

ORDINANCE NO. 4132

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF MESQUITE AND MESQUITE INDEPENDENT SCHOOL DISTRICT FOR THE OPERATION OF THE CITY'S EDUCATIONAL ACCESS CHANNEL.

WHEREAS, prior to 2005, cable operators were required to negotiate municipal franchise agreements with municipal governments in order to access public rights-of-way used for the installation of their cable systems, and in exchange for such access, the cable operators paid municipal franchise fees and other financial and in-kind contributions to operate Public, Educational and Government (PEG) access channels; and

WHEREAS, effective September 7, 2005, the Public Utilities Regulatory Act (PURA) was revised by adding Chapter 66 to the Texas Utilities Code, entitled "State-Issued Cable and Video Franchise," which removed the authority of local governments to grant cable franchise agreements and authorized the Texas Public Utility Commission (PUC) to issue certificates of authority for the delivery of cable and video services in the State of Texas; and

WHEREAS, on February 18, 2011, the grandfathered municipal cable franchise agreement between the City of Mesquite (City) and Time Warner Cable, the incumbent cable service provider responsible for the operation of PEG access channels, expired; and

WHEREAS, on February 19, 2011, Time Warner Cable began operating cable and video services within the City under a State-Issued Certificate of Franchise Authority (SICFA) pursuant to Chapter 66 of the Texas Utilities Code; and

WHEREAS, pursuant to Section 66.009 of the Texas Utilities Code, the City is responsible for management and operation of PEG access channels and failure on the part of the City to provide eight hours of daily programming on any PEG access channel may result in the channel no longer being available to the City; and

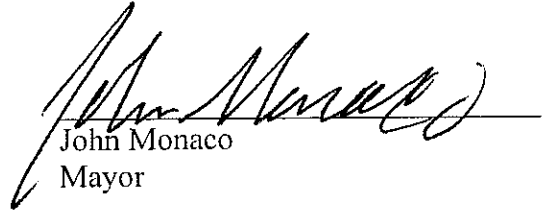
WHEREAS, Mesquite Independent School District (MISD) has historically served as a point of distribution for the City's Educational Access Channel (EAC) for the incumbent cable company, Time Warner Cable; has equipped a video production studio for the purpose of developing and cable-casting School Board meetings, District events, staff development workshops and educational programming; and has contributed to the education of all students by empowering them to expand their opportunities through educational programs offered on the City's EAC.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the terms and conditions of the Interlocal Agreement between the City of Mesquite and the Mesquite Independent School District Regarding the Operation of the Educational Access Channel (Agreement) are hereby approved. A copy of the Agreement in substantially its final form is attached hereto and made a part of this Ordinance as Exhibit "A."

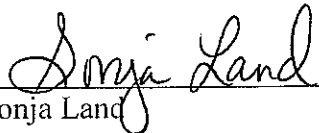
The fully executed original Agreement will replace the copy once finalized by the parties.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas,
on the 7th day of March, 2011.




John Monaco
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED:



B. J. Smith
City Attorney

THE STATE OF TEXAS §
§
§
COUNTY OF DALLAS § **INTERLOCAL AGREEMENT/OPERATION OF**
EDUCATIONAL ACCESS CHANNEL

KNOW ALL BY THESE PRESENTS:

This INTERLOCAL AGREEMENT (“Agreement”) is made by and between the City of Mesquite, Texas (“City”), a municipal corporation organized under the laws of the State of Texas, acting by and through its City Manager or his designee, pursuant to Ordinance No. 4132 passed and approved on March 7, 2011; and the Mesquite Independent School District (“MISD”), a political subdivision organized under the laws of the State of Texas, acting by and through its Superintendent or her designee (collectively, the “Parties”). This Agreement is made pursuant to Chapter 791 of the Texas Government Code (the Interlocal Cooperation Act) and Chapter 66 of the Texas Utilities Code for the purpose of establishing terms and conditions under which MISD will operate the City’s Educational Access Channel consistent with Chapter 66 of the Texas Utilities Code.

