COMMITTEE OF THE WHOLE

10-0618R

RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH DULUTH-SUPERIOR PUBLIC ACCESS COMMUNITY TELEVISION, INC. FOR COMMUNITY ACCESS CABLECASTING, TRAINING, PRODUCTION AND ADMINISTRATION SERVICES IN 2011 IN THE NET AMOUNT OF $162,000.

CITY PROPOSAL:

RESOLVED, that the proper city officials are authorized to enter into an agreement substantially in the form of that on file in the office of the city clerk as Public Document No. _____, with Duluth-Superior Public Access Community Television, Inc. (PACT) for providing cablecasting, training and production and administrative services in 2011 relating to public access television in the net amount of $162,000, to be paid from General Fund 110, Agency 700, Organization 1414, Object 5441.

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Attorney

Approved:

Auditor

ADM/ATTY JC:dma 12/01/2010

STATEMENT OF PURPOSE: This resolution authorizes an agreement with PACT to continue to provide services for public access television in Duluth. PACT received $169,000 in 2010, less $7,000 as payment for rent for use of its space in City Hall for a net amount of $162,000. PACT will receive the same amount in 2011.

AGREEMENT

THIS AGREEMENT, entered into by and between DULUTH-SUPERIOR PUBLIC ACCESS COMMUNITY TELEVISION, INC., hereinafter referred to as "PACT", and the CITY OF DULUTH, MINNESOTA, hereinafter referred to as "City".

WHEREAS, the provisions of the cable communications franchise with Charter Communications provide that City may contract with a nonprofit organization such as PACT to administer and operate community public access channels; and

WHEREAS, PACT has been staffing and administering the cable television public access channels for City pursuant to a contract between the parties; and

WHEREAS, City desires to have PACT continue to provide information, training, consulting services and equipment access to local community organizations, residents and City employees in the production of public access community television programs and messages.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. SERVICES TO BE PROVIDED

PACT will provide the following services:

A. PACT will produce for live cablecast regular Duluth City Council meetings as well as special City Council meetings if given at least four working days notice of any special meeting. PACT will also produce for live cablecast all Duluth City Council agenda sessions and all Duluth Economic Development Authority meetings. These meetings will be carried on the public access channels. Within five days of each such meeting, PACT will make available to the Duluth Public Library one copy of each such meeting.

B. Upon receipt of a special request from the Chief Administrative Officer or her designee, PACT will produce for live cablecast or in the event of scheduling conflicts, for delayed cablecast, other special City Council meetings, committee-of-the-whole City Council meetings, budget meetings, and other meetings related to City business which are held in the Duluth City Council

Chambers. The Chief Administrative Officer or her designee will inform PACT of the meeting requested for cablecast no later than four days before the meeting is scheduled to begin. Delayed cablecast meetings will be carried on the public access channels within four days of such meeting. Within five days of each such meeting, PACT will make available to the Duluth Public Library one copy of each such meeting.

C. PACT will assist City in producing, at a minimum, the State of the City Address and twelve "Duluth - This Is Your City" programs during the period of this Agreement.

D. PACT will oversee the City's Rules Administering Public Access Channels. See attached Exhibit A.

E. PACT will schedule all programs on the four public access channels 24/7, 365 days of the year. PACT will cablecast all programs provided by individuals, institutions, and organizations pursuant to the City's Rules Administering Public Access Channels.

F. PACT will provide information about community access opportunities and procedures to any City employee, community member or interested party.

G. PACT will provide monthly training to community members in the use of production equipment. PACT will charge a fee for such training classes which fee will also provide membership to PACT. PACT will assist PACT members with video production questions and development of their programs. PACT will certify persons who have demonstrated proficiency with video equipment. PACT will provide certified users access to video production equipment on a first-come, first-served basis for the purpose of producing programs that will be cablecast on one of two video public access channels.

H. PACT will provide at no charge up to four in-service training sessions per year to City employees and individual department directors approved by the Chief Administrative Officer or her designee. Such sessions will cover opportunities for program production and messages, equipment reviews,

special training sessions, and may include on-site assistance with productions of City meetings and hearings.

