

Agmt

RESOLUTION NO. 99-0010

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF TAMPA AND TAMPA EDUCATIONAL CABLE CONSORTIUM TO ASSUME RESPONSIBILITY FOR PROGRAMMING EDUCATIONAL ACCESS CHANNELS ON TAMPA'S CABLE TELEVISION SYSTEM; AUTHORIZING EXECUTION THEREOF BY THE MAYOR OF THE CITY OF TAMPA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City's cable franchises has dedicated certain channel capacity for public, educational and governmental access use; and

WHEREAS, the City has dedicated a portion of such channel capacity for educational access programming purposes and desires to engage the services of the Consortium to operate such educational access cable channels pursuant to the terms herein contained.

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA:

Section 1. That the Agreement between the City of Tampa and Tampa Educational Cable Consortium, a copy of which is attached hereto and made a part hereof, is hereby approved in its entirety.

Section 2. That the funds shall be expended from Account No. TV02141-08201.

Section 3. That the Mayor of the City of Tampa is authorized and empowered to execute and the City Clerk to attest and affix the official Seal of the City of Tampa to said Agreement on behalf of the City of Tampa.

Section 4. That other proper officers of the City of Tampa are hereby authorized to do all things necessary and proper in order to carry out and make effective the terms of this Resolution and Agreement.

Section 5. That this Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA ON JAN 17 1999

E99-20

ATTEST:

Janet S. Martin
City Clerk

Quinton
CHAIRMAN, CITY COUNCIL

Prepared by:

Samuel S. Hamilton
Samuel S. Hamilton
Assistant City Attorney

TECCA# 2.reso.doc

CITY OF TAMPA/TAMPA EDUCATIONAL CABLE CONSORTIUM AGREEMENT

THIS AGREEMENT, made in triplicate at Tampa, Florida, on _____, 1998, by and between the City of Tampa, a Florida municipal corporation (the "City"), the address of which is 315 East Kennedy Boulevard, Tampa, Florida 33602, and Tampa Educational Cable Consortium, a Florida non-profit corporation (the "Consortium"), the address of which is Post Office Box 2651, University of Tampa, Florida 33606.

WHEREAS, the City's cable franchises has dedicated certain channel capacity for public, educational and government access use; and

WHEREAS, the City has dedicated a portion of such channel capacity for educational access programming purposes and desires to engage the services of the Consortium to operate such educational access cable channels pursuant to the terms herein contained;

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the City and the Consortium agree as follows:

SECTION 1. SCOPE OF SERVICES. In exchange for the funding provided by the City to the Consortium as provided in this Agreement, the Consortium shall provide the following services:

- A. **OPERATE EDUCATIONAL ACCESS CABLE CHANNEL (S).** Operate the educational access cable channel(s) for educational access programming purposes, the primary purpose being to coordinate access to cable television for educational interests in the City of Tampa and Hillsborough County, Florida, and

the Consortium will cooperate in the production, programming and promotion of educational programs.

- B. *OPERATE an EDUCATIONAL ACCESS CENTER.* Staff, equip and manage a video production facility, available for educational use at such hours and times as are determined by the Consortium to objectives as defined in line of the Consortium's Annual Plan. Access to services shall be available to all members of the Consortium.
- C. *DEVELOP OPERATING POLICIES AND PROCEDURES.* Develop policies and procedures for use and operation of the educational access equipment, facilities, services and channel(s) and file such policies and procedures with the City.
- D. *COMPLIANCE WITH LAWS RULES, AND REGULATIONS.* Administer the educational access channel(s) and facilities in compliance with applicable laws, rules, and regulations.
- E. *PLAYBACK/CABLECAST.* Provide facilities, equipment and staff for the playback/cablecasting of local original, replayed and outside programs on the educational access channel(s) twenty -four (24) hours per day seven (7) days per week.
- F. *MAINTENANCE OF EQUIPMENT.* Provide regular maintenance and repair of all video equipment purchased with funds received pursuant to this Agreement and/or donated, loaned, or leased to the Consortium by the City. The Consortium shall maintain a record of all maintenance activities including preventive maintenance and repairs for each piece of equipment.
- G. *ORIGINAL PROGRAM PRODUCTION.* Provide original program production services as provided in the Annual Plan.