RECITALS:

WHEREAS, prior to 2005, cable operators were required to negotiate municipal franchise agreements with municipal governments in order to access public rights-of-way used for the installation of their cable systems, and in exchange for such access, cable operators paid municipal franchise fees and other financial and in-kind contributions to operate Public, Educational and Governmental (“PEG”) access channels; and

WHEREAS, effective September 7, 2005, the Public Utilities Regulatory Act was revised by adding Chapter 66 to the Texas Utilities Code, entitled “State-Issued Cable and Video Franchise,” which removed the authority of local governments to grant cable franchise agreements and authorized the Texas Public Utility Commission (“PUC”) to issue certificates of franchise authority for the delivery of cable and video services in the State of Texas; and

WHEREAS, on February 18, 2011, the grandfathered municipal cable franchise agreement between the City and Time Warner Cable, the incumbent cable service provider responsible for the operation of PEG access channels, expired; and

WHEREAS, on February 19, 2011, Time Warner Cable began operating cable and video services within the City under a State-Issued Certificate of Franchise Authority (“SICFA”) pursuant to Chapter 66 of the Texas Utilities Code; and

WHEREAS, pursuant to Section 66.009 of the Texas Utilities Code, the City is responsible for management and operation of PEG access channels and failure on the part of the

City to provide at least eight (8) hours of daily programming on any PEG access channel may result in the channel no longer being available to the City; and

WHEREAS, MISD has historically served as a point of distribution for the City's Educational Access Channel for the incumbent cable company, Time Warner Cable; has equipped a video production studio for the purpose of developing and cable-casting School Board meetings, District events, staff development workshops and educational programming; and has contributed to the education of all students by empowering them to expand their opportunities through educational programs offered on the City's Educational Access Channel.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

I. OPERATION OF EDUCATIONAL ACCESS CHANNEL

1.1 Authority to Operate. The City hereby authorizes MISD to conduct the daily operation and management of the City's Educational Access Channel consistent with the terms of this Agreement, the City of Mesquite Public, Educational and Governmental Access Channel Guidelines (hereinafter referred to as the "Guidelines") attached hereto as Exhibit "A" of this Agreement, and all applicable federal and state statutes and regulations.

1.2 Point of Distribution. MISD will continue to act as the point of distribution for the City's Educational Access Channel for all SICFA cable and video service providers that have an active application on file with the PUC and whose service area footprint includes any portion of the City. The point of distribution is the Professional Development Center located at:

Professional Development Center
Mesquite Independent School District
2600 Motley Drive
Mesquite, TX 75150

1.3 Daily Operation of Educational Access Channel. MISD will continue to staff the Professional Development Center studio with trained personnel and appropriate equipment that it deems necessary to operate the City's Educational Access Channel and MISD will be required to:

1.3.1 Coordinate interconnection of the point of distribution for the City's Educational Access Channel with SICFA cable and video service providers;

1.3.2 Permit SICFA cable and video service providers access, if necessary, to MISD facilities during regular business hours for installation and maintenance of provider communications network equipment and connections;

- 1.3.3 Provide SICFA cable and video service providers with at least eight (8) hours of daily educational programming, 365 days a year;
 - 1.3.4 Provide transmissions of educational programming to SICFA cable and video service providers in a manner or form that is capable of being accepted and transmitted by the provider without requirement for additional alteration or change in the content by the provider and is compatible with the technology or protocol utilized by the provider;
 - 1.3.5 Address technical issues with SICFA cable and video service providers and other institutions and producers of educational programming as may be needed; and
 - 1.3.6 Plan and coordinate with producers of educational programming to facilitate transmission of appropriate educational programming.
- 1.4 Entities Authorized to Provide Programming. Entities eligible to provide appropriate educational programming include institutions of higher education, primary and secondary educational institutions and all non-profit educational institutions and students enrolled at such institutions; arts community, including museums; educational foundations; any other organizations and individuals allowed by MISD and the City's Guidelines.
- 1.5 Educational Program Guidelines. The purpose of the City's Educational Access Channel is to provide viewers with programming that promotes MISD's educational programs, opportunities and services. Determination of what is considered appropriate educational content will be within the discretion of MISD, subject to Section 1.6 herein, and the City's Guidelines.
- 1.6 Grievance Procedures. In the event that MISD determines that a program topic or program behavior violates MISD policy, procedures, or any local, state or federal law, including the City's Guidelines, MISD shall have the discretionary authority to prevent the program from being scheduled for viewing on the City's Educational Access Channel. If such a decision results in a grievance from an educational program producer or member of the public, MISD will endeavor to mediate the complaint. In the event that MISD in its discretion is unable or unwilling to fully address a complaint by a producer, or by a member of the public, based on the terms of this Agreement, including the City's Guidelines, and past experience, MISD will forward the complaint to the City's staff contact for appeal and final determination. MISD shall not be responsible for any actions it takes as a result of and in reliance on City's final determination.
- 1.7 City's Financial Contribution. On an annual basis, consistent with the City's budget cycle, MISD may provide the City with a capital budget for the City's Educational Access Channel studio facility and equipment for the City's review and approval based on the following considerations:

