

ORDINANCE 2019-05-16-0406

APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND THE ALAMO COMMUNITY COLLEGE DISTRICT FOR THE CONTINUED OPERATION OF THE CITY'S EDUCATIONAL ACCESS CHANNEL; INCLUDING ANNUAL COMPENSATION CONSISTENT WITH CHAPTER 66 OF THE PUBLIC UTILITIES REGULATORY ACT.

* * * * *

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

WHEREAS, Chapter 66 of PURA shifted the responsibility of the operation, management and control of Public, Educational, and Government (PEG) Access Channels from cable service providers to municipalities; and

WHEREAS, Chapter 66 of PURA mandates that cable service providers pay municipalities 1% of gross revenues to support the operation of PEG Access Channels (in addition to a franchise fee of 5% of gross revenues for ROW access); and

WHEREAS, PEG funds may only be used for capital expenditures that support the PEG Access Channels; and

WHEREAS, San Antonio College (SAC), a member institution of the Alamo Community College District, has historically equipped a studio for the purpose of developing and cable-casting original educational programming for the Educational Access Channel; has coordinated with other local educational institutions for the purpose of airing their educational programming on the Educational Access Channel; and has contributed significant original educational programming, including distance learning college courses that are integrated into SAC's educational curriculum; and

WHEREAS, the Alamo Community College District has operated the Educational Access Channel on behalf of the City since January 1, 2006, and the current Interlocal Agreement between the City and the Alamo Community College District, entered into in February 2010, expires June 2019; and

WHEREAS, this Ordinance will approve a 5 year Interlocal Agreement (with two, 2 year renewal options) with the Alamo Community College District for the continued operation of the Educational Access Channel by SAC, and establish a budget process for providing

financial assistance to SAC for capital expenditures from eligible PEG funds; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The Interlocal Agreement between the City of San Antonio and the Alamo Community College District (Interlocal Agreement) for the continued operation of the Educational Access Channel is approved.

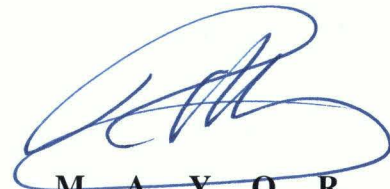
SECTION 2. The Director of the Government & Public Affairs Department is authorized to use PEG funds in the amount up to \$200,000.00 to support the Alamo Community College District capital expenditures associated with the operation of the Educational Access Channel for Fiscal Year 2019.

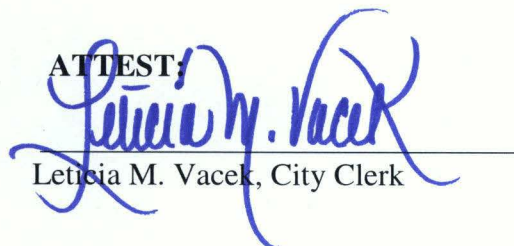
SECTION 3. The transfer of PEG funds to the Alamo Community College District in support of the Educational Access Channel under this Ordinance are authorized from the City's appropriate PEG Fund.

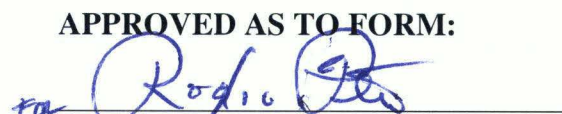
SECTION 4. The City Manager or designee is hereby authorized to execute the Interlocal Agreement, a copy of which is attached to this Ordinance as **Exhibit A**.

SECTION 5. This Ordinance shall become effective immediately upon the passage by eight (8) votes of the City Council and if passed upon fewer than eight (8) votes after the tenth (10th) day after passage thereof.

PASSED AND APPROVED this 16th day of May, 2019.


