

INDEPENDENT SCHOOL DISTRICT 271
Bloomington, MN

REQUEST FOR SCHOOL BOARD ACTION

DATE OF BOARD MEETING: January 23, 2017

SUBJECT: Educational Access Cable Television Agreement

ORIGINATING DEPARTMENT: Tom Ringdal, BEC-TV Coordinator

APPROVAL OF ADMINISTRATIVE CABINET MEMBER: Rod Y. Zivkovich, Executive Director of Finance and Support Services

RESOLUTION FOR BOARD TO ADOPT:

RESOLVED, that the School Board of Independent School District 271 approves the agreement between the City of Bloomington and Independent School District 271 to participate in the promotion and development of Educational Access programming (BEC-TV) on the Bloomington cable television system.

RECOMMENDATION OF SUPERINTENDENT:

Approve.

DETAILED BACKGROUND:

Bloomington Educational Cable Television (BEC-TV) has been providing educational access programming for over 30 years.

Under this agreement, our District agrees to participate in the promotion and development of programming on the BEC-TV system. The agreement is being renewed for 2017 at a total cost of \$158,240. This amount is the same as the 2016 contract.

The District's attorney and insurance agent of record have reviewed the agreement.

**AGREEMENT BETWEEN THE CITY OF BLOOMINGTON, MINNESOTA
AND INDEPENDENT SCHOOL DISTRICT #271 FOR
BLOOMINGTON EDUCATIONAL CABLE TELEVISION (BEC-TV)**

THIS AGREEMENT is made and entered into this _____ day of January, 2017, by and between the City of Bloomington, a Minnesota municipal corporation located at 1800 West Old Shakopee Road, Bloomington Minnesota, 55431 (hereinafter referred to as the "City"), and Independent School District #271 located at 1350 West 106th Street, Bloomington, Minnesota, 55431 (hereinafter referred to as the "School District.")

WHEREAS the City operates a cable television franchise at its 1800 W. Old Shakopee Road, Bloomington, MN 55431 location, and;

WHEREAS the School District desires to promote and develop educational television via The Bloomington Channel 14.

For and in consideration of the promises, covenant, terms and provisions herein contained, the parties hereto mutually agree as follows:

1. This Agreement shall be effective January 1, 2017, through December 31, 2017, subject to termination as hereinafter provided.

2. The School District agrees to participate in the promotion and development of educational access programming on the Bloomington cable television system. Specifically, the School District agrees:

- A. To educate School District administrative staff, faculty, and students regarding the potential uses of cable television as a communications medium in the community.
- B. To cablecast live and taped programs covering a wide variety of educational issues, events and activities in/or affecting Bloomington.

- C. To encourage and promote student and faculty utilization of available training, technical assistance, facilities and equipment for the production of educational access programming.
- D. To cooperate, within the constraints of available resources and existing policy, with other access organizations in the community toward the improvement in quantity and quality of all access programming.
- E. To participate in and abide with the policies of The Bloomington Channel 14.

3. The School District agrees to provide qualified staff or personnel, both paid and volunteer, necessary to perform the services herein set forth.

4. For the period of this Agreement, the City will pay the School District an amount not to exceed the sum of One Hundred Fifty-Eight Thousand, Two Hundred Forty Dollars (\$158,240); such amount being a portion of the City's revenues from cable television franchise fees designated for local programming. Said amount shall be payable on the following schedule:

First Quarter, February 6, 2017	\$39,560
Second Quarter, April 10, 2017	\$39,560
Third Quarter, July 10, 2017	\$39,560
Fourth Quarter, October 9, 2017	\$39,560

It is mutually understood and agreed by the parties hereto that if the revenues to the City from cable television franchise fees are not sufficient to fund the entire amount due to the School District under this agreement, the amount of such payment by the City will be reduced accordingly.

5. The School District agrees that all amounts paid to the School District by the City, under the terms of this Agreement, shall be expended solely for the above stated purposes and no amounts shall be expended for any purpose not directly related to cable television.

6. The School District will provide a statement of the objectives to be accomplished during the period of this Agreement, a copy of its guidelines of operation, and a copy of all pertinent job descriptions. A final year end budget for the term of the Agreement, with deviations noted, and annual report shall be provided to the Communications Administrator by March 1, 2018. The School District will provide to the City a written report summarizing the educational access activities accomplished and outlining the disposition of funds paid by the City under the terms of this Agreement.