H. **PROMOTION.** Actively promote the use and benefit of the educational access channel(s) to cable subscribers, the educational access community, and cable companies.

I. **OTHER ACTIVITIES.** Undertake other educational access programming activities and services as deemed appropriate by the Consortium and consistent with the obligation to facilitate and promote educational access programming.

J. **PROGRAM DISTRIBUTION.** The Consortium shall require that all programs produced or acquired with funds, equipment, facilities, or staff provided under this Agreement shall be distributed on the channels whose use is authorized by this Agreement. This subparagraph shall not be interpreted to restrict other distribution (beyond distribution on channels authorized by this Agreement), so long as such other distribution is consistent with any pertinent guidelines established in the educational access operating policies and procedures.

K. **ANNUAL PLAN AND BUDGET.** Upon execution of this Agreement and on or before April 15th of each year in which this Agreement is in effect, the Consortium shall provide to the City an Annual Plan and Budget Request (the "Annual Plan") outlining activities and programs planned for the following fiscal year commencing on October 1 and ending on September 30 of the following calendar year with funds and channel(s) received from the City. Such plan shall contain:

1. A statement of anticipated number of hours of local original educational access programming;
2. Other access activities planned by the Consortium; and
3. A detailed operating and capital equipment and facilities budget.

SECTION 2. INDEMNIFICATION. The Consortium shall indemnify, defend, and hold harmless the City, its officers, agents, and employees and volunteers from and against any and all claims, suits, actions, causes of action, losses, damages, or liabilities of any kind, nature or description, including, payment of litigation costs and attorneys' fees (whether at trial, at all appellate levels, or otherwise), brought by any person or persons for or on account of any loss, damage or injury to person, property or any other interest, tangible or intangible, sustained by or accruing to any person or persons, howsoever the same may be caused, directly or indirectly arising or resulting from any alleged acts or omission of the Consortium, its officers, employees, agents or subcontractors arising out of or resulting from the performance of this Agreement.

The Consortium shall also indemnify and hold harmless the City, its officers, agents, employees and volunteers from and against any and all claims or other injury, including costs of litigation and attorney's fees (whether at trial, at all appellate levels, or otherwise), arising from or in connection with claims or losses or damages to person or property arising out of the failure to comply with any applicable laws, rules, regulations or other requirements of local, state or federal authorities, for claims of libel, slander, invasions of privacy, or infringement of common law or statutory copyright, for breach of contract or other injury or damage in law or at equity which claims, directly or indirectly, result from the Consortium's use of channels, funds, equipment, facilities or staff provided under this Agreement or the City's cable franchise agreement.

SECTION 3. COPYRIGHT CLEARANCE. Before cablecasting video and audio transmissions, the Consortium shall require all users to agree in writing that they shall make all appropriate arrangements to obtain all rights to all material cablecast and clearances from broadcast stations, networks, sponsors, music licensing organizations' representatives, and without limitation from the foregoing, any and all other persons as may be necessary to transmit its or their program material over the education access channels that are operated and managed by the Consortium. The Consortium shall maintain for the applicable statute of limitations for the City's inspection, upon reasonable

notice by the City and for the term of the applicable statute of limitations, copies of all such user agreements.

SECTION 4. COPYRIGHT AND OWNERSHIP. The Consortium shall own the copyright of any programs that it produces.

SECTION 5. EQUIPMENT AND FACILITIES.

- A. Consortium shall own all equipment and facilities acquired by it and purchased with funds received pursuant to this Agreement, except that upon termination or non-renewal of this Agreement all such equipment or facilities purchased with funds received pursuant to this Agreement shall become the property of the City.
- B. Upon the dissolution of the Consortium, it shall, subject to the approval of the City, transfer all assets of the Consortium representing City-funded equipment and facilities, and/or the proceeds of either, to the City, or at the City's option, to such organization or organizations designated by the City to manage access which shall at the time qualify as a tax exempt organization(s) under Section 501(c)(3) of the Internal Revenue Code (or the corresponding provisions of any future United States Internal Revenue Law).

