

ORDINANCE NO. 8185

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE STATE OF COLORADO FOR THE USE AND BENEFIT OF PUEBLO COMMUNITY COLLEGE AND THE CITY OF PUEBLO, A MUNICIPAL CORPORATION

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

Subject to appropriations therefor, the Intergovernmental Agreement between the State of Colorado, Department of Higher Education, State Board for Community Colleges and Occupational Education, for the use and benefit of Pueblo Community College, and the City of Pueblo, a Municipal Corporation, dated March 1, 2010 (the "Agreement"), a copy of which is attached hereto, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The President of the City Council is authorized to execute the Agreement in the name of the City and the City Clerk is directed to affix the seal of the City thereto and attest same.

SECTION 3.

This Ordinance shall become effective upon final passage and approval.

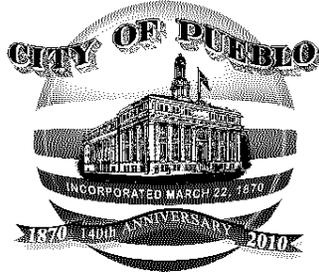
INTRODUCED: April 12, 2010

BY: Chris Kaufman
COUNCILPERSON

APPROVED: Lawrence W. Ortencia
PRESIDENT OF CITY COUNCIL

ATTESTED BY: *Gina Deucher*
CITY CLERK

PASSED AND APPROVED: April 26, 2010



**Background Paper for Proposed
ORDINANCE**

DATE: April 12, 2010

AGENDA ITEM # R-12

DEPARTMENT: Law Department
Thomas J. Florczak, City Attorney

TITLE

AN ORDINANCE APPROVING AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE STATE OF COLORADO FOR THE USE AND BENEFIT OF PUEBLO COMMUNITY COLLEGE AND THE CITY OF PUEBLO, A MUNICIPAL CORPORATION

ISSUE

Should City Council approve an Ordinance entering into an Intergovernmental Agreement with Pueblo Community College for provision of designated access provider, cablecasting and PEG channel management services?

RECOMMENDATION

Approve the Ordinance.

BACKGROUND

Under the new Franchise Agreement entered into between the City and Comcast of Colorado IV, LLC ("Comcast"), Comcast will continue to make available three (3) public, educational and government ("PEG") channels for non-commercial use. It will also collect and remit PEG access support fees to be used solely for PEG capital facilities and equipment ("PEG Capital Funds"). As additional consideration for the Franchise, Comcast agreed to advance approximately 2 years of access support fees to the City. That advance, in the amount of \$202,000 has now been received by the City.

The Intergovernmental Agreement before City Council has several elements to it: First, it provides that Pueblo Community College ("PCC") will continue to provide cablecasting of City Council meetings for \$2,500 per month as it has done for many years under purchase order. Secondly, it formally designates PCC as the City's PEG access provider under the Franchise. In effect, PCC manages the PEG channels for the City subject to City direction. Third, PCC provides studio and PEG programming origination and production equipment and services for the PEG channels.

The Agreement also shares with PCC the PEG Capital Funds by providing it with a one-time disbursement of \$130,000 of the \$202,000 advance, and approximately \$65,000 per year of PEG Capital Funds anticipated for receipt in years 3 through 5 of the Comcast Franchise term. These funds may be used by PCC solely for capital needs and equipment to serve the PEG channels. PCC has a substantial need for these funds both to provide meaningful television instruction for its students, and to fulfill its designated PEG access provider functions under the Agreement.

FINANCIAL IMPACT

The Agreement is subject to annual appropriations. The \$2,500 monthly fee for cablecasting Council meetings has been appropriated and budgeted in the 2010 budget. The sharing of the PEG advance will require an appropriation ordinance. The remaining \$72,000 of the PEG Capital Funds advance may be expended by Council only for capital needs serving the PEG channels, including capital expenditures during the renovation of City Hall which serve PEG purposes.

INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 1st day of March 2010, by and between the State of Colorado, Department of Higher Education, State Board for Community Colleges and Occupational Education, for the use and benefit of Pueblo Community College, located at 900 W. Orman Avenue, Pueblo, Colorado (hereinafter referred to as "PCC"), and the City of Pueblo, a Municipal Corporation, 1 City Hall Place, Pueblo, Colorado (hereinafter referred to as "City"). City and PCC may each be referred to herein as a "Party" or collectively as the "Parties."

