

AN ORDINANCE TO AUTHORIZE A ONE YEAR EXTENSION TO THE EDUCATIONAL ACCESS CHANNEL AGREEMENT BETWEEN RED CLAY CONSOLIDATED SCHOOL DISTRICT AND THE CITY OF WILMINGTON.

#4815

Sponsor:

**Council
Member
Oliver**

Co-Sponsor:

**Council
President
Shabazz**

WHEREAS, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of personal property or the rendering of services for a period of more than one year if approved by City Council by ordinance; and

WHEREAS, on June 7, 2018, this Council authorized the Educational Access Channel Agreement (the “Agreement”) between Red Clay Consolidated School District (“Red Clay”) and the City of Wilmington; and

WHEREAS, the Agreement appointed Red Clay to operate and manage the educational access channel (“EDtv”) under the City’s cable franchise agreement with Comcast for a two-year period commencing on July 1, 2018 and ending on June 30, 2020; and

WHEREAS, the Agreement included an option for an additional one-year option subject to Red Clay receiving a satisfactory evaluation from its initial performance review; and

WHEREAS, Red Clay has received said satisfactory performance review and the parties wish to exercise the option to extend the agreement for one year. The term of the option year would begin on July 1, 2020 and end on June 30, 2021.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. The one-year option to the Education Access Channel Agreement between Red Clay and the City of Wilmington, a copy of which is attached hereto attached as Exhibit “A”, is hereby approved.

SECTION 2. The appropriate officers of the City are hereby authorized and directed to take all such action, execute, deliver, file and record all such documents, publish all notices, and otherwise carry out the intent of the one-year extension of the Educational Access Channel Agreement and this Ordinance in the name of and on behalf of the City.

SECTION 3. This Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading..... June 4, 2020
Second Reading..... June 4, 2020
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2020.

Mayor

SYNOPSIS: This Ordinance authorizes the City to execute a one-year option to the Educational Access Channel Agreement with the Red Clay Consolidated School District. The one-year Educational Access Channel Agreement option provides that the Red Clay Consolidated School District shall continue to operate and manage the educational access channel (“EDtv”) for an additional one-year period commencing on July 1, 2020 and ending on June 30, 2021. There will be no annual cost to the City under the one-year option to the Educational Access Channel Agreement.

FISCAL IMPACT STATEMENT: This Ordinance has no anticipated fiscal impact.

EDUCATIONAL ACCESS CHANNEL AGREEMENT

THIS EDUCATIONAL ACCESS CHANNEL AGREEMENT (the “Agreement”) is made as of the ___ day of _____, 2018, by and between the CITY OF WILMINGTON (the “City”) and the RED CLAY CONSOLIDATED SCHOOL DISTRICT (“Red Clay”).

WITNESSETH:

WHEREAS, under the terms of that certain Franchise Agreement dated November 19, 2012 between the City and Comcast of New Castle County, LLC (the “Cable Franchise Agreement”), the City has the right to three public, educational, or governmental access channels on the cable network serving the City; and

WHEREAS, on March 15, 2018, the City issued a Request for Proposals and Request for Qualifications for a Cable Television Educational Access Manager (the “RFPQ”); and

WHEREAS, Red Clay responded to the RFPQ with a submission dated April 20, 2018, a copy of which is attached hereto as Exhibit “1” (the “Red Clay Response”); and

WHEREAS, at its May 25, 2018 meeting, the Wilmington Cable, Video and Telecommunications Commission reviewed the Red Clay Response and recommended that Red Clay be authorized to operate and manage an educational access channel under the Cable Franchise Agreement for a period of two (2) years, with the possibility of a one (1) year extension; and

WHEREAS, Red Clay has agreed to operate and manage an educational access channel under the Cable Franchise Agreement in a manner that is consistent with the Red Clay Response and in accordance with this Agreement.

NOW, THEREFORE, intending to be legally bound hereby and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Grant of Educational Access Channel; Term. Subject to the terms of this Agreement and the Cable Franchise Agreement, the City hereby grants Red Clay the right to operate and manage an educational access channel (the “Educational Access Channel”) for a term of two (2) years beginning on July 1, 2018 and ending on June 30, 2020. The term of this Agreement shall be extended for an additional one (1) year period, from July 1, 2020 until June 30, 2021, if Red Clay receives a satisfactory evaluation from its initial performance review as provided in Section 7 herein.