SECTION 6. INSURANCE. The Consortium shall maintain in full force and effect at all times during the term of this Agreement insurance as required by Exhibit A - Tampa Insurance Requirements. The cost of such insurance shall be borne by the Consortium and may be included in the Consortium's Annual Plan.

SECTION 7. NON-DISCRIMINATION IN EMPLOYMENT AND SERVICE.

- A. The Consortium shall not discriminate against any person, employee or applicant for employment or subcontractor on the basis of race, color, creed,

religion, sex, sexual preference, marital status, ancestry, national origin, or physical or mental handicap.

B. The Consortium shall not discriminate in the delivery of services on the basis on race, color, creed, religion, sex, sexual preference, marital status, an ancestry, national origin or physical or mental handicap.

C. In carrying out the services described or referred to in this Agreement, the Consortium shall comply with the City's ordinances and policies regarding Women and Minority Business Enterprises, Equal Employment Opportunity and Affirmative Action.

SECTION 8. INDEPENDENT CONTRACTOR. It is understood and agreed that the Consortium is an independent contractor and that no relationship of principal/agent or employer/employee exists between the City and the Consortium. If in the performance of the services described in this Agreement any third persons are employed by the Consortium, such persons shall be entirely and exclusively under the control, direction and supervision of the Consortium. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment shall be determined by the Consortium and the City shall have no right or authority over such persons or terms of employment.

SECTION 9. ASSIGNMENT AND SUBLETTING. Neither this Agreement nor any interest herein shall be assigned or transferred by the Consortium, without the prior written consent of the City, which consent shall not be unreasonably withheld.

SECTION 10. ANNUAL REPORTS. On December 31st of each year, the Consortium shall submit to the City an annual report for the preceding fiscal year (October 1 - September 30). This report shall contain, at a minimum, the following information:

A. Statistics on programming and services provided:

- B. Current and complete listing of the Consortiums' Board of Directors;

SECTION 11. RECORDS, PERFORMANCE REVIEW AND FISCAL AUDIT.

- A. The Consortium shall maintain all necessary books and records, in accordance with generally accepted accounting principles.
- B. Within ten (10) business days from the City's request, the Consortium shall, at any time during normal business hours, make available all of its records with respect to all matters covered by this Agreement.
- C. The Consortium shall annually submit to the City an independent fiscal audit by a certified public accountant.
- D. At the request of the City, the Consortium shall conduct a performance review of the Consortium's operation every three (3) years. The performance review should be done by an entity that has a background in public, education or government access matters. This review shall include an opportunity for the educational community and cable subscribers to provide input. Upon completion, a copy of the performance review shall be submitted to the City.

SECTION 12. FUNDING AND OTHER RESOURCES. The City agrees to make the following funds and resources available to the Consortium:

- A. Time Warner Entertainment -Advance Newhouse Partnership has dedicated certain channel capacity for PEG access use. The City agrees to permit the Consortium to manage the channel capacity the City has dedicated for educational access programming purposes.
- B. Funding for Educational Access Facilities, Equipment and Services.

The City shall utilize revenues derived from cable television franchise fees to fund all services specified under this Agreement. Consideration shall not exceed a total amount of Three Hundred Thousand Dollars (\$300,000.00) annually, without the prior written approval of the City Council and the Mayor of the City.

No other costs or expenses incurred by the Consortium or on its behalf shall be chargeable to the City unless specifically authorized and set forth in this Agreement.

SECTION 13. EXPENDITURE OF FUNDS. The Consortium shall spend funds received from the City solely for the purposes listed in its Annual Plan. Funds not expended in the year covered by the Annual Plan may be carried over by Consortium into succeeding years and included in that year's Annual Plan. Upon termination of this Agreement all funds of any kind received from the City and not expended by the Consortium shall be returned to the City. The Consortium shall provide for such fiscal control and accounting procedures as are necessary to assure proper disbursement and accounting for funds received from the City.

SECTION 14. RECEIPT OF APPROVED FUNDING. For each year in which the Consortium has submitted the Annual Plan to the City as required under this Agreement, the City shall make quarterly payments to the Consortium. Such payments shall be made on or before February 15, May 15, August 15, and November 15 upon receipt from the Consortium of a quarterly performance report and an invoice. The payments to the Consortium shall reflect an amount equal to Twenty-five percent (25%) of the City budgeted allocation to the Consortium.