M A Y O R
Ron Nirenberg

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Andrew Segovia, City Attorney

Agenda Item:	18						
Date:	05/16/2019						
Time:	09:39:07 AM						
Vote Type:	Motion to Approve						
Description:	Ordinance approving a five-year Interlocal Agreement with Alamo Community College District for Educational Access Channel operation and capital improvements for the Educational Access Channel studio facility in an amount up to \$200,000.00, with an option to extend. [Carlos Contreras, Assistance City Manager; Jeff Coyle, Director, Government & Public Affairs]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				
Art A. Hall	District 2				x		
Rebecca Viagran	District 3		x			x	
Rey Saldaña	District 4		x				x
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

Exhibit A

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND
THE ALAMO COMMUNITY COLLEGE DISTRICT REGARDING THE
OPERATION OF THE EDUCATIONAL ACCESS CHANNEL**

STATE OF TEXAS

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COUNTY OF BEXAR

This Agreement is entered into pursuant to Chapter 791 of the Texas Government Code by and between the City of San Antonio ("City"), acting by and through its City Manager or designee, pursuant to Ordinance No. _____ passed and approved on _____, 2019; and the Alamo Community College District ("ACCD"), acting through its Chancellor or his designee (collectively, the "Parties"). The purpose of this Agreement is to establish the terms and conditions under which ACCD will operate the City's Educational Access Channel and the City will provide governance regulations and financial support for capital improvements consistent with Chapter 66 of the Texas Utilities Code.

**I.
RECITALS**

1.1 Whereas, on September 7, 2005, Senate Bill 5 (S.B.5) was signed into law by the Texas Governor effective immediately. S.B.5, in part, shifted certain responsibilities over the operation, management and control of Public, Educational and Governmental ("PEG") access channels from cable service providers to municipalities.

1.2 Whereas, S.B.5 has been codified as Chapter 66 of the Texas Utilities Code, entitled "State-Issued Cable and Video Franchise."

1.3 Whereas, pursuant to Section 66.009(f) of the Texas Utilities Code, the City is responsible for management and operation of PEG access channels and the cable/video providers bear the responsibility for the transmission of such channels, and connectivity at each PEG access channel point of distribution.

1.4 Whereas, pursuant to Section 66.009(d) of the Texas Utilities Code, failure on the part of the City to utilize any PEG channel for at least eight (8) hours a day may result in the channel no longer being available to the City.

1.5 Whereas, acting by and through San Antonio College ("SAC"), a member institution, ACCD has historically served as the point of distribution for the Educational Access Channel for the incumbent cable company (Time Warner Cable); has equipped a studio for the purpose of developing and cable-casting original educational programming; has coordinated with other local educational institutions for the purpose of airing their educational programming; and has contributed significant original educational programming, including distance learning college courses.

II. OPERATION OF EDUCATIONAL ACCESS CHANNEL

2.1 Authority to Operate. The City hereby authorizes ACCD to conduct the daily operation and management of the Educational Access Channel consistent with the terms of this Agreement and City regulations concerning the management of PEG channels.

2.2 Point of Distribution. ACCD will continue to act as the point of distribution for the Educational Access Channel for Time Warner Cable. The point of distribution is at the SAC Educational Multimedia Center located at:

San Antonio College
Department of Creative Multimedia
Moody Learning Center Room 632/641
1819 N. Main Street
San Antonio, TX 78212

At the present time, the City has established separate points of distribution for the Educational Access Channel for Grande Communications and AT&T GOOGLE FIBER at City facilities.

2.3 Daily Operation of Educational Access Channel. ACCD will continue to staff the SAC studio with trained personnel and appropriate equipment that it deems necessary to operate the Educational Access Channel and ACCD will be required to:

2.3.1 Coordinate interconnection of the point of distribution for the Educational Access Channel with cable/video providers;

2.3.2 Provide cable/video providers with at least eight (8) hours of daily educational programming, 365 days a year;

2.3.3 Provide transmissions of educational programming to cable/video providers in a manner that can be accepted and transmitted;

2.3.4 Address technical issues with cable/video providers and other educational institutions (if applicable);

2.3.5 Plan and coordinate with producers of educational programming to facilitate transmission of appropriate educational programming;

2.3.6 Communicate with designated City staff on a regular basis regarding the on-going operation of the Educational Access Channel, including a program log; and

2.3.7 Permit the City, access to the Educational Access Channel studio premises for the purpose of (i) Visual inspection of SAC headend, and (ii) physical access to the City's cable/fiber connection point and equipment within MLC 632/641. The City shall have access during regular business hours. In the event of loss of signal, or malfunction of

equipment resulting in signal degradation, the City shall have access to the studio premises and physical infrastructure 24 hours a day, 7 days a week by calling the emergency contact listed in section 2.11 herein.

