information shall include program title, airtime, and length of program or other information as deemed appropriate.

Suspension from Public Access Channel Use

The failure of public access Producers and Providers to abide by the Public Access Policies or other rules and regulations stipulated by the Public Access Administrator may lead to appropriate disciplinary actions including temporary and/or permanent suspension of public access channel use. Aggrieved parties may appeal disputes to the City of San Diego for final determination.

Decisions by the City of San Diego shall be deemed final.

Use of channel during emergencies

Public agency use of the public access channel during emergencies or disasters declared by the City of San Diego has priority over other programming. During such emergencies or disasters, the public access channel shall be permitted to accept recorded and character generated information from governmental or non-governmental entities when such announcements are deemed to provide important public information pertaining to the emergency or disaster or other conditions requiring protection of the public health, safety, and welfare.