SECTION 15. FUNDING FROM OTHER SOURCES. The Consortium may, during the

course of this Agreement, receive supplemental funds from other sources, including, but not limited to fundraising activities.

SECTION 15. TERM OF AGREEMENT. This Agreement shall be for a period of five (5) years commencing retroactively to October 1, 1998 and ending on September 30, 2003 unless terminated earlier, as provided in this Agreement; and shall be automatically renewed for two (2) additional successive five (5) year periods, unless either party to this Agreement notifies the other party within one hundred eighty (180) days of the end of the then current term of this Agreement of its desire not to renew this Agreement.

SECTION 17. TERMINATION OF AGREEMENT: TRANSFER OF ASSETS.

- A. The City may cancel or terminate this Agreement upon thirty (30) days advance written notice to the Consortium. In the event that this Agreement is terminated, the Consortium shall cease work and shall deliver to the City all documents prepared or obtained by the Consortium in connection with its services herein.
- B. Upon termination of this Agreement, the Consortium shall immediately transfer to the City all equipment, real property, fixtures, contracts, leases, deposit accounts or other assets received by or purchased by the Consortium with funds received pursuant to this Agreement.


SECTION 18. TIME. Time is of the essence in this Agreement and for the performance of all covenants and conditions of this Agreement.

SECTION 19. COOPERATION. Subject to applicable law, each party agrees to execute all documents and do all things necessary and appropriate to carry out the provisions of this Agreement.

SECTION 20. APPLICABLE LAW, VENUE. This Agreement shall be interpreted and enforced under the laws of the State of Florida. Venue for any action arising under this

ATTEST:

TAMPA EDUCATIONAL CABLE
CONSORTIUM


SECRETARY

 (SEAL)
CHAIRMAN

PREPARED BY:


SAMUEL S. HAMILTON
ASSISTANT CITY ATTORNEY
A17ECCAM2 8971

Exhibit A - TAMPA INSURANCE REQUIREMENTS

REQUIRED INSURANCE The contractor shall maintain the following types of insurance for the duration of any work performed pursuant to this Agreement, and unless otherwise agreed to by the City in writing, any addendum hereto.

COMMERCIAL GENERAL LIABILITY INSURANCE - Shall be written on ISO Occurrence Form CG 00 01 or equivalent substitute form to cover liability arising from premises and operations, independent contractors, products and completed operations, personal and advertising injury, contractual for this contract, and XCU exposures, unless waived by the City. The combined bodily injury and property damage limit shall not be less than \$1,000,000 each occurrence and annual aggregate and shall apply specifically to this project.

AUTOMOBILE LIABILITY INSURANCE - Shall be maintained in accordance with the laws of the state of Florida as to the ownership, maintenance and use of all owned, non-owned, leased and hired vehicles. The combined bodily injury and property damage limit shall not be less than \$1,000,000 each accident.

WORKERS' COMPENSATION/EMPLOYERS LIABILITY INSURANCE - Workers' Compensation insurance shall cover all employees engaged in work for the contractor in accordance with the laws of the state of Florida. The Employers Liability limit shall not be less than \$100,000 disease each employee, \$500,000 disease aggregate, and \$100,000 each accident.

UMBRELLA LIABILITY INSURANCE - Shall be maintained on a following form with coverage identical to and in excess of the primary underlying liability coverages specified above. The minimum limit shall be \$4,000,000 per occurrence and annual aggregate and shall apply specifically to this project.

PROPERTY INSURANCE - Shall be maintained on an all risk replacement cost form to cover all equipment and furnishings associated with the public access agreement. The City shall be included as a loss payee. The Contractor shall be responsible for all deductibles.

ADDITIONAL INSURED - The City shall be included as an insured by way of ISO endorsement CG 20 10 or its equivalent on the general & excess liability policies. Alternatively, the contractor may purchase a separate owners protective liability policy in the name of the City in the amounts specified above for general liability which shall be excess over any insurance of the contractor.