2. Advisory Committee.

a. To assist with the administration of the Educational Access Channel, Red Clay shall form an advisory committee (the “Advisory Committee”). The Advisory Committee will meet on a quarterly basis to discuss the operation of the Educational Access Channel and the

EXHIBIT “A”

programming selections for the next quarter. At the quarterly meetings, the Advisory Committee shall solicit comments and concerns from the public regarding the Educational Access Channel.

b. The Advisory Committee shall contain 13 members, one of whom shall be the Chair of the Wilmington City Council Education, Youth and Families Committee. If any member of the Advisory Committee shall resign, then the Superintendent of Red Clay and the Wilmington City Council President shall confer regarding a replacement for such position on the Advisory Committee. In the event that the Superintendent of Red Clay and the Wilmington City Council President are unable to reach an agreement on the selection of a replacement member, then the selection of replacement members shall alternate between the City and Red Clay.

c. All meetings of the Advisory Committee shall be open to the public and subject to the Delaware Freedom of Information Act.

3. Programming Requirements.

a. Beginning on July 1, 2018, Red Clay shall provide at least twelve (12) hours of programming daily for the channel. All programming on the Educational Access Channel shall be of an educational nature and shall seek to serve the educational needs and interests of the citizens of Wilmington, including children and adults. Red Clay anticipates that students enrolled in its ARV career pathway at McKean High School, with guidance from teachers with broadcast experience, will plan and create much of the programming for the Educational Access Channel.

b. Red Clay shall invite other school districts, charter schools, and private schools operating within the limits of the City to submit ready for broadcast programming that will benefit City residents.

c. All programming selections and broadcasting times shall be reviewed at the quarterly meetings of the Advisory Committee.

4. Technical Requirements. Red Clay shall operate the Educational Access Channel in a good, safe, and quality manner. Red Clay shall create a professional communications center utilizing the agreed upon equipment, technology, hardware, and software. Red Clay shall develop and implement an equipment maintenance and replacement schedule that shall provide for the proper care and replacement of the technology, hardware, and software.

5. Coordination with Comcast. Red Clay shall be solely responsible for coordinating with Comcast to meet the requirements for the Educational Access Channel under the terms of the Cable Franchise Agreement.

6. Financial Support. Red Clay shall be solely responsible for all financial costs associated with the operation and management of the Educational Access Channel. Red Clay acknowledges and agrees that the City **is not** providing any funding for the Educational Access Channel.

7. Reports and Records. Red Clay must submit quarterly reports to the City containing a

description of: (a) the operation of the Educational Access Channel; (b) programming selections for the prior quarter; and (c) the development and implementation of an equipment maintenance schedule for the Educational Access Channel. The quarterly reports must also include minutes of the Advisory Committee and copies of any requests to provide programming from other school districts, schools, or members of the public. Lastly, Red Clay shall furnish the City with such information and/or periodic reports as the City may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

8. Annual Performance Review. The City will conduct an annual performance review to ensure that Red Clay is complying with the terms of this Agreement. In the performance evaluation, Red Clay shall be evaluated based on the following subcategories: (a) technical performance; (b) programming development; and (c) channel management.

9. Insurance. Red Clay shall obtain and maintain comprehensive commercial general liability insurance with limits of at least One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate, which shall name the City as an additional insured. In addition, Red Clay shall carry reasonable amounts of automobile liability insurance and workers' compensation insurance as required by law. All such insurance shall be written with insurers of recognized responsibility having an A.M. Best (or successor rating agency) rating of no less than A-X (or equivalent successor rating) and which are qualified to do business in Delaware. A duly executed certificate and copy of such policies shall be deposited with the City within thirty (30) days following the execution of this Agreement.

10. Indemnity. Red Clay hereby acknowledges and agrees that the City shall have no responsibility or liability with respect to the use, operation, or management of the Educational Access Channel, and Red Clay, at its sole cost and expense, shall indemnify, defend, and hold the City harmless, including its respective officials, employees, and agents, from all liability, damage, claim, loss, or cost (including counsel fees, expert fees, litigation expenses, and disbursements of legal counsel) of whatever nature arising in whole or in part out of any injury, loss, theft, damage, or cost relating or pertaining to the use, operation, or management of the Educational Access Channel. This Section 10 shall survive the expiration or termination of this Agreement.

11. Waiver of Subrogation. Any insurance Red Clay carries with respect to the Educational Access Channel shall include an endorsement denying to the insurer rights of subrogation against the City, if available. Without limiting any other provisions of this Agreement, Red Clay hereby waives any rights of recovery against the City for injury or loss due to hazards covered by such insurance.