2.4 Entities Authorized to Provide Programming. Entities eligible to provide appropriate educational programming include all non-profit (i) secondary educational institutions, (ii) arts community, including museums, (iii) institutions of higher education within the greater San Antonio viewing area and students enrolled at such educational institutions, and (iv) other organizations and individuals authorized under City regulations.

2.5 Prioritizing of Educational Programming. The purpose of the Educational Access Channel is to provide viewers with programming that (i) inspires learning, (ii) informs the community about educational opportunities, and the educational process, and (iii) showcases the video and film productions of local area students. Determination of what is considered "appropriate" educational content will be within the discretion of ACCD, subject to section 2.6 herein. Appropriate educational programming will fall into the following categories, which are listed in terms of priority:

2.5.1 Instructional programming and opportunities (such as distance learning college courses);

2.5.2 Public service educational programming (such as educational lectures and instructional programs);

2.5.3 Staff development and continuing education programming for instructors, administrators, counselors, and other professionals in the educational, arts, and cultural academic fields;

2.5.4 Arts and museum programming (such as video tours of museums or special cultural events);

2.5.5 Local educational content produced by student producers and registered Education Channel producers;

2.5.6 Educational news and bulletins (such as district-wide or campus news, and educational public service announcements);

2.5.7 School events (such as recording of sporting events and graduations);

2.5.8 Other local educational programming produced by individuals or organizations (such as school board or ACCD Board of Trustee meetings); and

2.5.9 Emergency announcements, though rare, may interrupt any scheduled programming.

2.6 Grievance Procedures. In the event that ACCD determines that a program topic or program behavior violates ACCD policy, procedure, or any local, state or federal law, statute or ordinance,

ACCD shall have the discretionary authority to prevent the program from being scheduled for viewing on the Education Access Channel. If such a decision results in a grievance from an education programming producer, ACCD will endeavor to mediate the complaint. In the event that ACCD 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 City regulations) and past experience, ACCD will forward the complaint to the City's Government and Public Affairs Department for appeal and final determination. ACCD shall not be responsible for any actions it takes as a result of and in reliance on City's final determination.

2.7 City's Financial Contribution. On an annual basis, consistent with the City's budget cycle, ACCD will provide the City with a Capital Improvement Budget for the Educational Access Channel studio facility for the City's review and approval based on the following considerations:

2.7.1 The City will review the proposed capital budget; may request clarifications; and may amend the budget.

2.7.2 The City will 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 contributions.

2.7.3 The City may only use PEG contributions received pursuant to section 66.006(b) of the Texas Utilities Code for funding the proposed capital budget.

2.7.4 Any funds received from the City may only be used by ACCD for capital improvements for the Educational Access Channel studio consistent with section 66.006(c) of the Texas Utilities Code - under no circumstances will these funds be used for operational expenses.

2.7.5 ACCD will provide an affidavit on an annual basis certifying that any funds received from the City were used for capital improvements.

2.7.6 The City reserves the right to suspend funding of capital budget items under this Agreement for the misuse of PEG contributions by ACCD and request reimbursement of misused funds.

2.7.7 ACCD will be responsible for the maintenance of all equipment purchased with PEG contributions.

2.8 Accounting of Capital Budget. ACCD shall account for capital improvements on a monthly and annual basis.

2.8.1 On a monthly basis, the SAC staff will present the City's TVSA Manager with copies of invoices for any capital equipment or improvements made during the previous month.

2.8.2 On an annual basis, the SAC staff will present the City's Director of Government and Public Affairs Department a written accounting of the previous year's capital expenditures

based on that year's budget. The accounting will include the affidavit described in section 2.7.5 herein.

