

# **INTERLOCAL AGREEMENT BETWEEN THE CITY OF ODESSA AND ECTOR COUNTY INDEPENDENT SCHOOL DISTRICT CONCERNING THE OPERATION OF THE EDUCATIONAL ACCESS CHANNEL**

This Interlocal Agreement ("Agreement") is entered into between the City of Odessa ("City"), a home rule city, and Ector County Independent School District ("ECISD"), a local independent school district, to detail their agreement regarding the operation by ECISD of an educational access channel, currently Channel 10 ("ECISD Educational Channel") being provided by Grande Communications ("Grande") and Cable One ("Cable One") through a cable system in the City, (Grande and Cable One are hereinafter collectively referred to as "Cable Provider"). This Agreement is authorized by the "Interlocal Cooperation Act", Texas Government Code, Chapter 791, et seq. The Agreement is also adopted to clarify the procedures for the operation of the ECISD Educational Channel since the recent adoption of Chapter 66 of the Texas Utility Code concerning state-issued cable service and video service franchises ("Chapter 66").

## **PREMISES**

1. The City of Odessa granted a cable franchise to ClearSource, Inc., on March 9, 2000. The name of the company was subsequently changed to Grande Communications and the franchise will expire on March 9, 2015. Under Chapter 66 of the Texas Utility Code, after September 1, 2005, Grande received its franchise from the Public Utility Commission. It is now regulated by Chapter 66 and the City's franchise as provided in Chapter 66.
2. The City of Odessa granted a franchise to Cable One by Ordinance No. 2002-09, on March 15, 2002, and it will expire on March 15, 2017. At that time, it may become a state franchise.
3. Under federal law, 47 U.S.C. Section 531, and pursuant to the franchise, the City, as the franchise authority at the time, designated the use of the PEG Channels. It designated one of the channels to be used for educational purposes by ECISD, currently Channel 10.

The parties hereby agree as follows:

1. The City consents to ECISD operating the ECISD Educational Channel for educational purposes, and ECISD agrees to operate the ECISD Educational Channel subject to the terms of this Agreement and in such a manner to be in full compliance with the Rules and Procedures as they now exist or may be amended in the future by mutual consent of the parties.
2. ECISD's operation of the ECISD Educational Channel shall include providing adequate programming to meet the minimum utilization criteria as set forth in Chapter 66, Section 66.009 (d) and (e), as applicable. ECISD agrees to provide the City in advance, and as soon as is reasonably practicable, a weekly programming schedule.

3. ECISD agrees it will provide all the equipment as is reasonably necessary to provide professional quality programming on the ECISD Educational channel. The City has no obligation to provide any equipment or programming for the use by ECISD for the ECISD Educational Channel.
4. ECISD agrees it shall not request any additional institutional network capacity and/or cable services to ECISD public school buildings than was provided on September 1, 2005 from the Cable Provider without the express written consent from the City Manager, or his/her designee. If any such services are requested by ECISD without the City's consent as provided for herein, the City shall not be deemed to have requested them from the Cable Provider and they are unauthorized by the City and are not to be continued to be provided by the Cable Provider under Chapter 66, Section 66.006 (d).
5. ECISD agrees it will provide the City within 6 months before March 9, 2015, the termination date of the Grande franchise, and within six (6) months before March 15, 2017, the termination date of the Cable One franchise, a written request for any institutional network capacity and/or cable services to public schools to continue to be provided to ECISD after the franchise expires. Included with such request, ECISD shall also expressly agree to pay the actual incremental cost for such services either to the City or to the Cable Provider, as applicable. In the event that this request is not timely made, or there has not been a separate agreement entered into between the City and ECISD 60 days before the franchise expires, whichever is later as to the payment of the actual incremental cost of the requested services by ECISD, the City may inform the Cable Provider that any institutional capacity services provided to the ECISD or cable services provided to ECISD public schools at that time may be discontinued as of the termination date of the franchise, as they have not been requested to be provided by the City after the franchise expires.
6. The City and ECISD agree and confirm that any payments made under this Agreement are from current revenues available to the paying party, as is required by the Interlocal Cooperation Act, Section 791.011 (d)(3).
7. ECISD understands and agrees that the City is not responsible for any expenses or liabilities associated with the operation of the ECISD Educational Channel so long as ECISD is operating the ECISD Educational Channel.
8. ECISD agrees to hold the City, its officials, employees, and agents, harmless from any and all liability, claims, demands, damages, losses, and expenses, including but not limited to attorney's fees, of any nature that may arise from the operation of the ECISD Educational Channel by ECISD and further provided any said claim as not as a result of any action or inaction of the City. ECISD agrees to defend and fully indemnify the City, its officials, employees, and agents, for any liability, claims, demands, damages, losses, and expenses, including but not limited to attorney's fees, that may be made against the City, its officials, employees, and agents which arise in any manner from the operation of the ECISD Educational Channel by ECISD during the period of time in which it is operated by ECISD and further provided any said claim as not as a result of any action or inaction of the City. This hold harmless and indemnity clause shall survive the termination of this Agreement and shall apply to the fullest extent allowed by law. Nothing in this paragraph shall waive any governmental, statutory or other immunity of any type which is available to ECISD under existing law.