- 1.7.1 The City will review the proposed capital budget; may request clarifications; may amend the budget; and fund requests from current available revenues;
- 1.7.2 The City may fund the proposed capital budget in whole, in part, or not at all, based on policy considerations, documented capital needs, and the availability of PEG funding;
- 1.7.3 The City shall use PEG payments received pursuant to Section 66.006(b) of the Texas Utilities Code only for the purpose of funding approved capitalized expenses allowed by law;
- 1.7.4 Any PEG funds received from the City may only be used by MISD for capitalized expenses related to operating the City's Educational Access Channel consistent with Section 66.006(c) of the Texas Utilities Code, and under no circumstances will PEG funds be used for operational expenses.
- 1.7.5 The City reserves the right to suspend funding of capital budget items authorized under this Agreement for the misuse of PEG funds by MISD and request reimbursement of any misused funds.
- 1.7.6 All capital equipment or improvements acquired or made by MISD with PEG funds will become the property of MISD and MISD will be responsible for the maintenance of all such equipment or improvements.
- 1.8 Accounting of Capital Budget. MISD shall account for capital improvements and equipment on an annual basis and will provide the City a written accounting of the previous year's capital expenditures based on that year's budget. The accounting will include an affidavit certifying that all PEG funds were used solely for capital equipment and improvements. Any PEG funds not utilized during the previous year's capital budget will roll over to the following budget year and taken into consideration in the City's review of the next proposed capital budget to support the Educational Access Channel.
- 1.9 Good Faith Cooperation. The City and MISD will work together in good faith in order to continue the uninterrupted operation of the City's Educational Access Channel. City and MISD staff will cooperate to resolve any policy and technical issues that may arise during daily operation of the Educational Access Channel. The City will notify MISD of any changes regarding a SICFA cable and video service provider's franchise status, including changes to a providers' service area footprint, transfer of SICFA to successors and termination of SICFA by the PUC.

1.10 Emergency Contacts. The following personnel will be available 24 hours a day, 365 days a year, to address issues in case of an emergency regarding the operation of the City's Educational Access Channel:

For City: Ted Chinn
Managing Director of Administrative Services
City of Mesquite
1515 North Galloway
Mesquite, Texas 75149
tchinn@cityofmesquite.com
972.216.6406

For MISD: Laura Jobe
Administrative Officer for Communications
Mesquite Independent School District
405 East Davis Street
Mesquite, Texas 75149
ljobe@mesquiteisd.org
972.882.7406

II. TERM

2.1 Subject to prior amendment or termination of this Agreement as provided in Section 4 of this Agreement, the initial term shall be for five (5) years upon execution by both Parties, and shall have two successive five (5) year renewal options. This Agreement will automatically renew for successive terms upon the expiration of the previous term unless written notice is given by either Party of its decision not to exercise this option to the other Party no less than six (6) months prior to the expiration of the current term.

III. AMENDMENTS

3.1 This Agreement may be amended at any time by written agreement signed by both Parties.

IV. TERMINATION

4.1 This Agreement may be terminated by either Party for any reason upon six (6) months written notice to the other Party. In the event of termination or non-renewal, both Parties will cooperate to transition operation of the City's Educational Access Channel as appropriate.

V. ASSIGNMENT

5.1 Neither Party may assign their interest in this Agreement without the written consent of the other Party.

VI. ENTIRE AGREEMENT

6.1 This Agreement supersedes all prior agreements, written or oral, between the City and MISD and will constitute the entire Agreement and understanding between the Parties and there are no representations, inducements, promises, agreements, arrangements or undertakings, oral or written, between the Parties to this Agreement other than those set forth in this Agreement and duly executed in writing.

