

ESUCC

Executive Committee Meeting

Tuesday, November 4, 2014, 10:00 AM

Educational Service Unit No. 3 6949 So. 110th Street LaVista, NE 68128 Distance Learning will be available at ESUs 05, 09, 13, 16, 17., 6949 South 110th Street, LaVista, NE 68128

1. Call to Order

2. Roll Call

3. Agenda Item

3.1. Joint Technology Planning Committee

4. Next Meeting Agenda Items

5. Executive Session

6. Adjournment

{{Name: Agenda Item Name}}

{{Discussion: Agenda Item Discussion}}

{{Comments: Agenda Item Comments}}

{{Actions: Agenda Item Actions}}

**NEBRASKA COUNCIL OF SCHOOL ADMINISTRATORS
AND
EDUCATIONAL SERVICE UNIT COORDINATING COUNCIL

TECHNOLOGY PROGRAMMING AND USE AGREEMENT**

This Agreement ("Agreement") is made and entered into between the Educational Service Unit Coordinating Council ("ESUCC") and the Nebraska Council of School Administrators ("NCSA"). The parties are referred to collectively as a "Party" or the "Parties."

WHEREAS, the Parties desire to provide excellent programming, training, and resources in the field of technology and digital resources to assist Nebraska's schools, service units, educational entities, educators, and students;

WHEREAS, NCSA has been the entity responsible for assisting various state educators and others in hosting what has commonly been known as the "Google Summit";

WHEREAS, NCSA has accrued a positive balance from the fees charged to attend the Google Summit and has used these funds to pay for expenses of organizers to attend technology-focused national conferences and procure technology devices;

WHEREAS, the Parties desire to clarify and share the responsibilities associated with this programming and continuing education effort in the field of technology and digital resources, including the procurement of certain technology hardware and software for use in educational purposes;

WHEREAS, the Parties agree that NCSA has the experience and resources to plan and coordinate events and that the NCSA is the entity best suited to plan and coordinate events;

WHEREAS, the respective boards of each Party have authorized each Party to approve and enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed by the parties as follows:

- 1. NCSA/ESUCC Technology Committee.** The Parties agree to

continue to provide programming and training in the field of technology, digital resources, and education. The Parties agree and hereby mutually declare their intent to work cooperatively to provide this programming and training into the future. To accomplish this objective, the Parties agree to establish the NCSA/ESUCC Technology Committee ("Committee"). The Committee will consist of three (3) representatives from each entity, comprising a Committee of six (6) total members.

2. Committee Chairperson. The Committee will be chaired by one member of the Committee for a period lasting one full Term as described in this Agreement. The first Term, beginning January 1, 2015 and lasting through December 31, 2015, will be "Term 1." During odd numbered terms, beginning with Term 1, a representative of NCSA will serve as the Chairperson. During even numbered terms, beginning with Term 2 (January 1, 2016 to December 31, 2016), a representative of ESUCC will serve as the Chairperson. The Chairperson will serve as the meeting organizer, including establishment of the meeting time, location, and agenda. The Chairperson will serve in an organizational capacity and does not have any powers or duties, other than those outlined in this paragraph, in addition to those provided to all Committee members.

3. Purpose and Powers. The Committee shall have the following duties, responsibilities, purposes, and powers:

- a. To take any actions and commit resources necessary to provide training and programming in the field of technology, digital resources, and education. This power is intended to be interpreted broadly so as to allow the Committee to adapt its programming and training as it sees fit. The Committee provides overall direction, and the detail planning and coordinating will be handled by the NCSA pursuant to this Agreement;
- b. To authorize the purchase of hardware and software intended to serve the purposes of the Committee and the educational needs of the schools and students in Nebraska. The hardware and software, once purchased, will be used to further the educational missions of the Parties and the Committee;

- c. To solicit and pay for legal advice for matters such as, but not limited to, contract review; and
- d. To exercise any other authority as may be given to the Committee by way of resolution passed by both Parties' boards.

4. Planning and Coordination of Committee-Sponsored Events.

While the Parties intend to use the Committee to develop and authorize the expenditure of money to pay events, training, and technology purchases to serve the educational community in the fields of technology and digital resources, the Parties agree and understand that NCSA will be responsible for planning and coordinating all Committee events. Generally, Committee events will be planned and coordinated like other events hosted by NCSA, using the NCSA Event Coordinator and other NCSA staff members as the NCSA Executive Director sees fit. For example, the Committee may decide to continue what has been known as the "Google Summit," but the planning and coordinating will be the responsibility of the NCSA, including but not limited to, registration, procuring speakers, renting facilities, signing contracts, and physical setup of the event venue. To this end, the Parties agree that NCSA has the authority to sign all contracts necessary to fulfill the approved desires of the Committee

5. Event Management and Fee. As discussed in the preceding paragraph, NCSA shall be the event management agent for purposes of planning and coordinating all events approved by the Committee. Events include but are not limited to major statewide conferences (*i.e.* the "Google Summit"), local and regional conferences, and events like webinars and telephone conferences. In consideration of NCSA committing its resources and personnel to planning and coordinating all Committee events, NCSA shall receive an "Event Management Fee." For major and statewide conferences, such as the Google Summit or similar events, NCSA shall receive Seven Thousand Five Hundred Dollars (\$7,500) per event. For mid-level and smaller events, the Committee will solicit from NCSA the proposed Event Management Fee, which NCSA will submit based on a reasonable estimate of the level of involvement for planning the particular event. The Parties agree that NCSA will receive any interest accrued on the Committee Funds in addition to their Event Management Fees.

