

AN ORDINANCE TO AUTHORIZE AND APPROVE AN EDUCATIONAL ACCESS CHANNEL AGREEMENT (CONTRACT 22009CCPS) BETWEEN THE CITY OF WILMINGTON AND THE RED CLAY CONSOLIDATED SCHOOL DISTRICT

#0059

Sponsor:

Council
Member
B. Fields

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 February 19, 2021, the City issued a Request for Proposals and Request for Qualifications for a Cable Television Educational Access Channel Manager (Contract 22009CCPS) (the "RFPQ"); and

WHEREAS, the only response to the RFPQ was submitted by the Red Clay Consolidated School District ("Red Clay") on March 12, 2021; and

WHEREAS, the City desires to enter into an Educational Access Channel Agreement (the "Agreement") with Red Clay for the operation and management of an educational access channel under the City's franchise agreement with Comcast of New Castle County, LLC, a copy of which Agreement, in substantial form, is attached hereto and incorporated herein by reference as Exhibit "A"; and

WHEREAS, the term of the Agreement is for a period of two (2) years commencing on July 1, 2021 and ending on June 30, 2023, with the possibility of a one-year extension thereafter, at no annual cost to the City.

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

SECTION 1. The Educational Access Channel Agreement between the City of Wilmington and the Red Clay Consolidated School District, a copy of which Agreement, in substantial form, is attached hereto as Exhibit "A," for the period of two (2) years from July

1, 2021 through June 30, 2023, with the possibility of a one-year extension thereafter, is hereby approved, and the City Council President, or his designee, is hereby authorized to execute as many copies of the Agreement, as well as to take all additional undertakings related thereto, as may be necessary.

SECTION 2. This Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading..... May 6, 2021
Second Reading..... May 6, 2021
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2021.

Mayor

SYNOPSIS: This Ordinance authorizes the execution of an Educational Access Channel Agreement (Contract 22009CCPS) (the "Agreement") between the City of Wilmington and the Red Clay Consolidated School District for the operation and management of an educational access channel under the City's franchise agreement with Comcast of New Castle County, LLC. The Agreement is for a period of two (2) years from July 1, 2021 through June 30, 2023, with the possibility of a one-year extension thereafter. There is no cost to the City under the Agreement.

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

EXHIBIT A

EDUCATIONAL ACCESS CHANNEL AGREEMENT

(City Contract 22009CCPS)

THIS EDUCATIONAL ACCESS CHANNEL AGREEMENT (this “Agreement”) is made as of the ___ day of _____, 2021, by and between the **CITY OF WILMINGTON** (the “City”), by and through the Wilmington City Council, and **RED CLAY CONSOLIDATED SCHOOL DISTRICT** (“Red Clay”).

WITNESSETH:

WHEREAS, under the terms of that certain Franchise Agreement between Comcast of New Castle County, LLC and the City entered into on or about October or November of 2012 (the “Cable Franchise Agreement”), the City has the right to three (3) public educational or governmental access channels on the cable network serving the City;

WHEREAS, on February 19, 2021, the City issued a Request for Proposals and Request for Qualifications for a Cable Television Educational Access Channel Manager (the “RFPQ”);

WHEREAS, Red Clay responded to the RFPQ with a submission dated March 12, 2021 (the “Red Clay Response”);

WHEREAS, at its June 4, 2021 meeting, the Wilmington Cable Video & 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 thereafter; 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 RFPQ, 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, 2021 and ending on June 30, 2023. The term of this Agreement shall be extended for an additional one (1) year period, from July 1, 2023 until June 30, 2024, if Red Clay received a satisfactory evaluation from its initial performance review as provided in Section 7 below.

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 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 thirteen (13) members, one of whom shall be the Chair of the Wilmington City Council Education, Youth and Families Committee. The remaining twelve (12) members of the Advisory Committee shall be chosen by Red Clay. 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 July 1, 2021, Red Clay shall provide at least twelve (12) hours of programming daily for the Educational Access 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 the City, 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 meeting 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 equipment, technology, hardware, and software as required by the RFPQ, as represented in the Red Clay Response, and as is necessary to operate the Educational Access Channel in a good, safe, and quality manner. Red Clay shall also develop and implement an equipment maintenance and replacement schedule that shall provide for the proper care and replacement of the technology, hardware, and software as required by the RFPQ, as represented

in the Red Clay Response, and as is necessary to operate the Educational Access Channel in a good, safe, and quality manner.

5. 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.

6. 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.

7. 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.

8. 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) in the 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.

9. 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, 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.

10. 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.

11. RFPQ and Red Clay Response. Red Clay shall comply with all requirements contained in the RFPQ and fulfill all representations made in the Red Clay Response.

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.

[signature page follows]

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: _____

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