

ESUCC

Coop Committee Meeting

Wednesday, March 9, 2016, 2:00 PM

Technology Committee Meeting Educational Service Unit No. 11 412 W 14th Ave Holdrege,
NE 68949 DL: ESUs 4, 5, 6, 10, 11 (host), 13, 18, 19, 6949 South 110th Street, LaVista, NE
68128

Attendance Taken at 2:05 PM.

Fisher ESU 04:	Present
Gegg ESU 05:	Present
Jeff West (NE):	Present
Mowinkel ESU 08:	Present
Tedesco ESU 11:	Present
Paul Calvert (ESU 15):	Present

1. Call to Order

2. Roll Call

3. Agenda Item

3.1. Consent Items

3.2. Program Updates

3.2.1. Annual/Paper Buy

3.2.2. AEPA

3.2.2.1. 2015 AEPA Membership Dues

3.3. Future Efforts

3.3.1. Approve Movie Licensing USA Special Buy

3.3.2. Review Admin Fees Charged

3.3.3. Custodial Prime Vendor Bid

3.4. Statewide Communications

3.5. Coop Strategic Plan

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}}

AEPA Assessment Invoice

2015

Agency: ESUCC Cooperative Purchasing
Address: 1292 East 4th Street
City,State, Zip Ainsworth, NE 69210

Contact Name: Craig Peterson
Contact Email: craig.peterson@esucc.org
Contact Phone: 308-995-0665

Complete the Fees Received Worksheet

<i>Total Administrative Fees Received (From Fees Received Worksheet)</i>	\$ 100,932.95
Admin Rate 12/31/2015	<u>2%</u>
Total Sales	\$ 5,046,647.50
Assessment Rate	<u>0.0003</u>
Assessment Fee	\$ 1,513.99
Assessment	<u>\$1,500.00</u>
Total Amount Due	<u><u>\$3,013.99</u></u>

I certify that the above information is true and accurate.

Signature: _____ Date: _____

Return a copy of this invoice and the fees received worksheet with your check made out to AEPA Inc. to:

Tamra Hurst, %Stark County ESC, 2100 38th Street NW, Canton, OH 44709

Payment is due by April 1, 2016.



2016-2019 SPECIAL BUY AGREEMENT

THIS AGREEMENT is entered into by and between the Nebraska ESUCC Cooperative Purchasing ("Cooperative"), and Swank Motion Pictures, Inc. d/b/a Movie Licensing USA ("Contractor"). The Cooperative is an organization founded in 1968 with the purpose of providing the Educational Service Unit (ESU) member school districts ("Members") of Nebraska an opportunity to secure the maximum procurement value through cooperative synergies. The Educational Service Unit Coordinating Council (ESUCC) Advisory group serves as the steering committee for new and future cooperative buys statewide under its direction. A chief executive officer coordinates the statewide purchasing agreement between service units and their school districts and other serviceable entities. The Director manages the program with the guidance of the ESUCC, Advisory Board, and the Fiscal Agent. Nebraska ESUCC Cooperative Purchasing serves 17 ESUs that provide a statewide network of educational opportunities to approximately 249 school districts and more than 300,000 students.

In consideration of mutual covenants, the parties agree as follows:

- 1. Scope of the Contract.** The Contractor shall provide Members the opportunity to purchase the goods and/or services as defined in **Exhibit A**, which is attached hereto and incorporated herein by this reference, at the prices set forth in this Agreement and its Exhibits.
- 2. Payment Terms/Payment Schedule.** Members shall pay for services rendered and/or for accepted goods on the terms and payment schedule as set forth in **Exhibit B** which is attached hereto and incorporated herein by this reference. Prices listed in Exhibit B shall remain in effect during the term of this Agreement unless agreed otherwise by the parties in writing.
- 3. Administrative Fee.** Contractor shall submit to the Cooperative as an administrative fee a sum equal to two percent (2%) of the total gross dollar volume, less freight of all goods and services and excluding annual support and maintenance purchased by the Cooperative, ESUs, and Members. This fee will be submitted to the Cooperative on a ~~yearly~~ quarterly basis beginning three months from the Effective Date of this Agreement for all transactions completed and paid during said quarter.
- 4. Term.** This Agreement is effective on March 11, 2016 ("Effective Date") and shall continue until 12:00 midnight (CST) on February 28, 2019, 2019, unless terminated earlier as provided by this Agreement or by law.
- 5. Governing Law; Designation of Forum.** This Agreement is governed by and construed in accordance with the laws of the State of Nebraska. Any action to enforce this Agreement must be brought in the state or federal courts of the State of Nebraska. Mandatory and exclusive venue for any disputes shall be in Brown County Omaha, Nebraska.