I. PACT will assist City Departments such as Police, Engineering and City Clerk with unscheduled video and audio production services.

J. City will make available to PACT its video equipment for community access television. PACT will manage the video equipment on City's behalf for the purpose of providing production equipment to producers of programs on the community access channels, for cablecasting programs, displaying community messages and for duplicating community access videotapes. City will maintain and repair all equipment, subject to the availability of funds for such maintenance. PACT will work with the City's video equipment maintenance vendor and supervise scheduled and unscheduled maintenance. PACT shall allow use of such equipment only by PACT staff, City staff, or persons who are members of PACT and who have been trained and certified by PACT in the use of production equipment. PACT shall return such equipment to City upon termination of this Agreement, and shall use reasonable care during the term of this Agreement to prevent damage to any of the video equipment.

K. PACT will work with the City's Cable Committee, keep them informed of federal and statewide pending legislative action, work with them on strategic planning for the transition from analog to digital technology, and recommend equipment acquisition purchased with the cable franchise subscriber pass-through fee.

L. PACT will work with the Council Chambers Remodeling Committee on modernization of the Council Chambers.

M. PACT will work with the City's Graphics Department on special projects

N. PACT will provide a message service for community organizations, institutions and the City to be displayed on a channel separate from the two video public access channels. PACT will instruct City employees in the opportunities and procedures for submitting messages.

O. PACT will provide outreach services to local non-profits for "Express Yourself" programs and operation and development of the City's message board character generators.

P. PACT will provide those services to be performed by the City pursuant to the City's Channel Sharing Agreement dated May 10, 2006, with the City of Superior, WI, as may be amended from time to time, including enabling public access television programming by Superior to be viewed on Channel 14, or such successor channel as the parties may agree, to all cable subscribers in Duluth as well as sending Duluth public access television programming signal for display on Superior's Channel 16.

2. COMPENSATION

City shall pay PACT $169,000 for services provided from January 1, 2011 to December 31, 2011. From said payment for services shall be deducted $7,000 for payment of rent for PACT's current space located at 328 City Hall. The City shall make net payments to PACT in 12 equal monthly installments from General Fund 110-700-1414-5441.

3. TERM

This Agreement shall be in effect from January 1, 2011 or the date that the final required signature is obtained by the City and shall remain in effect until December 31, 2011 unless terminated earlier as set forth herein.

4. ADMINISTRATION OF AGREEMENT

The Chief Administrative Officer or her designee shall administer this Agreement for City and determine training, videotape, and videotape copying needs of City pursuant to this Agreement and may exercise any membership privileges in PACT.

5. RULES ADMINISTERING PUBLIC ACCESS CHANNELS

The parties agree to abide by the City's Rules Administering Public Access Channels as may be amended by the City from time to time. See attached Exhibit A.

6. XEROGRAPHY SERVICES

City shall allow PACT the reasonable and necessary use of its xerography services at no charge through the duration of this Agreement.

7. SUBCONTRACTS/ASSIGNMENTS

Pact shall neither enter into subcontracts for performance of any of the services contemplated under this Agreement, nor assign or transfer any of its rights or interests under this Agreement in any way whatsoever without the prior written consent of City.

8. INDEPENDENT CONTRACTOR

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or City or of constituting PACT as an agent, representative or employee of City for any purpose or in any manner whatsoever. PACT shall not be considered an employee of City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of PACT while so engaged and any and all claims whatsoever on behalf of PACT arising out of employment or alleged employment, including without limitation claims of discrimination against City, its officers, agents, contractors or employees shall in no way be the responsibility of City. PACT and its officers and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability or pay or severance pay. Furthermore, City shall be in no way responsible to defend, indemnify or save harmless PACT from liability or judgments arising out of PACT's acts or omissions while performing the work specified by this Agreement.