CLAIMS MADE POLICIES - If any liability insurance is issued on a claims made form, contractor agrees to maintain uninterrupted coverage for a minimum of one year following completion and acceptance of the work either through purchase of an extended reporting provision, or through purchase of successive renewals with a retroactive date not later than the beginning of performance of work for the City.

CANCELLATION/NON-RENEWAL - Thirty (30) days written notice by registered or certified mail must be given to the City of any cancellation, intent to non-renew, or material reduction in coverages (except aggregate liability limits). However, ten (10) days notice may be given for non-payment of premium. Notice shall be sent to City of Tampa Cable Communications, 202 W. 7th Avenue, Tampa, FL 33602.

EVIDENCE OF INSURANCE - Within ten (10) working days of receipt of notification of award, the City must receive a certificate of insurance on a form provided by the City. Failure to furnish by the 10th working day may disqualify proposer. Certified copies of the policies evidencing the coverages required herein are also acceptable, and if requested shall be furnished

to the City. Renewal certificates shall be provided to the City at least ten (10) days prior to expiration of the current coverages.

Work may not begin until proof of insurance is submitted as required herein and approved by the City. If at any time Contractor fails to maintain the coverages required herein, all work shall cease until coverage is restored.

If a binder is submitted initially as evidence of insurance coverage, the binder must be effective from the date of issue until such time as the actual policy is in existence and submitted to the City.

WAIVER OF SUBROGATION - Contractor waives all rights against City, its agents, officers, directors, and employees for recovery of damages to the extent such damage is covered under the general liability, automobile liability, excess liability or property insurance policies.

SUBCONTRACTORS - It is the contractor's responsibility to require all subcontractors to maintain adequate insurance coverage.

PRIMARY POLICIES - The contractor's insurance is primary to the City's insurance or any self insurance program thereof.

RATING - All insurers shall be authorized to do business in Florida, and shall have an A.M. Best rating of B+ (or better), Class VI (or higher), or otherwise be acceptable to the City if not rated by A.M. Best.

DEDUCTIBLES - The contractor is responsible for all deductibles. In the event of loss which would have been covered but for the presence of a deductible, the City may withhold from payment to contractor an amount equal to the deductible to cover such loss should full recovery not be obtained under the insurance policy.

INSURANCE ADJUSTMENTS - These insurance requirements may be increased, reduced, or waived at the City's sole option with an appropriate adjustment to the contract price.

[Handwritten initials]

PURCHASING/SSH/MR/DD

RESOLUTION NO. 2002- 1458

A RESOLUTION APPROVING AND AUTHORIZING PAYMENT UNDER AN EXISTING AGREEMENT BETWEEN THE CITY OF TAMPA AND TAMPA EDUCATIONAL CABLE CONSORTIUM FOR THE FURNISHING OF EDUCATIONAL SERVICES FOR CABLE TELEVISION FOR THE USE OF THE OFFICE OF CABLE COMMUNICATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Tampa, Florida, by authority contained in Resolution No. 99-0010, passed and adopted by City Council on January 7, 1999, entered into an Agreement with Tampa Educational Cable Consortium for the furnishing of Educational Services for Cable Television for the use of the Office of Cable Communications; and

WHEREAS, it is necessary to make an additional payment for the provision of said services; and

WHEREAS, it is in the best interest of the City of Tampa to make said payment for the provision of said services.

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA:

Section 1. That the payment under an existing Agreement between the City of Tampa and Tampa Educational Cable Consortium, for the furnishing of Educational Services for Cable Television, for the use of the Office of Cable Communications is hereby approved and authorized.

Section 2. That other proper officers of the City of Tampa are authorized to do all things necessary and proper to carry out and make effective the provisions of this Resolution, which shall take effect immediately upon its adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA ON DEC 05 2002

[Signature]
CHAIRMAN, CITY COUNCIL

ATTEST:

[Signature]
CITY CLERK/DEPUTY CITY CLERK

APPROVED AS TO FORM:

[Signature]
SAMUEL S. HAMILTON
ASSISTANT CITY ATTORNEY

TV02141-08201 Estimated: \$282,886.00
Funding for subsequent years will be based on future budget appropriations from such account.

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