

## **FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT**

**THIS FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT** (the “IGA”) is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **DENVER PUBLIC SCHOOLS (“DPS”)**, whose address is 1860 Lincoln Street, Denver, Colorado 80203 (collectively, the “Parties”).

### **WITNESSETH:**

**WHEREAS**, the Parties entered into an Agreement dated August 12, 2013 for the support of the DPS education access channel through City cable franchise PEG fees; and

**WHEREAS**, the Parties wish to amend the Agreement to extend the term and revise the Agreement.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and obligations herein set forth, the Parties agree as follows:

- 1.** The RECITALS contained in the original Agreement are amended as follows:

“**WHEREAS**, the City has cable franchise agreements with Comcast and Century Link and is responsible for identifying the ‘Designated Access Providers’ under Section 9 of those agreements “...to control and manage the use of any and all Access facilities provided by Grantee...””

“**RECOGNIZING**, that both Cable providers have made “available to the City... Downstream Channels” for Public/Education/Government (PEG) use and that Comcast Channel 22 and Century Link Channel 8007 have been identified by the City for educational access use.”

“**WHEREAS**, the City has identified and assigned the DPS as the Designated Access Provider for these education access channels 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, Century Link 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.”

- 2.** Article 1 of the Agreement entitled “CONTENT” is hereby amended to read as

follows:

**“1. CONTENT.**

- A. 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.
- B. Current funding and future capital equipment support is contingent upon DPS’s ability to meet the requirements of a “fully utilized channel” as laid out in the Cable Franchise Agreement(s). According to Section 9.2 (B) of the Cable Franchise Agreement(s), “A Channel shall be considered fully utilized if substantially unduplicated programming is delivered over it more than an average of 38 hours per week over a six (6) month period. Programming that is repeated on an Access Channel up to two (2) times per day shall be considered unduplicated programming.” A current DPStv Org Chart is attached as Exhibit A to this amendment.”

3. Article 2 of the Agreement entitled “CHANNEL ASSIGNMENT” is hereby amended to read as follows:

**“2. CHANNEL ASSIGNMENT.** The cable operators can change the channel assignment at their convenience and the City cannot guarantee Comcast Channel 22 and/or Century Link Channel 8007 will be the assigned education access channels for each cable operator. Should the channel assignment be changed, the cable franchise agreement(s) allow 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 cable franchise(s).”

4. Article 4 of the Agreement entitled “CHANNEL ASSIGNMENT” is hereby amended to read as follows:

**“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 DPStv to identify all capital and construction needs through the year 2023. DPStv shall submit yearly equipment request lists to the Director of Denver Media Services (“Director”) for review no later than May 30th of each year. The lists shall include requested equipment, manufacturer,

unit cost, quantity, purpose, total cost, and available model number. DPStv shall receive notification of the status of equipment approval within 30 business days starting the next business day after the City's receipt. Approval of the requested equipment shall be at 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 \$589,768 over the following five years contingent upon actual PEG fund receipts from the City's cable franchises. This amount represents the remaining sum of funds allocated in the original 5-year ascertainment plan and will be allocated on the basis of DPStv equipment and construction needs and priorities. Payment by the City to DPS shall be on a schedule agreed upon by both parties.

- 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 DPStv 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 DPStv education access television purposes is the property of DPS and placed on its inventory. Any costs associated with replacement, damage or theft of that equipment shall be the responsibility of DPS, by whatever means.
- E. Total approved equipment/construction dollar amount for this IGA is approximately \$589,768 over the next five-year period.

5. Article 5 of the Agreement entitled "TERM, RENEWAL AND TERMINATION" is amended to read as follows:

**"5. TERM, RENEWAL AND TERMINATION:** The term of this Agreement shall commence on April 1, 2013 and continue through April 1, 2023. 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."

6. Article 12 of the Agreement entitled "LIABILITY" is amended to read as follows:

**"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. 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.”

7. Except as herein amended, the Agreement is affirmed and ratified in each and every particular.

**[SIGNATURE PAGES FOLLOW]**

**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 \_\_\_\_\_




assumption of any duty for the benefit of any third party.”

7. Except as herein amended, the Agreement is affirmed and ratified in each and every particular.

[SIGNATURE PAGES FOLLOW]

**APPROVED AS TO FORM:**

By:   
Office of the General Counsel



**Contract Control Number:** TECHS-201309953-01

**Contractor Name:** DENVER PUBLIC SCHOOLS

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:

Attorney for the City and County of Denver

By *[Signature]* 3-23-18

By \_\_\_\_\_

By JEFF BARIZATT, EXEC. DIR.



EXHIBIT A



# DPS TV

**Robert Piekarski**  
**Manager TV Station/Studio**

Open Position Video Production Specialist	Shawn Montano Project Specialist, Video Production & Editing Program
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	Open Digital Effects Instructor
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