9. INDEMNIFICATION

PACT agrees to defend, indemnify and hold City, its officers, employees and agents harmless from any liability, claims and damages, costs, judgments or expenses, including reasonable attorney's fees, which the City may hereafter sustain or be required to pay as a result of any act or omission on the part of PACT and its employees, agents, representatives and sub-contractors, in the performance of the services provided under this Agreement or arising out ot the use of or occupancy of PACT's current space located at 328 City Hall. On ten (10) days' written notice from City, PACT will appear and defend all lawsuits against the City growing out of such injuries or damages.

10. INSURANCE

A. PACT Service shall obtain the following minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota:

i. Workers' Compensation Insurance in accordance with the laws of the State of Minnesota.

ii. Commercial General Liability Insurance in an amount of not less than $1,500,000 combined single limit or $1,500,000 bodily injury per occurrence; $500,000 property damage per occurrence and $1,500,000 in aggregate.

iii. Automobile Liability coverage in an amount not less than $1,500,000 combined single limit or $1,500,000 bodily injury per occurrence; $500,000 property damage per occurrence.

B. City reserves the right to require increased coverage limits from those specified above in response to legislative action or court decision which have the effect of increasing liability limits of the City.

C. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect PACT, its employees, agents, and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by PACT, its employees, agents, and representatives in the negligent performance of work covered by this Agreement.

D. City shall be named as additional insureds on each liability policy other than the Workers' Compensation policies of PACT.

E. Certificates showing that PACT is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be filed with the City during the term of this Agreement.

F. If proof of such insurance is in the form of a so-called "Accord" form of certificate, the words "endeavor to" shall be stricken from the notice provisions thereof. Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be a pre-2004 edition.

G. The certificates shall provide that the policies shall not be changed or canceled during the life of this Agreement without at least 30 days advanced notice being given to the City.

H. The City does not represent or guarantee that these types or limits of coverage are adequate to protect PACT's interests and liabilities. It is understood that the specified amounts of insurance stated in this paragraph shall in no way limit the liability of PACT under this Paragraph.

11. RECORDS, AUDITING AND RETENTION

Pursuant to Minnesota Statute 16C.05, subd. 5, PACT's books, records, documents, accounting procedures and practices relevant to this Agreement are subject to the examination by the City and either the Legislative or State Auditor. Such evidence is also subject to review by the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Agreement. PACT agrees to maintain such evidence for a period of six (6) years from the date of services or payment were last provided or made or longer if any audit in progress requires a longer retention period.

12. LAWS, RULES AND REGULATIONS

PACT agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota, the City and their respective agencies now in effect or hereinafter promulgated which are applicable to its activities under this Agreement, including but not limited to laws pertaining to unlawful discrimination.

13. TERMINATION

If PACT fails to perform any of the provisions of this Agreement or so fails to administer the work as to endanger the performance of the Agreement, this shall constitute a default. Unless PACT's default is excused by the Chief Administrative Officer, City may upon written notice immediately terminate this Agreement in its entirety. PACT shall be paid for actual work done to the date of termination.

14. NOTICE

Notice to City or PACT provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time:

City: City of Duluth
330 City Hall
Duluth, MN 55802

PACT: PACT
328 City Hall
Duluth, MN 55802

15. CHOICE OF LAW/VENUE

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this Agreement shall be venued in the State of Minnesota.

16. AMENDMENTS

Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original Agreement or their successors in office.

17. WAIVER

Any waiver by any party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

18. ENTIRE AGREEMENT

This Agreement, including Exhibit A, constitutes the entire Agreement between City and PACT and supersedes all prior written or oral agreements and negotiations between the parties relating to the subject matter hereto.

[Remainder of page left intentionally blank, signature page to follow.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

CITY OF DULUTH

By _____
Mayor
Dated_____

DULUTH-SUPERIOR PUBLIC ACCESS COMMUNITY TELEVISION, INC.

