

**INTERGOVERNMENTAL AGREEMENT**  
**Denver Public Schools and**  
**City and County of Denver-Channel 8**  
**(Operation of Comcast Educational Access Channel)**

**THIS INTERGOVERNMENTAL AGREEMENT** (the “IGA”) is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“CITY”), and the **SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER** and State of Colorado, a body corporate and politic, with an address of 900 Grant Street, Room 702, Denver, Colorado 80203, (“DPS”).

**RECITALS**

**WHEREAS**, the City has a cable franchise agreement with Comcast and is responsible for identifying the ‘Designated Access Providers’ under Section 9 of that agreement “...to control and manage the use of any and all Access facilities provided by Grantee...”. Comcast has currently assigned Channel 22 as one of those Access facilities.

**WHEREAS**, the City has identified and assigned the DPS as the Designated Access Provider for this education access channel on the cable lineup, as well as on any future digital and/or high-definition channel assigned to K12 education access provided in future franchise agreements with Comcast and any other cable operator.

**WHEREAS**, this IGA covers the operation of one educational access channel for as long as allowable by the City’s cable franchise agreement(s) and applicable federal law. It also approves the purchase of educational access video/audio equipment utilizing the City’s Public/Education/Government (“PEG”) Fund, and the usage of the City’s mobile video production truck.

**NOW, THEREFORE**, in consideration of the mutual agreements of the parties hereto it is understood and agreed as follows:

1. **CONTENT**. DPS will be solely responsible for the content of the access channel. The City shall have no control or involvement in content production, selection, scheduling, or promotion.
  
2. **CHANNEL ASSIGNMENT**. Comcast can change the channel assignment at its convenience and the City cannot guarantee Ch. 22 will be the assigned education access channel. Should the channel assignment be changed, the cable franchise agreement allows for marketing

costs to promote the new channel location, of which the City agrees to pay up to \$6,500 to DPS as provided for in Section 9 of the Comcast franchise.

### 3. **MOBILE VIDEO PRODUCTION TRUCK.**

A. DPS staff shall be allowed to operate the City's mobile production truck for educational access program production, provided it is not already scheduled by the City or another authorized entity. DPS staff using the Production Truck must complete the necessary driver education class, certify themselves to the City on knowledge of and proficiency on the production gear and equipment, and comply with the City's Motor Pool check in/out, security, and fueling procedures, attached hereto as Exhibit A.

B. Cameras are not stored on the Production Truck. It will be the responsibility of DPS staff to coordinate with Denver Media Services for the pickup, installation, configuration/testing of any equipment for the Production Truck. It shall be the responsibility of the DPS to coordinate the drop off of the cameras after use of the Production Truck is complete.

C. DPS shall be responsible for any damage to the Production Truck, equipment, cables, or generators while being used by DPS. It shall be the responsibility of both parties to survey the Production Truck prior to its use by DPS and afterwards. The City shall have 24 hours after being returned by the DPS to notify DPS of any apparent damage to the vehicle itself. Damage to equipment shall not be limited to a 24 hour notice, but shall be a reasonable period of time. DPS shall provide proof that the Production is a covered vehicle under a commercially acceptable insurance policy.

D. DPS agrees that it shall be solely responsible for any third party claims resulting from its use of the Production Truck.

E. At all times during the term of this IGA, including any renewals or extensions, DPS shall maintain such insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the CGIA. DPS shall provide proof that the Production is a covered vehicle under a commercially acceptable insurance policy.

### 4. **CAPITAL EQUIPMENT.**

A. Section 9 of the cable franchise agreement with Comcast identifies the "Capital Contribution," sometimes called the "PEG Fee" which collects revenue from subscribers for the procurement of video and audio capital equipment and for construction purposes for all Designated Access Providers. DPS is entitled to request a portion of those monies for capital and construction purposes.

B. The attached Equipment List (Exhibit B) was prepared by the City and DPS Channel 22 to identify all capital and construction needs through the year 2023. DPS Channel 22 shall submit yearly equipment request lists to the Director of Denver Media Services (“Director”) for review no later than November of each year. The lists shall include requested equipment, manufacturer, unit cost, quantity, purpose, total cost, and available model number. Approval of the requested equipment shall be in the sole discretion of the Director and approval of all or part of the request, shall be dependent, in part, on the amount of PEG Fee revenue and equipment demands each year. Upon approval from the Director, the City shall disburse to DPS up to \$3,160,675 over the following five years contingent upon actual receipts from cable franchises and equipment needs and priorities. Of this amount, \$1,736,000.00 is identified as DPS Channel 22 facility construction costs, up to \$1,074,675 in regular equipment purchases, and \$350,000 in “past approved” equipment. Payment by the City to DPS shall be on a schedule agreed upon by both parties. The approved “up to” amount of \$3,160,675.00 does not include any emergency equipment repair or replacement costs, which will be identified on an as-needed basis.