7. The School District agrees that programs submitted to The Bloomington Channel 14 shall be subject to the approval of the City Manager or the City Manager's representative.

8. The School District further agrees that The Bloomington Channel 14 will not be used for political campaigning by individuals or organizations seeking public office or legislation or for solicitation of funds for political purposes. This is not to preclude the cablecasting of political debates or candidates meetings, provided that fairness and equal time rules are followed. Also not precluded shall be the possibility of cablecasting reports by current elected officials regarding the status of issues and other governmental business, providing again, that fairness and equal time rules are followed where applicable. In the preparation of campaign material, the School District agrees to comply with the Fair Campaign Practices Act, Minnesota Statutes Chapter 211B, which sets forth the minimum standards for the preparation, dissemination, and broadcast of campaign material, subject to criminal penalties.

9. The School District agrees that it will not cablecast any program promoting a product or a service with the primary objective of producing a monetary profit for a specific commercial organization or individual on The Bloomington Channel 14. This is not to preclude the incidental mention of a business or product, as part of a program, where the primary purpose is to disseminate information of public benefit. Businesses, individuals and organizations may be acknowledged for assistance in the production of a program or the provision of other means of support.

10. The School District further agrees that it will not cablecast programming generally considered religious in nature on The Bloomington Channel 14. Religious organizations or ideals may be mentioned as incidental information as part of a program. This will also not preclude the appearance of a clergy or individual representing a particular religion as part of a program providing general information.

11. The School District agrees that the programs it cablecasts on The Bloomington Channel 14 will adhere to the rules identified in Minnesota Statute 238, Cable Communications, as well as community standards relative to obscenity and defamation.

12. The School District shall keep accurate and complete records of all financial transactions and shall provide to the City, on or before March 1, 2018, a complete written financial report of its operations during the period of this Agreement. Said records shall include an accounting system maintained in generally accepted accounting procedures, including, if applicable, the filing of proper tax returns to the Federal and State governments, such as payroll tax returns or corporate income tax returns (or permitted alternates). Pursuant to the provisions of Minnesota Statute 16C.05, Subd. 5, the books, records, documents and accounting procedures and practices of the School District relevant to this Agreement are subject to examination by the City and either the legislative or state auditor as appropriate. The School District shall also provide to the City a written report of its operational activities, including highlights of its cable program year, numbers and types of programs produced and documentation of facility use by the community.

13. The School District will comply with all applicable provisions of the Minnesota Government Data Practices Act, Chapter 13 of the Minnesota Statutes.

14. To the fullest extent allowed by law, the School District shall defend, indemnify and hold harmless the City and all of its officers, officials, agents and employees, from any and all claims, causes of action, lawsuits, damages, losses, or expenses, including attorney fees, arising out of or

resulting from the actions of the School District its guests, invitees, members, officers, officials, agents, employees, volunteers, representatives and/or subcontractors, or any persons associated with the School District to the extent allowed by law.

15. At all times during the Agreement the School District shall maintain insurance amounts in conformance with the general liability damage limits set forth in Minn. Stat. §466.04 (or any future Minnesota Statute governing the maximum liability of a municipality) as set forth below.

1. Commercial General Liability with Bodily injury limits in the amount of at least \$500,000 per individual and \$1,500,000 per occurrence for injuries or death arising out of each occurrence.
2. Property Damage Liability with Property limits in the amount of at least \$500,000 per individual and \$1,500,000 per occurrence.

To the fullest extent allowed by law, the School District further agrees to name the City as additional insured and to provide the City with a certificate of insurance on the Commercial General Liability insurance policies. The School District also agrees to notify the City thirty (30) days prior to a change in, or termination, of said policies. The School District agrees that all vendors, contractors and sub-contractors working on the School District's behalf to perform duties under this Agreement shall maintain insurance in at least the above-listed amounts.

16. The School District agrees to maintain Workers' Compensation Insurance as required by Minnesota Statutes, Section 176.181, subd. 2, and further agrees to provide a copy of the certificate of insurance to the City. The School District also agrees to notify the City thirty (30) days prior to a change in or termination of said policy.

17. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting the Contractor's staff as the agents, representatives or employees of the City for any purpose in any

manner whatsoever. The Contractor and its staff are to be and shall remain an independent contractor with respect to all services performed under this Agreement. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing services under this Agreement. Any and all personnel of the Contractor or other persons, while engaged in the performance of any work or services required by the Contractor under this Agreement, shall not be considered employees of the City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of said personnel or other persons while so engaged, and any and all claims whatsoever on behalf of any such person or personnel arising out of employment or alleged employment including, without limitation, claims of discrimination against the Contractor, its guests, invitees, members, officers, officials, agents, employees, volunteers, representatives and/or subcontractors shall in no way be the responsibility of the City; and the Contractor shall defend, indemnify and hold the City, its officers, officials, agents and employees harmless from any and all such claims. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the City, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Compensation, disability, severance pay and PERA.

18. It is understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

19. In the event of a breach by the School District of the terms or conditions of the Agreement, the City shall have, in addition to any other legal recourse, the right to terminate this Agreement immediately. Either party may terminate this Agreement, without cause, with thirty (30) days written notice. Upon termination of the Agreement, all uncommitted portions of the grant and all equipment purchased with the grant and/or a Cable Equipment Grant from Comcast shall be returned to the City. Final determination of any such uncommitted amount shall be as determined by the City.

20. The School District agrees to comply with the Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act of 1973 (“Section 504”) and shall not discriminate on the basis of disability in the admission or access to, or treatment of employment in its services, programs, or activities. The School District agrees to hold harmless and indemnify the City from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of ADA and/or Section 504 caused by the Contractor. Upon request accommodation will be provided to allow individuals with disabilities to participate in all services, programs and activities. The City has designated coordinators to facilitate compliance with the Americans with Disabilities Act of 1990, as required by Section 35.107 of the U.S. Department of Justice regulations, and to coordinate compliance with Section 504, as mandated by Section 8.53 of the U.S. Department of Housing and Urban Development regulations.

21. The School District agrees to utilize the Minnesota TDD Relay Service in order to comply with accessibility requirements.

22. This Agreement represents the entire Agreement between the School District and the City and supersedes and cancels any and all prior agreements or proposals, written or oral, between the parties relating to the subject matter hereof.

23. The City and the School District agree to submit all claims, disputes and other matters in question between the parties arising out of or relating to this Agreement to mediation. The mediation shall be conducted through the Conflict Resolution Center, 2101 Hennepin Avenue, Suite 100, Minneapolis, MN 55405. The parties hereto shall decide whether mediation shall be binding or non-binding. If the parties cannot reach agreement, mediation shall be non-binding. In the event mediation is unsuccessful, either party may exercise its legal or equitable remedies and may commence such action prior to the expiration of the applicable statute of limitations.

24. The School District agrees to require each of its guests, invitees, members, officers, officials, agents, employees, volunteers, representatives and/or subcontractors to abide by the City of Bloomington's policies prohibiting sexual harassment, firearms and smoking, as well as other reasonable work rules, safety rules or policies regulating the conduct of persons on City property at all times while performing duties pursuant to this Contract. The School District agrees and understands that a violation of any of these policies or rules constitutes a breach of the Contract and sufficient grounds for immediate termination of the Contract by the City.

25. This Agreement shall not be assignable except at the written consent of the City.

26. The School District agrees to comply with all applicable local, state and federal laws, rules and regulations in the performance of the duties of this contract.

27. The person signing this Agreement (hereafter "Signatory") represents and warrants that the Contractor has authorized him/her to execute this Agreement on its behalf and agrees to be bound by its terms and conditions, including the agreement of the Contractor to indemnify and hold the City harmless. In the event the Contractor did not authorize the Signatory to sign on its behalf, the Signatory agrees to assume responsibility for the duties and liabilities of the Contractor, as set forth herein, personally.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed the day and year first above written.

CITY OF BLOOMINGTON, MINNESOTA

DATED: _____ BY: _____
Its Mayor

DATED: _____ BY: _____
Its City Manager

Reviewed and approved by the City Attorney.

City Attorney

INDEPENDENT SCHOOL DISTRICT #271

DATED: _____ BY: _____
Its Chairperson of the Board

DATED: _____ BY: _____
Its Superintendent