VII. VENUE AND GOVERNING LAW

7.1 This Agreement is entered into accordance with and made subject to the provisions of the Charter and ordinances of the City of Mesquite, as amended, and all applicable state and federal laws. This Agreement shall be governed by and construed in accordance with the Constitution and laws of the State of Texas. The obligations of the Parties to this Agreement are performable in Dallas County, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in Dallas County, Texas.

VIII. NOTICE

8.1 Unless specifically provided otherwise, any notice required or permitted to be given under this Agreement shall be given in writing and sent certified mail, return receipt requested, to City or MISD at the addresses set forth below, or to any other address as may be provided by amendment:

For City: City Manager
 City of Mesquite
 1515 North Galloway
 Mesquite, Texas 75149

For MISD: Superintendent
 Mesquite Independent School District
 405 East Davis Street
 Mesquite, Texas 75149

IX. SEVERABILITY

- 9.1 In the event that any clause or provision of this Agreement is found to be invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain valid and in place.

X. RESPONSIBILITY

- 10.1 To the extent permitted by law, City agrees to fully and completely defend, indemnify and hold harmless MISD from and against any and all claims, causes of action, damages, liability, judgments, costs or expenses whatsoever arising from breach of this Agreement and from any and all claims of whatsoever kind or nature that have been or may be asserted by any party against MISD, its officers or employees, directly or indirectly based upon acts or omissions of the City, its officers, employees, or invitees and arising out of the terms of this Agreement. This indemnity agreement and the term "claim" as used in this Article, shall include all potential elements of recovery by any parties, including claims for actual, statutory, or treble or multiple or penal damages, attorney's fees, interest, expenses, and court costs. This obligation shall be construed for the benefit of the Parties to this Agreement, and not the benefit of any third parties or to create liability for the benefit of any third parties.
- 10.2 To the extent permitted by law, MISD agrees to fully and completely defend, indemnify and hold harmless City from and against any and all claims, causes of action, damages, liability, judgments, costs or expenses whatsoever arising from breach of this Agreement and from any and all claims of whatsoever kind or nature that have been or may be asserted by any party against the City, its officers or employees, directly or indirectly based upon acts or omissions of MISD, its officers, employees, or invitees and arising out of the terms of this Agreement. This indemnity agreement and the term "claim" as used in this Article, shall include all potential elements of recovery by any parties, including claims for actual, statutory, or treble or multiple or penal damages, attorney's fees, interest, expenses, and court costs. This obligation shall be construed for the benefit of the Parties to this Agreement, and not the benefit of any third parties or to create liability for the benefit of any third parties.
- 10.3 Where any such claim arises from the joint or concurring negligence of the Parties, liability, if any, shall be shared by each Party on the basis of comparative responsibility in accordance with the applicable laws of the State of Texas, subject to all defenses, including governmental immunity.
- 10.4 Nothing herein contained shall be deemed to waive, diminish or impair the Parties' limit of liability under the laws providing for governmental immunity.

XI. NONDISCRIMINATION

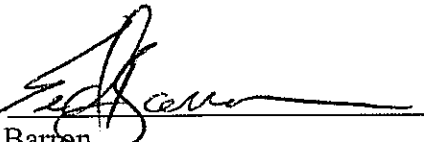
11.1 Parties to this Agreement shall not discriminate on the basis of race, color, national origin, sex, religion, age, disability or sexual orientation and shall not permit any contractor, subcontractor or programmer to establish any such practice of discrimination.

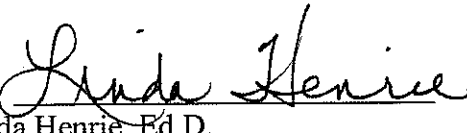
XII. SIGNATURES

12.1 IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Agreement in duplicate original counterparts, on the dates indicated herein. This Agreement shall not become effective until executed by each Party.

CITY
City of Mesquite

MISD
Mesquite Independent School District

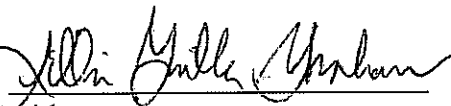
By: 
Ted Barron
City Manager

By: 
Linda Henrie, Ed.D.
Superintendent

Date: 3/8/11

Date: 4/5/11

APPROVED AS TO FORM:

By: 
BJ Smith
City Attorney, or his designee

**CITY OF MESQUITE
PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS CHANNEL
GUIDELINES**

I. Purpose

The purpose and intent of these Guidelines are to:

- A. establish clear local guidelines and standards for the exercise of local authority with respect to the use of the City of Mesquite Public, Educational and Governmental (PEG) Access Channels;
- B. permit and manage reasonable use of the City's PEG channels on a non-discriminatory, non-commercial, non-exclusive and content-neutral basis; and
- C. ensure that the operations and programming of the City's PEG channels are consistent with all applicable local, state and federal laws rules and regulations.