9. ECISD agrees to promptly forward to the City every demand, notice, summons or other process received by ECISD in any claim or legal proceeding contemplated herein. Nothing in this section shall be deemed an attempt to change or modify in any manner whatsoever the method or conditions of preserving, asserting or enforcing any legal liability against the City as required by the City ordinances or any law of the State of Texas.
10. To the extent that such agreements are reasonably obtainable, ECISD shall in good faith include in its programming contracts a release and a waiver as to any claim that may be made by the programmer against the City. Such release and waiver language shall be subject to the review and approval by the City Attorney.
11. ECISD agrees and understands that the City cannot and does not guarantee the continued cablecast ability of the ECISD Educational Channel and ECISD agrees that the City shall not be responsible or liable for claims or damages in any way in the event there is a failure of the ECISD Educational Channel to be cablecast for any reason.
12. The City shall require and ECISD agrees to promptly reimburse the City for any and all incremental cost to the City, which may accrue to the City, which would include, but not be limited to, any cost for the monitoring and oversight to ensure compliance with this Agreement and to monitor the associated programming of the ECISD Educational Channel. Such cost shall be paid to the City by ECISD within 30 days from the receipt of the invoice.
13. ECISD understands and agrees that the City may terminate this Agreement with cause for violation of this Agreement, for unlawful use or for other improper use of the ECISD Educational Channel provided the City has given ECISD 30 days' written notice of any claimed violation and an opportunity to cure same and ECISD fails to do so.
14. All notices shall be in writing and delivered to the parties at the addresses listed below, unless notified otherwise in writing. Personal hand delivery to an officer authorized to receive notices or the mailing of the notice by registered or certified mail, return receipt requested, postage prepaid, shall be sufficient service.

**Address for Notice to City Of Odessa:**

City of Odessa  
City Attorney  
411 W. 8<sup>th</sup> Street  
Odessa, TX 79761

**Address for Notice to ECISD:**

Ector County Independent School District  
Superintendent of Schools  
802 N. Sam Houston Street  
Odessa, Texas 79761

15. Failure of either party hereto to insist on the strict performance of any of the provisions herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by any appropriate remedy strict compliance with any other obligation hereunder or to exercise any right or remedy accruing as a result of any future default or failure of performance. Any waiver or inaction by either party to a default, violation or other non-compliant matter shall not be deemed a waiver with respect to a subsequent default, violation or other non-compliant matter.
16. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein and this Agreement shall not create any rights in any third parties not signatories hereto. Each party shall comply with all applicable federal, state, and municipal laws and regulations in the performance of this Agreement.
17. If any term or provision of this Agreement is held to be illegal or invalid, the Agreement shall automatically terminate, unless otherwise provided for herein. In the event that it is determined that by reason of state or federal law, the period for collection of the actual incremental cost of services by the Cable Provider shall commence at a different time than specified herein, this Agreement provides for such collection at such different time and ECISD's obligation to pay for such cost at such different time shall be in effect and shall not result in termination of the Agreement.
18. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or any other third party to create the relationship of principal and agent, partnership, joint venture, or of any other association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of City and Independent School District, as those terms are understood herein.
19. This Agreement is effective upon adoption by both the City and ECISD, whichever party adopts last and shall expire on termination as herein provided or on expiration of the term as herein provided.
20. Interlocal Agreement: This Agreement shall satisfy any requirements for an Interlocal Agreement and shall rescind and supersede any prior agreements of the parties that are in conflict. Both parties find that the services provided by each party are of equal value and the providing of such services constitutes a fair exchange of consideration.
21. The term shall expire on March 15, 2017 unless the parties agree to its renewal.

*The remainder of this page has been left intentionally blank.*

EXECUTED this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

"ECISD"  
ECTOR COUNTY INDEPENDENT  
SCHOOL DISTRICT

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

"CITY"  
CITY OF ODESSA

By: \_\_\_\_\_

Richard Morton, City Manager

ATTEST:

\_\_\_\_\_

Norma Aguilar, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_

Larry Long, City Attorney