

**SERVICE AGREEMENT
BETWEEN THE CITY OF DENTON, TEXAS AND
DENTON INDEPENDENT SCHOOL DISTRICT – DISD TV**

This Agreement is hereby entered into by and between the City of Denton, Texas, a Home Rule Municipal Corporation, hereinafter referred to as "City", and the Denton Independent School District – DISD TV, hereinafter referred to as "Organization":

WHEREAS, City has determined that the proposal for services merits assistance and can provide needed services to citizens of City; and

WHEREAS, this Agreement serves a valid municipal and public purpose and is in the public interest as it will assist local non-profit agencies, schools, hospitals, and public safety organizations within the City, among other things;

NOW, THEREFORE, the parties hereto mutually agree as follows:

I. SCOPE OF SERVICES

Organization shall in a satisfactory and proper manner perform the following tasks, for which the monies provided by City may be used:

The funds being provided shall be used by Organization to assist with the costs of capital equipment related to providing Public, Educational, and Government cable television services within the City of Denton in accordance with Federal Communications Commission (FCC) regulations.

II. OBLIGATIONS OF ORGANIZATION

In consideration of the receipt of funds from City, Organization agrees to the following terms and conditions.

A. Ten Thousand Dollars and no/100 (\$10,000.00) shall be paid to Organization by City to be utilized for the purposes set forth in Article I.

B. Organization will maintain records to establish that the City funds are used for the purposes authorized by this Agreement.

C. Organization will permit authorized officials of City to review Organization's books within a reasonable time after request is made by City.

D. Organization will provide full-backup documentation for expenditures, invoices, and canceled checks to City by the end of the current fiscal year, September 30 2012.

E. Organization will appoint a representative who will be available to meet with City officials when requested.

F. Organization will submit to City copies of year-end audited financial statements. City acknowledges that Organization's fiscal year ends June 30.

III. TIME OF PERFORMANCE

The services funded by City shall be undertaken and completed by Organization within the following time frame:

The term of this Agreement shall commence on the effective date and terminate at end of the current fiscal year, unless the contract is sooner terminated by the City under Section VII "Suspension or Termination".

IV. PAYMENTS

A. PAYMENTS TO ORGANIZATION. City shall pay to Organization the sum specified in Article II within a reasonable time after the effective date of this Agreement.

B. EXCESS PAYMENT. Organization shall refund to City within ten (10) working days of City's request, any sum of money which has been paid by City and which City at any time thereafter determines:

- 1) has resulted in overpayment to Organization; or
- 2) has not been spent strictly in accordance with the terms of this Agreement as provided in Article I; or
- 3) is not supported by adequate documentation to fully justify the expenditure.

V. EVALUATION

Organization agrees to participate in an implementation and maintenance system whereby the services can be continuously monitored, in a manner that is not violative of educational laws, statutes, and policies. Organization agrees to make available its financial records for review by City at all reasonable times as may be requested by City. In addition, Organization agrees to provide City the following data and reports, or copies thereof:

A. All external or internal audits. Organization shall submit a copy of the annual independent audit to City within ten (10) days of receipt.

B. All external or internal evaluation reports.

C. An explanation of any major changes in program services.

D. To comply with this section, Organization agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of funds received and the services

performed under this Agreement. The record system of Organization shall contain sufficient documentation to provide in detail full support and justification for each expenditure. Organization agrees to retain all books, records, documents, reports, and written accounting procedures pertaining to the services provided and expenditure of funds under this Agreement for five years.

E. Nothing in the above subsections shall be construed to relieve Organization of responsibility for retaining accurate and current records, for the five year period provided in section D above, that clearly reflect the level and benefit of services provided under this Agreement.

VI. TERMINATION

The City may terminate this Agreement for cause if Organization violates any covenants, agreements, or guarantees of this Agreement, the Organization's insolvency or filing of bankruptcy, dissolution, or receivership, or the Organization's violation of any law or regulation to which it is bound under the terms of this Agreement.

VII. EQUAL OPPORTUNITY AND COMPLIANCE WITH LAWS

A. Organization shall comply with all applicable equal employment opportunity and affirmative action laws or regulations.

B. To the extent permitted by law, Organization will furnish all information and reports requested by City, and will permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with local, State, and Federal rules and regulations.

C. In the event of non-compliance by Organization with the non-discrimination requirements, the Agreement may be canceled, terminated, or suspended in whole or in part, and Organization may be barred from further contracts with City.

VIII. WARRANTIES

Organization represents and warrants that:

A. All information, reports, and data heretofore or hereafter requested by City and furnished to City, are complete and accurate as of the date shown on the information, data, or report, and, since that date, have not undergone any significant change without written notice to City.

B. Any supporting financial statements heretofore requested by City and furnished to City, are complete, accurate, and fairly reflect the financial conditions of Organization on the date shown on said report, and the results of the operation for the period covered by the report, and that since said data, there has been no material change, adverse or otherwise, in the financial condition of organization.

C. No litigation or legal proceedings that would adversely affect Organization's obligations under this Agreement are presently pending or threatened against Organization.

D. None of the provisions herein contravenes or is in conflict with the authority under which Organization is doing business or with the provisions of any existing indenture or agreement of Organization.

E. Organization has the power to enter into this Agreement and accept payments hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this Agreement.

F. None of the assets of Organization are subject to any lien or encumbrance of any character, except for current taxes not delinquent, except as shown in the financial statements furnished by Organization to City.