6. Termination.

- A. The Cooperative may terminate this Agreement in whole or part if funding from federal, ~~state, or other~~ sources for the Cooperative or its Members is not obtained and continued at levels sufficient to allow for purchase of the good and/or services in the indicated quantities or term. The Cooperative shall notify the Contractor as soon as practicable if funds to meet the Cooperative's or Members' obligations become unavailable. The determination of the Cooperative as to the insufficiency of funds is conclusive.
- B. Each party may terminate this Agreement if the other party breaches or is in default of any material obligation hereunder which default is incapable of cure, or which, being capable of cure, has not been cured within 30 days after receipt of written notice of such default or such additional cure period as the nondefaulting party may authorize in writing.
- C. Each party may terminate this Agreement by written notice if federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
- D. The Cooperative may terminate this Agreement, in whole or in part, by written notice to the Contractor and may regard the Contractor in default of this Agreement if the Contractor becomes:
 - (1) Insolvent;
 - (2) Makes a general assignment for the benefit of creditors;
 - (3) Files a voluntary petition of bankruptcy;
 - (4) Suffers or permits the appointment of a receiver for its business or assets;
 - (5) Becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign; or
 - (6) Has wound up or liquidated, voluntarily or otherwise.
- E. The Cooperative may terminate this Agreement, in whole or in part, immediately, without notice, if the Contractor is debarred or suspended from performing services on any public contracts.
- F. The parties may terminate this Agreement without cause by mutual written consent or by either party with a minimum of 90 days written notice.
- G. Upon the termination for any reason or expiration of this Agreement, the Contractor promptly must return to the Cooperative all papers, materials and other property of the Cooperative then in its possession, including but not limited to all work in progress as is appropriate in its then existing form to the Cooperative.

7. Indemnification.

- A. The Contractor hereby ~~waives and~~ agrees to indemnify and save harmless the Cooperative and the ESUs and their officials, agents, employees, and volunteers

(hereinafter collectively referred to as "Indemnities"), against any and all claims of injuries, death, damage to property, liabilities, judgments, costs and expenses which may otherwise accrue against such Indemnities in consequence of the granting of this Agreement or which may otherwise result therefrom third-party claims arising from the Contractor's breach of this Agreement.

~~B. Cooperative, Members and the ESUs hereby agrees to indemnify, defend and save harmless the Contractor and its Indemnities against any and all claims of injuries, death, damage to property, intellectual property infringement, liabilities, judgments, costs and expenses which may accrue against Contractor and its Indemnities in consequence of any claims of unauthorized use of the Titles or other intellectual property of the Studies.~~

B. The Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith.

C. If any judgment shall be rendered against the Cooperative or the ESUs in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same.

D. Any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify and save harmless and defend the Indemnities as herein provided.

E. The Contractor's obligation to indemnify and save harmless any Indemnities will survive the expiration or termination of this Agreement by either party for any reason.

8. Insurance. Contractor shall secure and keep in force during the term of this Agreement the following insurance coverages from insurance companies or government self-insurance pools authorized to do business in Nebraska:

A. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per ~~person- occurrence~~ and \$5,000,000 ~~per occurrence~~ in the aggregate; and

~~B.~~ If applicable, workers compensation coverage meeting all statutory requirements.