2.9 Outreach Plan. On an annual basis, ACCD will deliver to the City at the same time as the Capital Improvement Budget required under section 2.7, an updated Outreach Plan that incorporates, but is not limited to, the following elements:

2.9.1 Plan to reach out to the educational arts, and museum communities for opportunities to develop local educational programming for airing on the Education Channel.

2.9.2 The percentage of educational programming hours dedicated to non-ACCD programming.

2.9.3 Plan for lending out production kits to registered ACCD students and Education Access Channel producers for the purpose of producing local educational programming.

2.9.4 General demand for production kits (including editing and camera capability) available to registered ACCD students and Education Access Channel producers - ACCD should have at least 5 kits production kits available.

2.9.5 Affirmation that no rental fees are charged for the use of production kits.

2.9.6 Description of additional funds and/or resources that ACCD and the local educational, arts, and museum communities contribute to the Outreach Plan.

2.10 Good Faith Cooperation. The City and ACCD will work together in good faith in order to continue the uninterrupted operation of the Educational Access Channel. The City and ACCD staff will cooperate to resolve any policy and technical issues that may arise during daily operation of the Educational Access Channel.

2.11 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 Education Access Channel:

For City:

David McElroy
TVSA Manager, Government and Public Affairs Department
City of San Antonio
115 Plaza de Armas
San Antonio, Texas 78205
david.mcelroy@sanantonio.gov
(940) 465-6025

For ACCD:

Dr. Barbara Knotts or Jason Ucab
San Antonio College

Department of Creative Multimedia
Moody Learning Center Room 632
1819 N. Main Street
San Antonio, TX 78212

Knotts: 210-773-3065 (cell)
Knotts: 210-486-0593 (work)

Ucab: 210-837-2826 (cell)
Ucab: 210-486-1212 (work)

III. TERM OF AGREEMENT

3.1 The initial term of this Agreement shall be for 5 years upon execution by both Parties, and shall have two successive 2 year renewals.

IV. AMENDMENTS

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

V. TERMINATION

5.1 This Agreement may be terminated by either Party for any reason upon six months written notice. In the event of termination, both Parties will cooperate to transition operation of the Educational Access Channel as appropriate.

VI. NOTICE

6.1 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 ACCD at the addresses set forth below, or to any other address as may be provided by amendment:

For City:

Jeff Coyle
Director, Government and Public Affairs Department
City of San Antonio
115 Plaza de Armas
San Antonio, Texas 78205
Jeff.Coyle@sanantonio.gov
(210) 207 7910

For ACCD:

Vice Chancellor for Finance and Administration
Alamo Community College District
201 W. Sheridan
Building B
San Antonio, Texas 78204-1429

**VII.
ASSIGNABILITY**

7.1 ACCD may not assign any interest in this Agreement to another party without the written consent of the City.

**VIII.
ENTIRE AGREEMENT**

8.1 This Agreement supersedes all prior agreements, written or oral, between the City and ACCD and will constitute the entire Agreement and understanding between the Parties with respect to the subject matter of this Agreement.

**IX.
VENUE AND GOVERNING LAW**

9.1 Venue and jurisdiction arising under or in connection with this Agreement shall lie exclusively in Bexar, County, Texas.

9.2 This Agreement shall be construed under and in accordance with the constitution and the laws of the State of Texas.

**X.
SEVERABILITY**

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

**XI.
INTERPRETATION, CAPTIONS**

11.1 The Article and Section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent or for any purpose, to limit or define the text of any Article or Section.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

**XII.
SIGNATURES**

12.1 IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Agreement in duplicate, on the dates indicated herein.

CITY
City of San Antonio

ACCD
Alamo Community College District

By: _____

(Name) Jeff Coyle

(Title) Dir., Government & Public Affairs

Date: _____

By: Robert Vela

(Name) Dr. Robert Vela

(Title) President, San Antonio College

Date: 4/25/19

APPROVED
AS TO FORM ONLY

Robert Vela
2019-04-25 11:13:21

APPROVED
By e-signature of 4/25/2019, April 25, 2019