6. Term. The initial term of this Agreement shall commence on January 1, 2015 and end on December 31, 2015. Each subsequent term will commence on the January 1 following the end of the previous term on December 31.

7. Renewal and Termination. This Agreement will automatically renew for another term unless the Parties mutually agree in writing to terminate the Agreement. In the event the Parties do not mutually agree to terminate the Agreement, one Party may terminate it at any time upon providing 180 days' written notice to the other Party.

8. Finances and Accounts. The Parties agree that NCSA will maintain the accounts and pay the obligations undertaken by the Committee. NCSA will account for and maintain a current balance of all funds belonging to and received as part of the operation of this Agreement. For purposes of this Agreement, those funds which exist prior to and including all funds accrued after the effective date of this Agreement will be called the "Committee Funds."

9. Committee Impasse. In the event the Committee cannot agree on any particular matter, the Parties agree that the matter will be decided by collaboration between the then-current Executive Director of the NCSA and ESUCC, whose decision shall be binding on the Parties and the Committee. In the event the NCSA and ESUCC Executive Directors cannot agree, this Agreement will terminate and the Committee will dissolve pursuant to the provisions contained herein.

10. Assignment of Rights. NCSA assigns to ESUCC all rights and interests it has in any tangible personal property purchased with Committee Funds prior to and at any point after the effective date of this Agreement. ESUCC agrees that the Committee may use the property to serve its functions, and after the property is no longer needed by the Committee, it shall be returned to ESUCC to use at its disposal.

11. Termination of Agreement and Dissolution of the Committee. In the event this Agreement is terminated either by mutual consent, notice by one Party, or impasse, the Committee shall dissolve and the NCSA shall assume and pay all Committee-approved but outstanding claims, debts, and commitments of the Committee using the Committee Funds. Any remaining money will become property of the NCSA upon termination. Any other tangible personal property, intellectual property, or other property such as hardware and software purchased by the Committee shall become the property of ESUCC. Nothing in this paragraph prohibits or limits the parties from agreeing to other terms regarding termination, dissolution, or property disbursement.

12. Manner of Acquiring, Holding, and Disposing of Real and Personal Property. The Parties do not anticipate a need to acquire, hold, or dispose of real property to accomplish the purposes of this Agreement. The Parties' respective governing boards shall determine the manner of acquiring, holding, or disposing of real property in the event that such a need arises. In no event shall the Committee have the authority to acquire real property on behalf of the Parties. The Committee shall have the authority to acquire and hold any personal property that is needed or required for the implementation of any purpose of this Agreement. The title to all such personal property shall be held in the name of ESUCC for the benefit of all Parties. ESUCC shall have the authority to dispose of such personal property, provided that (a) any such disposal shall comply with state law, and (b) any funds raised from such sale become Committee Funds.

13. Governance of Committee Members. The Committee Members are governed by their respective employment agreements and the policies, practices, and procedures which govern their employment with the respective Party. Serving as a member of the Committee does not guarantee any additional rights to employment or due process with the Committee members' respective employer. The Parties agree that service on the Committee is an assigned duty of the respective employer, and accordingly, any and all actions taken as a member of the Committee are subject to review by the Party which employs the Committee member.

14. Appointment and Removal of Committee Members. The representatives of each respective Party serve as Committee Members at the pleasure of the then-current Executive Director of each Party. The Executive Directors may appoint and remove members at will. Removal from the Committee may be done orally or in writing and does not constitute adverse employment action. There is no right to be a Committee member, and there are is no process provided before a Committee member can be removed by the Executive Directors.

15. Liability Insurance; No Indemnification. Each party is responsible for insuring its respective interests in this Agreement. Each party should obtain and pay for its own liability insurance coverage for participation in this Agreement, to the extent either Party decides that its current insurance coverages do not cover participation in the Agreement. Neither party shall be responsible for indemnifying the other, and each party assumes all risks and responsibilities of complying with the terms of this Agreement.