The Contractor shall furnish a certificate of insurance to the undersigned Cooperative representative prior to commencement of this Agreement. Failure to provide insurance as required in this agreement is a material breach of contract entitling the Cooperative to terminate this Agreement immediately.

9. Public Records. The Contractor acknowledges that the Cooperative must comply with NEB. REV. STAT. § 84-712 through § 84-713 and release public records as defined law upon request, which may include this Agreement and all records created and maintained in relation to this Agreement.

10. Publicity. The Cooperative does not endorse the goods or services of the Contractor. Except for listing the Cooperative as a client during the term of this Agreement, news

releases or other publicity concerning this Agreement must not be made by the Contractor without the prior written approval of the Cooperative.

11. **Drug/Alcohol/Tobacco/Weapons Free Workplace.** The Contractor and all subcontractors, if any, shall not manufacture, sell, distribute, dispense, possess or use controlled substances or marijuana, as defined by Nebraska law, during the performance of this Agreement while on Cooperative, ESU, or Member premises or at Cooperative, ESU, or Member related functions. The Contractor and all subcontractors, if any, shall not possess any weapon, as defined by Nebraska law and the federal “Drug-Free Schools Act,” on Cooperative, ESU, or Member property or at Cooperative, ESU, or Member related functions. The Contractor and all subcontractors, if any, also shall adhere to all Cooperative, ESU, and Member policies and regulations that prohibit the possession, distribution, sale, dispensation, or use of any alcohol or tobacco products while on Cooperative, ESU, or Member premises or at Cooperative, ESU, or Member related functions. Failure to comply with this provision may be considered a material breach. The Cooperative may suspend or terminate the Contractor, subcontractor, or both if it violates these laws, regulations, or policies or this provision.
12. **Nondiscrimination.** The Contractor and all subcontractors, if any, shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.
13. **Independent Contractor.** Contractor is an independent contractor under this contract and is not a Cooperative, ESU, or Member employee for any purpose. The Contractor retains sole and absolute discretion in the manner and means of carrying out Contractor’s activities and responsibilities under this Agreement, except to the extent specified in this Agreement.
14. **Employment Eligibility Verification.** The Contractor shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If the Contractor employs or contracts with any subcontractor in connection with this Agreement, the Contractor shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.
15. **Taxpayer Identification.** Contractor’s federal employer identification number is: 43-1382264.
16. **Sales Tax.** The Cooperative, ESUs, and Members are exempt from sales tax and shall not pay any sales tax under this Agreement. The Cooperative, ESUs and/or Members will provide the Contractor with applicable sales tax exemption certificates upon written request.
17. **Notice.** Each party giving any Notice (“Notice”) under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid.) Notice shall be sent to the following addressees at the following addresses:

Cooperative: Nebraska ESUCC Cooperative Purchasing
Attn: Craig Peterson
1292 East 4th Street
Ainsworth, NE 69210

With copy to:

Steve Williams, Legal Counsel
KSB School Law, PC, LLO
Cornhusker Plaza
301 South 13th Street, Suite 210
Lincoln, NE 68508

Contractor: _____

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

18. **Warranties and Specifications.** Contractor shall be responsible for providing to Members all manufacturer warranties on all goods and services. Contractor shall provide Members with all attachments normally supplied by the manufacturer and/or supplier. Complete product specification sheets or brochures must be provided to Members, ESUs, or the Cooperative upon request.
19. **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.
20. **Amendments and Modifications.** The parties may amend or modify this Agreement only by a signed, written agreement by both parties that identifies itself as an amendment or modification to this Agreement. No other alternations in the terms of this agreement shall be valid or binding.
21. **Waivers.** The parties may waive any provision in this Agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay: (1) In exercising any right or remedy, **or** (2) In requiring the satisfaction of any condition under this Agreement, **and** (3) No act, omission, or course of dealing between the parties operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other Person.
22. **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.

