

**SUBSTITUTE NO. 1 TO ORDINANCE NO. 18-022**

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

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**Rev. 1  
#4526**

**Sponsor:**

**Council  
President  
Shabazz**

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

**WHEREAS**, on March 15, 2018, the City of Wilmington issued a Request for Proposals and Request for Qualifications for a Cable Television Educational Access Manager (the “RFPQ”) and Red Clay Consolidated School District responded to the RFPQ with a submission dated April 20, 2018; and

**WHEREAS**, the City of Wilmington desires to enter into an Educational Access Channel Agreement with Red Clay Consolidated School District, which provides that the Red Clay Consolidated School District shall operate and manage an educational access channel 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, pursuant to the substantial form of agreement attached hereto as Exhibit “A.”

**THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:**

**SECTION 1.** The Educational Access Channel Agreement between Red Clay Consolidated School District and the City of Wilmington, a copy of which is attached hereto 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 Educational Access Channel Agreement and this Ordinance in the name of and on behalf of the City.

**SECTION 3.** This Substitute Ordinance shall be deemed effective upon its date of passage by City Council and approval by the Mayor.

First Reading..... May 17, 2018  
Second Reading..... May 17, 2018  
Third Reading.....

Passed by City Council,

\_\_\_\_\_  
President of City Council

ATTEST: \_\_\_\_\_  
City Clerk

Approved this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Mayor

**SYNOPSIS:** This Substitute Ordinance authorizes the City to enter into an Educational Access Channel Agreement with the Red Clay Consolidated School District. The Educational Access Channel Agreement provides that the Red Clay Consolidated School District shall operate and manage an educational access channel 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. There will be no annual cost to the City under the Educational Access Channel Agreement.

**FISCAL IMPACT STATEMENT:** This Substitute 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., 9<sup>th</sup> 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.

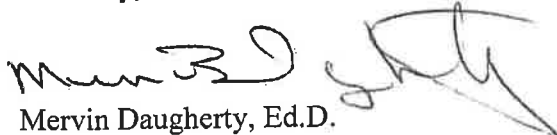
We have the equipment, the location, the personnel, the content and the enthusiasm to continue providing not only a public service to Wilmington but a means to educate and train Wilmington youth in the exciting and rewarding field of television production.

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



## **2. Description of the cable television educational access service**

Red Clay operates EDtv, a cable television educational access channel that serves as a source of information for students, parents and residents of the City of Wilmington and the greater Wilmington area.

In its 16 hours of daily programming, EDtv presents programming that both informs and invites parents and the community to become more involved in local schools.

In 2012, the district built a television production studio in Thomas McKean High School, and made major upgrades to the school's existing radio station, creating a comprehensive communications center that meets industry standards. The communications center serves as classroom and training ground for students who enroll in a three-year career pathway: Audio, Radio & Video Design and Engineering. Under the direction of a McKean teacher with broadcast experience, students learn first-hand all aspects of creation and delivery of television programming.

Red Clay has broadened the reach of the channel by inviting school districts and charter schools within the city limits to submit information or programming ready for broadcast.

Under the previous contract, Red Clay has demonstrated:

- Launched on Comcast Channel 965 on Jan. 22, 2013
- No major glitches in operations
- Currently producing six original programs for channel, with plans to launch two additional shows in fall
- Content on channel is high-quality, with documentaries and video shorts from local filmmakers and national institutions like CNN, NASA, and the Annenberg Foundation
- Has established partnerships with local entities and given opportunities to local filmmakers

## **3. Community benefits**

Wilmington students attending McKean High School have a direct benefit by taking ARV courses that cover all aspects of creating informational and creative programming. These valuable skills will transfer to many different occupations. Projects that students have created for broadcast can be included in a college application or submitted to potential employers.

McKean High School is located in Pike Creek and pulls students from the local area and the City of Wilmington. Many McKean students reside 12 or more miles away from the school, along

North Market and West Streets from West 23<sup>rd</sup> to West 29<sup>th</sup> Streets and within the 4<sup>th</sup> Street community of Wilmington.

EDtv has consistently presented high-quality, educational programming either produced by Red Clay, local filmmakers, or national institutions. The schedule is filled with documentaries, entertaining children's programming and educational fare from groups such as NASA and the Annenberg Foundation.

At the highest level, the community benefits if Wilmington parents and the community become more involved in the schools. Red Clay would create segments that inform residents and parents about district programs, events, schedules, etc.

#### **4. Evidence of need**

As more and more communications from the district have become paperless, Red Clay has struggled with ways to deliver important information to students and families that may not have access to a computer. The Red Clay school district, which serves 3,485 students who reside in Wilmington, has the responsibility but hasn't had the means to deliver important information that can easily be posted on the website but is too costly to print and send to parents' homes (i.e.: Presentations made at Board of Education meetings, the budget and meeting agendas, etc.)

Lack of transportation has put some of our Wilmington families at a disadvantage when they cannot attend Open Houses at our schools that provide detailed information about available programs or are unable to attend their child's sporting event or student performances.

A lack of information coming from the district into homes can further isolate parents and foster feelings of mistrust on the part of the parents toward the district.

#### **5. Service to the local community, local youth and area schools**

Under Red Clay's management, a cable access channel serves the local community, local youth and area schools in a variety of ways. Red Clay meets five of the six stated local purposes in the Request for Proposals.

McKean students who enroll in the communications pathway gain valuable, first-hand experience in planning and producing educational programming that is broadcast on air. Students take away a set of skills that can be applied to a number of different careers and a body of work that can be submitted as part of a college application or to potential employers. Red Clay

students at the district's other high schools also have the opportunity to produce and submit programming ready to air.

Students throughout the city and New Castle County benefit from watching educational programming that presents material aligned to the curriculum in fun and interesting ways, reinforcing what is taught in the classroom.

Superintendents in districts that encompass New Castle County have stated their intention to submit information from their individual districts.

In speaking with leaders at charter schools and community centers in Wilmington, leaders welcomed the plan and also stated they would use the opportunity to keep residents informed.

## **6. Management**

The district Public Information Officer serves as the Executive Producer of the channel, and the district hired a Director of Programming and Operations.

The district has formed an Advisory Board consisting of the superintendent, the principal, a Career and Technical Education Associate, a teacher, a parent, a member of the Leased Access Producer's Association and the district public information officer. The advisory board meets quarterly in public session and will solicit comments and concerns from the public.

## **7. Source of funding**

Federal, state and local funding was used to build, equip and maintain a television studio at McKean High School.

Red Clay secured a federal Perkins funds to implement and equip the television station. The Delaware Department of Education has approved the three-year ARV career pathway at McKean High School, which earns the district state Career and Technical Educational (CTE) funding for continued support of the program (i.e.: materials, cameras, software, etc.)

Finally, construction of the station and upgrades to the communications center would be funded with district minor capital funding and the district's maintenance budget.

## **8. Source of programming**

All of the channel's programming is educational in nature. Red Clay serves as the main source of educational programming, created in several different ways. McKean students enrolled in the

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.