16. Notice. Each Party giving any notice (“Notice”) contemplated under this Agreement may give written Notice in any of the following ways: by personal delivery, registered or certified Mail, or electronic mail. However, electronic mail is only sufficient if it is received by the then-current Executive Director for the non-sending Party. Notice sent via mail or personally delivery should be tendered to the following addressees:

ESUCC: ESUCC
Attn: Executive Director
6949 South 110th St.
Omaha, NE 68128

NCSA: NCSA
Attn: Executive Director
455 South 11th Street, Suite A
Lincoln, NE 68508

Notice is effective only if the party giving the Notice has complied with this section.

17. Outstanding Claims and Debts. The Parties understand that there are some outstanding claims against the Committee Funds. NCSA is permitted to pay all outstanding claims at its discretion prior to the effective date of this Agreement. Any tangible personal property in which NCSA acquires a property interest by way of fulfilling these claims is assigned to ESUCC pursuant to Paragraph 8 of this Agreement.

18. Amendments and Modifications. The Parties may amend or modify this Agreement only by a signed, written unanimous agreement that identifies itself as an amendment or modification to this Agreement. No other alterations in the terms of this agreement shall be valid or binding.

19. Severability. If any provision of this Agreement is determined to be unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain enforceable.

20. Counterparts. The Parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one Agreement. The signatures of all of the Parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or other electronic means is as effective as executing and delivering this Agreement in the presence of the other Parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other party. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.

21. Assignment. The Parties shall not assign or otherwise dispose of this Agreement or any duty, right, or responsibility contemplated in this Agreement to any other person or entity without the previous written consent of the other party.

22. Entire Agreement. The Agreement is the complete and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.

EDUCATIONAL SERVICE UNIT COORDINATING COUNCIL

Executive Director, duly authorized by the
ESUCC

Date: _____, 2014

NEBRASKA COUNCIL OF SCHOOL ADMINISTRATORS

Executive Director, duly authorized by the
NCSA Executive Board

Date: _____, 2014

CONSENT TO MULTIPLE REPRESENTATION

I, Dr. Michael Dulaney, do hereby state:

1. I am the Executive Director of the Nebraska Council of School Administrators (NCSA) and am authorized to act on behalf of the Board on this matter.
2. The NCSA is currently in the process of forming an agreement with Educational Service Unit Coordinating Council (ESUCC) to operate a technology-based series of programming in service to public schools in Nebraska.
3. NCSA and ESUCC anticipate that they will need legal advice on how to proceed in forming their contractual relationship and preparing a written Agreement to cover its terms.
4. NCSA and ESUCC desire to work cooperatively to accomplish these goals in a manner which is least disruptive to their respective entities and which is most economically efficient for NCSA and ESUCC.
5. To the extent that the interests of NCSA are not identical to the interests of ESUCC, NCSA recognizes that these interests vary only slightly.
6. NCSA hereby gives its consent to the firm of Harding & Shultz to represent ESUCC in this matter.

7. The attorneys from Harding & Shultz have fully explained the implications of this common representation to NCSA.
8. NCSA has had a chance to evaluate its need to obtain other representation by a firm that does not have any potential conflict. After this evaluation, NCSA still wishes to be represented by Harding & Shultz.
9. NCSA hereby waives any right to assert any conflict of interest on the part of Harding & Shultz or any of the lawyers affiliated with Harding & Shultz in their representation of ESUCC.
10. This consent is knowing, intelligent and voluntary and freely given.

By: _____
Dr. Michael Dulaney, Executive Director
Nebraska Council of School Administrators

Dated: November ____, 2014

CONSENT TO MULTIPLE REPRESENTATION

I, David M. Ludwig, do hereby state:

1. I am the Executive Director of the Educational Service Unit Coordinating Council (ESUCC) and am authorized to act on behalf of the Council on this matter by resolution passed by the Council, a copy of which is attached hereto.
2. ESUCC is currently in the process of forming an agreement with the Nebraska Council of School Administrators (NCSA) to operate a technology-based series of programming in service to public schools in Nebraska.
3. NCSA and ESUCC anticipate that they will need legal advice on how to proceed in forming their contractual relationship and preparing a written Agreement to cover its terms.
4. NCSA and ESUCC desire to work cooperatively to accomplish these goals in a manner which is least disruptive to their respective entities and which is most economically efficient for NCSA and ESUCC.
5. To the extent that the interests of ESUCC are not identical to the interests of NCSA, ESUCC recognizes that these interests vary only slightly.
6. ESUCC hereby gives its consent to the firm of Harding & Shultz to represent NCSA in this matter.

7. The attorneys from Harding & Shultz have fully explained the implications of this common representation to ESUCC.
8. ESUCC has had a chance to evaluate its need to obtain other representation by a firm that does not have any potential conflict. After this evaluation, ESUCC still wishes to be represented by Harding & Shultz.
9. ESUCC hereby waives any right to assert any conflict of interest on the part of Harding & Shultz or any of the lawyers affiliated with Harding & Shultz in their representation of NCSA.
10. This consent is knowing, intelligent and voluntary and freely given.

By:

David M. Ludwig, Executive Director
Educational Service Unit Coordinating Council

Dated: November ____, 2014