23. **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 parties. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.
24. **Force Majeure.** Neither party shall be liable for any loss or damage suffered by the other party, directly or indirectly, as a result of the non performing party's failure to perform, or delay in performing, any of its obligations contained in this contract (except any obligations to make payments for services rendered or accepted goods received before the failure to perform or the delay in performance), where, in the opinion of the Cooperative, such failure or delay is caused by circumstances beyond the non performing party's control or which make performance commercially impracticable, including but not limited to fire, flood, storm or other natural disaster, explosion, accident, war, riot, civil disorder, government regulations or restrictions of any kind or any acts of any government, alien enemy, judicial action, power failure, acts of God, or other natural circumstances. This Force Majeure provision excludes economic hardship, changes in market conditions, and insufficiency of funds on the part of Contractor.
25. **Assignment.** This Agreement binds the parties and their respective successors and assignees. The Contractor shall not assign or otherwise dispose of this Agreement or any duty, right, or responsibility contemplated in this Agreement to any other person without the previous written consent of the Cooperative.
26. **Subcontractors.** The Contractor shall not subcontract services or any part of this Agreement without the prior written consent of the Cooperative.
27. **Captions.** The descriptive headings of the Articles, Sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.
28. **Rights and Remedies Cumulative.** Any enumeration of the Cooperative's rights and remedies set forth in this Agreement is not exhaustive. The Cooperative's exercise of any right or remedy under this Agreement does not preclude the exercise of any other right or remedy. All of the Cooperative's rights and remedies are cumulative and are in addition to any other right or remedy set forth in this Agreement, any other agreement between the parties, or which may now or subsequently exist at law or in equity, by statute or otherwise.
29. **Relationship Among Parties.** This Agreement creates no relationship of joint venture, partnership, limited partnership, agency, or employer- employee between the parties, and the parties acknowledge that no other facts or relations exist that would create any such relationship between them. Neither party has any right or authority to assume or to create any obligation or responsibility on behalf of the other party except as may from time to time be provided by written instrument signed by both parties.
30. **Rules of Construction.** The parties hereto have each been represented by counsel, or had the opportunity to be represented, during the negotiation and execution of this

Agreement, and therefore waive application of any law or rule of construction providing that ambiguities in the contract will be construed against the party drafting such contract.

31. Attachments. Attachments to this Agreement include the following:

Exhibit A – Scope of Good or Services to be provided to Cooperative

Exhibit B – Payment Terms & Schedule

IN WITNESS WHEREOF the parties have executed this Agreement on the date last date written below.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

|
|
COOPERATIVE

By: _____

Name: _____

Title: _____

Date: _____

CONTRACTOR

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT "A"

SCOPE OF GOODS OR SERVICES TO BE PROVIDED TO MEMBERS

Contractor provides the Public Performance Site License for K12. This Public Performance Site License confirms that, subject to the terms of this Agreement, each licensed site is hereby licensed by the copyright owners listed below to exhibit publicly movies in any legal form, and thereby is in full compliance with the U.S. Copyright Act (Title 17 of the U.S. Code).

Contractor is the licensing agent for the following major motion picture studios and their affiliates (collectively, "Studios").

Walt Disney Pictures, Paramount Pictures, Warner Bros., Sony Pictures, NBC/Universal Pictures, New Line Cinema, Lionsgate Films, MGM, Touchstone Pictures, Hollywood Pictures, Columbia Pictures, TriStar Pictures, Summit Entertainment, Focus Features, Miramax, Warner Independent Pictures, Fine Line Features, United Artists, Warner Independent Films, Paramount Vantage, and Screen Gems.

In this regard, Contractor will grant Members public performance site license to exhibit certain motion picture titles ("Titles") offered by the Studios. As a condition precedent to any Member being granted such a license, such Member must agree to the then-current licensing terms promulgated by Contractor on behalf of the Studios and otherwise comply with any security rules and other restrictions imposed by the Studios.