12. Miscellaneous.

- a. Recording. No party may record this Agreement.
- b. Invalid Provisions. If any one or more of the provisions of this Agreement, or the

applicability or any such provision to a specific situation, shall be held invalid or unenforceable, such provision shall be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of any such provision shall not be affected thereby.

c. Construction. All parties to this Agreement have participated fully and equally in the negotiating of this Agreement, and in the event of any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Agreement, or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against any party by virtue of the party having drafted this Agreement or any portion thereof.

d. No Partnership. This Agreement is not intended to create a partnership between Red Clay and the City.

e. Binding Effect. This Agreement and its terms and conditions shall extend to and be binding upon the parties hereto and upon their respective successors and assigns.

f. Time. Time shall be of the essence of this Agreement.

g. Counterparts Deemed Original. This Agreement may be executed in one or more counterparts (including by facsimile and electronic mail), and all counterpart-signed documents shall be deemed to be an original and one (1) instrument.

h. Headings. The headings are for convenience only and shall not be considered a part of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on or as of the date first above written.

RED CLAY CONSOLIDATED SCHOOL
DISTRICT

Name: _____

Title: _____

Date: _____

CITY OF WILMINGTON

Name: _____

Title: _____

Date: _____

Exhibit “1”

To

Educational Access
Channel Agreement

Wilmington Cable, Video and Telecommunications Commission
Louis L. Redding City/Cty. Bldg., 9th Floor
800 French Street
Wilmington, DE 19801

April 20, 2018

To Whom it May Concern:

The Red Clay Consolidated School District is pleased to submit this proposal to be named again as the manager of the Cable Television Educational Access Channel.

We believe this application is a strong one because we have been managing the channel since its launch in January 2013 as EDTv. In our time of service, we have maintained a high degree of technical performance, have produced and developed a number of original programs and have provided opportunity to local filmmakers and young people.

We have the equipment, the location, the personnel, the content and the enthusiasm to continue providing not only a public service to Wilmington but a means to educate and train Wilmington youth in the exciting and rewarding field of television production.

We still envision the channel as a hub of educational information for the city of Wilmington and the greater Wilmington area, opening the airwaves to the other school districts that serve a portion of the city and New Castle County. We will continue to work toward this goal.

Our motivation is to provide our students with a skill set that will take them far, to provide all students with educational programming based on all content areas and levels of the curriculum and to keep our city parents – who may not have access to a computer – informed and involved with their children's schools.

We look forward to meeting with you to answer any questions you may have and provide more information on EDTv. It is our vision to continue building a channel that the entire community can be proud of.

Sincerely,



Mervin Daugherty, Ed.D.

Superintendent

Red Clay Consolidated School District
1502 Spruce Street
Wilmington, DE 1980

communications pathway - under the guidance of teachers with broadcast experience – plan and create educational programming.

Channel staff, the district PIO and the director of programming, create the original programs, with the occasional assistance of freelance crew members.

Red Clay schools with digital media or communications technology classes are also encouraged to produce and submit content that is ready to air. Red Clay also provides opportunities for school districts and charter schools inside city limits to submit their own programming that is ready to broadcast. Red Clay will maintain a calendar of events for Red Clay and other city schools that will run on a loop during hours after programming is over for the day.

9. Technical quality

Red Clay has demonstrated the technical quality of the equipment purchased by running the channel for more than four years with no interruptions in service.

10. Timeline

This section is moot, as the station and channel already exist and awarding Red Clay the contract again would result in a seamless transition.

11. Qualifications

1. Financial. Every year, the Red Clay business department tracks district spending of the millions of federal and state funds which are often designated for very specific purposes. Administrators will ensure that federal and state dollars are put toward the uses they were intended for.
2. Track Record. Since January 2013 the district has managed the EDTv channel. Since its inception in 1981, Red Clay is the largest school district in the state with roughly 16,000 students, 24 schools and close to 2,000 employees.
3. Community partnerships. Red Clay has partnered with a myriad of public and private entities over the years including area businesses, social service agencies, community groups and post-secondary institutions to provide programs and services to our students

and families. On EDTv, Red Clay is working with CCC Media (Rev. Benjamin Twin Brown, LAPA, Reed's Refuge, the United Way and others).

4. Cable access television experience. Red Clay has managed the channel since its inception in January 2013. Prior to that, Red Clay produced a weekly cable television show called "This Week in Red Clay." This program would remain part of the station's lineup.