C. Invoices shall be submitted to the City quarterly based on the yearly approved equipment list. Payment will be pursuant to the City’s Prompt Payment Ordinance or sooner if noted by DPS Channel 22 with approved reasoning for the expedited payment request. DPS shall utilize its internal Purchasing Department processes to procure equipment with those monies. The City shall also conduct a quarterly review with DPS to confirm status of approved equipment purchases.

D. All procured equipment for Channel 22 purposes is the property of DPS and placed on its inventory. Any costs associated with damage or theft of that equipment shall be the responsibility of DPS, by whatever means.

E. The City and DPS recognize outstanding equipment purchases by DPS and approvals by City from 2011 and 2012, which have not been paid. Those approved expenditures total \$350,000 and moneys therefore have been collected through the PEG Fee and reside in a City Special Revenue Fund administered by Denver Media Services. Upon complete execution of this IGA, DPS shall submit an invoice within 30 days to the City for reimbursement of that amount.

F. Total approved equipment/construction dollar amount for this IGA is approximately \$3,160,675 over the next five year period.

## **5. TERM, RENEWAL AND TERMINATION**

This IGA shall commence on April 1, 2013 (“Effective Date”) and shall continue for five years from its Effective Date. This IGA may be renewed for an additional five year period. In no instance shall this IGA continue past the term of any cable franchise agreement(s). Either party may cancel this IGA with or without cause at any time upon three (3) month written notification to the other party.

12. **LIABILITY:** Each party to this Agreement shall be an independent contractor, and neither party or such party’s agents, officers and employees shall be deemed to be an agent of the other party. Each party waives all claims and causes of action against the other party for compensation, damages, personal injury or death which may result or occur as a consequence, direct or indirect, of the performance of this Agreement, except for any physical damage to the Production Truck caused by the DPS. DPS and Denver are each responsible for their own negligence and that of their agents, officers and employees to the extent provided in the Governmental Immunity Act, C.R.S. §24-10-101 et. seq. Nothing in this Agreement shall be construed as a waiver of immunity provided by common law or by statute, specifically the Colorado Governmental Immunity Act, or as an assumption of any duty for the benefit of any third party.

13. **EXAMINATION OF RECORDS:** Each party agrees that any duly authorized representative of the other party, including the City’s Auditor or his representative, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any directly pertinent books, document, papers, and records of the parties, involving transactions related to this Agreement.

14. **NO THIRD PARTY BENEFICIARY:** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and DPS, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or entity on such Agreement, including but not limited to subcontractors, suppliers, DPS students or any other member of the public. It is the express intention of the City and DPS that any person or entity other than the City or DPS receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

15. **GOVERNING LAW; VENUE.** Each term, provision, and condition of this Agreement is subject to the provisions of Colorado law, the Charter of the City and County of Denver and the ordinances, and regulations enacted pursuant thereto. Unless otherwise specified, any general or specific reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders (including memoranda thereto), or contracts, means statutes, laws, regulations, charter or code provisions, ordinances, and executive orders (including memoranda thereto) and contract as amended or supplemented from time to time and any corresponding provisions of successor statutes, laws, regulations, charter or code provisions, ordinances, or executive orders (including memoranda thereto) and contracts. Venue for any legal action

relating to or arising out of this Agreement will be in the District Court of the State of Colorado Second Judicial District.

**16. SURVIVAL OF CERTAIN PROVISIONS.** The terms of this Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of this Agreement survive this Agreement and will continue to be enforceable. Without limiting the generality of this provision, Sub-grantee's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

**17. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under the IGA, DPS may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability. The DPS shall insert the foregoing provision in all subcontracts.

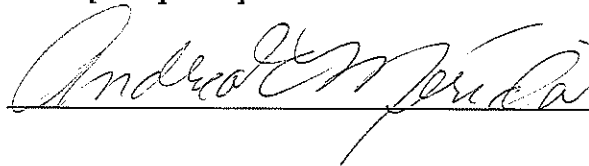
**Contract Control Number:**

By: 

Name: Mary Seawell  
(please print)

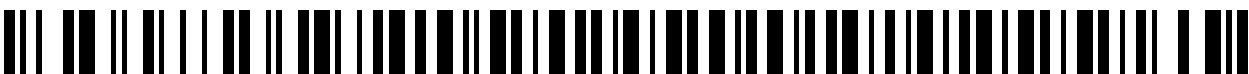
Title: Board of Education President  
(please print)

**ATTEST: [if required]**

By: 

Name: Andrea Merida  
(please print)

Title: Board of Education Secretary  
(please print)



**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