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EXHIBIT "B"

1. Contractor's Pricing

Contractor's Pricing Model under this Agreement is:

2016 NE State Pricing	
Student Enrollment (per school)	MUSLA State Level Price (per school) 2% surcharge not included
150 and under	\$248.00
151-300	\$286.00
301-500	\$305.00
501-1000	\$324.00
1001-1500	\$343.00
1501-2000	\$363.00
2001-2500	\$381.00
2501-3000	\$401.00
3001-3500	\$419.00
3501 and above	\$439.00
Suggested Timeline:	
Open Enrollment Begins:	4/4/2016
Enrollment Deadline:	5/23/2016
Bill Date:	5/30/2016
Payment Due Date:	30 days
License Start Date:	TBD (7/1/16?)

2. Payment Terms/ Payment Schedule

- A. Members will pay Contractor for all undisputed amounts for the goods and/or services identified in Exhibit A and provided by Contractor under this Agreement within ~~sixty-fourty-five~~ (6045) days of receipt of invoice, provided that goods/services have been accepted by the Member as hereinafter provided.
- B. The procedure for billing and payment for services or products and deliverables shall be as specified in this exhibit.

3. Acceptance of Services or Products:

- A. The Contractor shall deliver any goods, perform any services or both in accordance with the schedule set forth in any RFP, the time specified in a purchase order issued by the Cooperative, ESU, or Member, or this Agreement (whichever is later).
- B. Unless otherwise agreed to by the parties, the Contractor shall provide written

notification of completion of any deliveries, or performances of services or both, to the Member ("Delivery Notice").

- C. Members shall have sixty (60) days from the date of receipt of the Delivery Notice to provide the Contractor with written notification of acceptance or rejection due to unsatisfactory performance or nonconforming goods.
- D. If the Member issues a rejection notice, the Contractor shall as quickly as is practicable, correct or replace all deficiencies at its expense. The Cooperative shall not unreasonably withhold or delay its acceptance or rejection.

4. Title and Risk of Loss:

- A. Title and risk of loss for goods shall remain with the Contractor until goods are accepted by the Member, ESU, or Cooperative.
- B. Insurance during shipment and until the goods are accepted by the Cooperative, ESU, or Member is the responsibility of the Contractor.

Movie Licensing USA®

A Division of Swank Motion Pictures, Inc. • Tim Swank, Chairman

10795 Watson Road
St. Louis, Missouri 63127-1012

Toll-Free: 1-877-321-1300
Toll-Free Fax: 1-877-876-9873

To Whom It May Concern:

This letter serves as confirmation that the *Public Performance Site License* is a sole source product. Movie Licensing USA is the exclusive licensing agent for the following major motion picture studios and their affiliates:

- Walt Disney Pictures
- Warner Bros. Pictures
- Paramount Pictures
- Hollywood Pictures
- Metro-Goldwyn-Mayer
- Sony Pictures
- NBC Universal
- Columbia Pictures
- TriStar Pictures
- Touchstone Pictures
- United Artists
- Miramax Films
- Lionsgate
- Summit Entertainment
- New Line Cinema
- Focus Features
- Fine Line Features

The Federal Copyright Act (Title 17 of the US Code) governs how copyrighted materials, such as movies, may be used. Neither the rental nor the purchase of a movie carries with it the right to show the movie publicly outside the home, unless the site where the movie is used is properly licensed for public exhibition. Movie Licensing USA provides this *Public Performance Site License* to K-12 schools across the nation so that these entertainment movies can be shown legally in their school buildings.

Movie Licensing USA is a division of Swank Motion Pictures, Inc. We have served as the non-theatrical distributor for the major motion picture studios for over 75 years. No division of Movie Licensing USA, nor any other company, makes a similar or competing product. This product must be purchased directly by institutions from Movie Licensing USA at the address listed above. There are no agents or dealer authorized to represent this product. Additionally, competition is precluded by the existence of a contractual agreement with the above mentioned motion picture studios. There is no other like licensing available for purchase that would serve the same purpose and function.

If you require additional information, please contact us toll-free at (877) 321-1300 or visit our website at: <http://k12.movlic.com>. Thank you for your interest in movie copyright compliance.

Sincerely,

MOVIE LICENSING USA



Tim Swank
Chairman