By _____
President
Dated_____

Attest:

_____
City Clerk
Dated_____

Countersigned:

_____
City Auditor
Dated_____

Approved as to form:

_____
City Attorney
Dated_____

RULES ADMINISTERING
PUBLIC ACCESS CHANNELS
Amended January 2006

A. PUBLIC ACCESS CHANNELS

1. Public access channels are specifically designated channels on the Duluth cable television system that are available for use by the general public and local government. There are presently four public access channels in Duluth-Superior: channels 7, 14, 16 and 20. To the extent possible, all governmental programming, both live and replay, is shown on Channel 7. Channel 7 is also used for general programming. Channels 16 and 20 are for general programming. Channel 14 is a revolving message board which displays character generated messages and announcements of public interest.
2. The public access channels are administered for the City of Duluth by Duluth-Superior Public Access Community Television, Inc. (PACT). PACT is a nonprofit corporation whose purpose is to encourage and enable the general public to use the public access channels. There is an educational access channel in Duluth that is not administered by PACT, and it is not subject to these rules.
3. PACT will provide programming schedules of all its access channel shows to local media outlets, and will also post these schedules on each of the public access channels.

B. CHANNEL TIME

1. Channels 7, 14, 16 and 20 are available for use by the general public and local government on a first-come, first-served, non-discriminating basis, but subject to prioritization set forth in these rules.
2. No charge will be made for programming or messages cablecast over the public access channels.

C. RESERVING TIME FOR PUBLIC AND GOVERNMENT VIDEO PROGRAMMING ON PUBLIC ACCESS CHANNELS

1. PACT is solely responsible for scheduling time on all four public access channels.
2. Requests for cablecast time slots for video programs (live or recorded) shall be requested in person or by calling PACT at (218) 723-3686 no later than four days prior to the requested cablecast date.

Exhibit A

D. SCHEDULING CABLECAST TIME FOR PROGRAMS

1. For purposes of these rules:
   a. **Resident** is defined as:
      1) any person whose residence is located in, or who works in or who attends school in the resident area;
      2) any group of two or more persons from which a significant portion of its membership resides in the resident area; or
      3) any institution or business which is located in the resident area.
   b. **Resident area** is defined as that geographic area which includes the City of Duluth, St. Louis County, the City of Superior, and Douglas County.
2. Access time shall be available on a first-come, first-served basis, but subject to the priorities set forth in this section and following the procedures set forth in Section F.
3. First priority for scheduling time on Channels 7, 16 and 20 will be given to programs:
   a. Which are produced by residents,
   b. Of a subject having significant local interest and submitted by residents; or,
   c. Which have been recorded or will be produced live within the resident area.
4. Second priority for scheduling time on Channels 7, 16 and 20 will be given to all other programs.
5. Programs submitted for cablecast will be cablecast once. Repeat cablecasts may be requested by the producer and/or submitter of the program(s) in Section 3 and will be granted subject to available cablecast time. Programs scheduled per Section 4 will be cablecast on Channel 20.
6. Programs of the second priority (Section 4) will be scheduled on Channel 20 in a manner so that the total number of such programs will not exceed 20% of the total programs cablecast on Channel 20 in any given week.
7. PACT will attempt to satisfy requests for the cablecast of programs at specific times on specific dates, depending on availability of channel time and cablecast equipment.
8. Regularly scheduled series time slots will be allocated for a maximum of one year. If a person submitting or producing a series fails to submit more than two programs in the series, the series' time slot may be reassigned. Other rules for scheduling series may be promulgated by PACT through policies which shall be available to producers and submitters of series programs.

E. VIDEO PROGRAM CONTENT

1. The content of public access community television programs must be

noncommercial (no material designed or tending in part in whole or in part to promote the sale of commercial products or services, including political advertising by or on behalf of candidate(s) for public office or on behalf of ballot questions, which, if broadcast on commercial television, would be required to include a "paid advertisement" announcement pursuant to Minnesota Statutes 211B.04).

2. Public access community television must not contain obscenity as defined by federal, state or local law, or material otherwise prohibited by federal, state or local law.
3. Community television programs may seek funding for, or sponsorship of, their programs from private and/or public sources. Credit to funding sources may only be given at the beginning and ending of the program and may say only that assistance or support was provided by the funding source. A character-generated name or logo may appear, but no address or telephone numbers. Audio is limited to: identification of the program or series supporter by name, but no information about the supporters' products or services is allowed.
4. PACT will not edit or alter in any way the content of any program submitted to it for cablecast.
5. Videotaped and live programs must include opening and closing credits identifying the program's title and producer.