II. Definitions

For the purpose of this Agreement, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise:

- A. "Obscene" means material or a performance as defined in Section 43.21(a)(1) of the Texas Penal Code.
- B. "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner.

III. Authority

The City reserves the right of control to operate and manage any PEG channel provided by a State-Issued Certificate of Franchise Authority cable and video service provider and to establish reasonable guidelines governing such use as provided by Section 66.013(2) of the Texas Utilities Code and all other applicable federal and state laws, rules and regulations.

IV. Guidelines

- A. Non-Censorship. The City recognizes a citizen's First Amendment right to freedom of expression and takes no action abridging the right of free speech for all members of the community who wish to access cable television. The City exercises no prior restraint of program content and does not review or censor programs before cablecast. However, no manager, programmer or producer of PEG programming may knowingly permit the production or dissemination of any program that contains:
1. any material which is obscene and violates Chapter 43, Subchapter B of the Texas Penal Code;
 2. any material which is libelous, slanderous, defamatory, unlawfully disparaging or that constitutes invasion or violation of any person's right to privacy;
 3. any material which violates any local, state or federal laws, rules or regulations;
 4. any advertising or material that promotes any commercial product or service;
 5. any solicitation or appeal for funds;
 6. any unlawful use of copyrighted material or any other proprietary property; and
 7. any material that has a reasonable probability of creating an immediate danger or damage to property, creating an injury to person(s), or creating public nuisance.
- B. Programming. Programming on each PEG channel must be for non-profit and non-commercial use only and may come from local and non-local sources. If public use of production studio equipment and facilities are allowed by either the City, Dallas County Community College District (DCCCD) or Mesquite Independent School District (MISD) policies, then such public use of equipment and facilities shall be made available on a fair and equitable, non-discriminatory basis without regard to race, color, age, national origin, religion, sex, disability or sexual orientation.
- C. Underwriting. All underwriting shall comply with Federal Communications Commission Underwriting and Sponsorship Identification Rules and Regulations. An individual, organization or business may sponsor PEG channel programming; however, donors and sponsors may not promote or sell products or services and must adhere to the following non-commercial sponsorship guidelines.
1. The following video effects are permissible:
 - a) company name, logos or slogans, both still or animated, which identify but do not promote;

- b) corporate brand and trade names, mascots or other symbolic figures developed as a corporate (rather than product) symbol, accompanied by the company's name; and
 - c) value neutral descriptions of product line, brand name or service listings.
2. The following practices tend to convey a more commercial impression and may not be used:
- a) products in use or operation for the purpose of demonstrating their performance characteristics;
 - b) packaged goods, such as food products, shown outside the container or package, or in a prepared state;
 - c) depiction of tobacco products, distilled spirits and firearms; and
 - d) official spokespersons, company officials, directors or actors posing as generic employees.
3. The following audio techniques are acceptable:
- a) location information including general references to a service area, street addresses, Web-site and e-mail information; and
 - b) music and sound effects.
4. The following audio techniques are not allowed:
- a) donor acknowledgments that contain comparative claims or descriptive language comparing the underwriter's products or services with those of competitors;
 - b) donor acknowledgements that contain qualitative claims or qualitative descriptions of the underwriter's products or services;
 - c) announcements that contain solicitations or a "call to action," which is addressed directly at the viewer and tells the viewer to take action.
 - d) announcements that contain pricing information including interest rate information or other indications of savings associated with the product or service; and
 - e) inducements to buy, sell, rent or lease.

D. Copyrighted material. Prior to transmission of PEG programming, producers and programmers shall make all appropriate and lawful arrangements to obtain all required lawful rights to all material cablecast and clearances from sponsors, donors, networks, broadcast stations, music licensing organizations' representatives, and without limitation from the foregoing, any and all other persons as may be necessary to transmit their program material over the City's PEG channels.

V. Amendments

The City reserves the right to amend these guidelines as it deems necessary to comply with all applicable local, state and federal laws, rules and regulations.