Each of these representations and warranties shall be continuing and shall be deemed to have been repeated by the submission of each request for payment.

IX. CHANGES AND AMENDMENTS

A. Any alterations, additions, or deletions to the terms of this Agreement shall be by written amendment executed by both parties, except when the terms of this Agreement expressly provide that another method shall be used.

B. It is understood and agreed by the parties hereto that changes in the State, Federal or local laws or regulations pursuant hereto may occur during the term of this Agreement. Any such modifications are to be automatically incorporated into this Agreement without written amendment hereto, and shall become a part of the Agreement on the effective date specified by the law or regulation.

C. To the extent not publicly known, Organization shall notify City of any changes in personnel or governing board composition.

X. INDEMNIFICATION

The parties hereto acknowledge that each is a "governmental unit" as that term is defined in Tex. Civ. Prac. & Rem. Code §101.001, neither City nor Organization does by this agreement waive its right to claim immunity to liability or suit or to invoke the limits of liability set forth in Chapter 101 of the Texas Civil Practices & Remedies Code, as amended, to the extent sovereign immunity has been waived by said statutes. Each of the parties, City and Organization, to the extent authorized by law, agrees to indemnify, hold harmless, and defend the other party, its officers, agents, and employees from and against any and all claims or suits for injuries, damage, loss, or liability of whatever kind or character, arising out of or in connection with their respective duties and obligations as provided by this Agreement, or those services contemplated by this Agreement, including all such claims or causes of action based upon common, constitutional or statutory law, or based, in whole or in part, upon allegations of negligent or intentional acts of the other party, its officers, employees, agents, subcontractors, licensees, and invitees.

XI. CONFLICT OF INTEREST

A. Organization covenants that neither it nor any member of its governing body presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Organization further covenants that in the performance of this Agreement, no person having such interest shall be employed or appointed as a member of its governing body.

B. Organization further covenants that no member of its governing body or its staff, subcontractors, or employees shall possess any interest in or use his/her position for a purpose that is, or gives the appearance of being, motivated by desire for private gain for himself/herself, or others; particularly those with which he/she has family, business, or other ties.

C. No officer, member, or employee of City and no member of its governing body who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to the Agreement which affects his/her personal interest or the interest in any corporation, partnership, or association in which he/she has direct or indirect interest.

XII. NOTICE

Any notice or other written instrument required or permitted to be delivered under the terms of this Agreement shall be deemed to have been delivered upon expiration of three (3) days, whether actually received or not, after being deposited in the United States mail, postage prepaid, registered or certified, return receipt requested, or via hand-delivery or facsimile, addressed to Organization or City, as the case may be, at the following addresses:

ORGANIZATION

Denton Independent School District
DISD TV
Carla Ruge
1504 Long Road
Denton, TX 76207
Telephone: (940) 369.4850

CITY

City of Denton, Texas
Attn: City Manager
215 E. McKinney
Denton, TX 76201
Telephone: (940) 349-8307
Fax No. (940) 349-8596

Either party may change its mailing address by sending notice of change of address to the other at the above address by certified mail, return receipt requested.

XIII. MISCELLANEOUS

A. Organization shall not transfer, pledge, or otherwise assign this Agreement or any interest therein, or any claim arising thereunder to any party or parties, bank, trust company, or other financial institution without the prior written approval of City.

B. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in full force and effect and continue to conform to the original intent of both parties hereto.

C. In no event shall any payment to Organization hereunder, or any other act or failure of City to insist in any one or more instances upon the terms and conditions of this Agreement constitute or be construed in any way to be a waiver by City of any breach of covenant or default which may then or subsequently be committed by Organization. Neither shall such payment, act, or omission in any manner impair or prejudice any right, power, privilege, or remedy available to City to enforce its rights hereunder, which rights, powers, privileges, or remedies are always specifically preserved. No representative or agent of City may waive the effect of this provision.

D. This Agreement, together with referenced exhibits and attachments, constitutes the entire agreement between the parties hereto, and any prior agreement, assertion, statement, understanding, or other commitment occurring during the term of this Agreement, or subsequent thereto, have any legal force or effect whatsoever, unless properly executed in writing, and if appropriate, recorded as an amendment of this Agreement.

E. This Agreement shall be interpreted in accordance with the laws of the State of Texas and venue of any litigation concerning this Agreement shall be in a court of competent jurisdiction sitting in Denton County, Texas.

The foregoing Service Agreement between the City of Denton, Texas and the Denton Independent School District was offered for approval on motion made by _____, seconded by _____, and after discussion was adopted by the Board of Trustees of the Denton Independent School District at a regularly scheduled meeting called, posted, and held in Denton, Denton County, Texas, on _____, 2012, at which _____ Trustees were present, by the following vote: _____ For, _____ Against, and _____ Abstaining.

IN WITNESS WHEREOF, the parties do hereby affix their signatures and enter into this Agreement as of the _____ day of _____, 2012.

CITY OF DENTON

DENTON INDEPENDENT SCHOOL DISTRICT

GEORGE C. CAMPBELL,
CITY MANAGER

MIA PRICE, PRESIDENT
BOARD OF TRUSTEES

ATTEST:

ATTEST:

JENNIFER WALTERS, CITY SECRETARY

RUDY RODRIQUEZ, PH.D, SECRETARY
THE BOARD OF TRUSTEES

BY: _____

BY: _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: _____