F. SUBMITTING TAPES OR PREPARING FOR LIVE CABLECAST

1. The producer or submitter of a videotaped program scheduled for cablecast must complete and submit with the tape a "Cablecast Submissions Form" no later than two days prior to the cablecast. Exceptions may be made for programs of timely events such as sporting events or public meetings.
2. The producer or submitter of a live program must complete and submit a "Cablecast Submission Form" prior to the start of the live program.
3. The "Cablecast Submission Form" must include program title, producer or submitter, and any other information required by PACT to ensure that rules and policies have been followed, including statements from the producer/submitter that prohibited program content is not included in the program. The form must be signed by the producer or submitter. Failure to sign the form, or submitting false information on the form are grounds to refuse cablecasting of the program.
4. Tapes submitted for cablecast must be in S-VHS, VHS or DVD format with one program per tape, and must comply with any other rules promulgated by PACT, which rules shall be available to any producer or submitter upon request.
5. Following cablecast of the tape, the program producer or submitter is responsible for picking up any videotape. If the tape is not picked up within 45 days of the last cablecast date, PACT may dispose of or recycle

the videotape.

G. MESSAGE SERVICE

1. Channel 14 will display character generated messages limited to the following categories:
   a. Public access channel schedules of programs or other messages relating to public access community television,
   b. Government announcements, information and schedules,
   c. Community events, schedules and announcements of public interest from nonprofit organizations, or
   d. Information about cable system service programs, outages and repairs submitted by the cable company.
2. These messages must be noncommercial (no material designed or tending in whole or in part to promote the sale of commercial products or services, including political advertising by or on behalf of candidate(s) for public office or on behalf of ballot questions). These messages may not contain obscene material as defined by federal, state or local law, or material otherwise prohibited by federal, state or local law.
3. Channel 14 will display these messages 24 hours a day except in case of emergency situations.
4. PACT may not edit messages submitted.

H. FILE OF CABLECAST SUBMISSIONS

1. PACT will keep a file of Cablecast Submission Forms for two years following the date the form is signed, and will allow public inspection of these files during normal business hours.
2. PACT will keep a file of cablecast logs for two years indicating which programs have been cablecast, and will allow public inspection of these files during normal business hours.

I. EXCEPTIONS

1. Exceptions to these rules may be granted at the sole discretion of PACT but only for good cause. Good cause shall include an emergency, the occurrence of an unexpected event of significant public interest, and acts of God. Causes attributable to the producer or presenter of the program shall not be considered good cause.
2. When requested,.exceptions will be stated in writing with an explanation of the reason for the exception. Exceptions and such explanations will be kept on file as in Section H.1 above.
3. Anyone denied an exception may apply for and receive a hearing before the Executive Director of PACT and/or the PACT Board of Directors to reexamine the matter.

J. DISTRIBUTION AND AMENDMENT OF OPERATING RULES

1. PACT will make available a copy of these rules and any policies or rules referenced in these rules at the PACT offices to any person making the request.
2. Amendments to these rules must be approved by the Duluth City Council.

K. MAKE-GOOD POLICY

1. PACT reserves the right to change the cablecast schedule for emergency or other good cause as defined in Section I.1.
2. If PACT fails to cablecast a program, or changes the schedule as defined in Section K.1., it will attempt to contact the producer or submitter regarding rescheduling and agree upon a new cablecast date, publicizing the new date by a message service channel.

L. STUDIO USE

1. The times of operation of the studio are on a first-come, first-served basis to PACT certified users who have requested the studio for production of community access television programs. It is not available for commercial use.
2. Studio equipment (one camera, lighting and microphone) plus technical personnel will be made available by appointment for the purpose of recording and cablecasting special presentations. These special presentations will not exceed five minutes in length per week per producer, and the studio equipment referenced will be provided at no charge.