WHEREAS, PCC operates an educational facility and desires to provide occupational education in the field of television production, videography and broadcasting ("Television Instruction"); and

WHEREAS, PCC and City desire to cooperate in PCC's efforts to provide meaningful Television Instruction to PCC students; and

WHEREAS, under that certain Franchise Agreement between the City of Pueblo and Comcast of Colorado IV, LLC ("Comcast") approved by Ordinance No. 8109 of the City of Pueblo ("Franchise"), Comcast has been granted a cable television franchise under which it (a) must activate and make available public, educational and government ("PEG") channels to its subscribers, and (b) must collect and remit PEG access support fees to be used by City solely for PEG capital facilities and equipment ("PEG Capital Funds"); and

WHEREAS, pursuant to Article XXII, Section XXII, Section 1.b of the Franchise, City may designate an entity or entities to manage all or part of the PEG channels ("designated access providers"); and

WHEREAS, PCC has, under purchase orders from City for several years, provided equipment and students enrolled in Television Instruction to provide videography, production and cablecasting of such City Council meetings over Comcast cable channel 17, and the Parties desire to continue to have PCC provide such equipment and services; and

WHEREAS, City desires to continue cablecasting, over the Comcast cable television system, of regular meetings of the City Council and meeting of the executive committee of the City Council which occur on the same days as regular meetings; and

WHEREAS, PCC represents that it is capable and willing to act as a designated access provider for the PEG channels provided under the Franchise, and City is willing to select PCC as a designated access provider subject to compliance with the terms of this Agreement; and

WHEREAS, City is willing to provide PEG Capital Funds to PCC for acquisition of capital equipment and facilities to be used in connection with programming and production of content for cablecasting on the PEG channels; and

WHEREAS, the System President of the Board for Community Colleges and Occupational Education, or his designee has been delegated the authority to approve training agreements, to receive services, to use property, and to enter into other agreements so long as they involve less than \$500,000; and

WHEREAS, the System President has designated the College President of Pueblo Community College to enter into such training and other agreements for PCC;

NOW, THEREFORE, in consideration of the foregoing recitals and the terms and conditions set forth herein, the parties agree as follows:

1. GENERAL AND SCOPE OF SERVICES.

(a) PCC agrees to perform, using its own employees and enrolled PCC students, and any consultants or contractors hired by PCC, the planning, implementation, services and items of work, and to furnish all labor, equipment and materials encompassed within or reasonably necessary to accomplish the tasks and functions described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein by reference, in full compliance with all the provisions of this Agreement.

(b) PCC represents that it has the requisite authority and capacity to perform the work and services contemplated in Exhibit "A." To the extent any work or services are provided by consultants or contractors to PCC, PCC shall bind same to the terms of this Agreement, and shall be responsible for their work and services.

(c) PCC agrees that all Television Instruction and services performed under this Agreement by students enrolled at PCC shall be supervised by PCC instructors, and PCC instructors shall supervise students when present upon City's facilities and when programming is released to the Comcast headend.

2. CITY RESPONSIBILITIES.

City shall designate in writing a representative of City who will be authorized to make all necessary decisions on behalf of City in connection with the performance of this Agreement and the disbursement of funds hereunder. In the absence of such a designation, the City Manager shall be deemed the City's designated representative.

3. FEES FOR SERVICES; PEG CAPITAL GRANT.

(a) Subject to appropriations therefor, for all videography, acting as PEG access provider and providing cablecasting, production, studio facilities for PEG use and all other services described in Exhibit "A," City will pay to PCC the sum of \$ 2500.00 per month for each month during the term of this Agreement. PCC shall submit monthly invoices to City in such amount which reference this Agreement. Payment will thereafter be made by City within 30 days after receipt of invoice.

(b) The compensation stated in section 3(a) shall be the only compensation made to PCC for the services under this Agreement, and no additional payment shall be made for overhead or expenses, utilities, copying, computer time, supplies, equipment rental or other expenses, it being the intent of the Parties that PCC is providing a "turnkey" solution as the City's designated access provider for the PEG channels and as videographer, producer and programming originator for City Council sessions as set forth in Exhibit "A."

(c) Subject to receipt of PEG Capital Funds from Comcast and appropriation thereof by City Council, in addition to the compensation for services, City will make a one-time grant to PCC in the amount of \$130,000 for acquisition by PCC of capital equipment and fixtures dedicated to PEG support ("PEG Capital Grant"). All such equipment and fixtures shall have a useful life of not less than 5 years. City will disburse the PEG Capital Grant to PCC in the following manner:

(i) PCC shall obtain pre-approval by City of the specific capital equipment and fixtures to be procured within PEG Capital Grant funds, and

(ii) upon acquisition of the equipment and fixtures, PCC shall submit periodic reimbursement requests to City detailing the eligible payment and reimbursement items.

Upon verification by City that the expenditure has been authorized, City will disburse payment of PEG Capital Funds to PCC, aggregating up to but not exceeding the maximum amount specified in this Section.

(d) Subject to receipt of PEG Capital Funds from Comcast in calendar years 2012 and 2013, and appropriation thereof by City Council to PCC, City commits to making PEG Capital Grants to PCC during calendar years 2012 and 2013 in the approximate amount of \$65,000 per year. No additional PEG Capital Grant funds will be available during calendar year 2011.

4. TERM OF AGREEMENT.

The term of this Agreement shall be from February 22, 2010 to December 31, 2013 unless sooner terminated as herein provided.

5. TERMINATION.

(a) For Cause. This Agreement may be terminated by City for cause, including any material nonperformance by PCC, upon ten (10) days' prior written notice to PCC including a statement of the reasons therefor. During said ten (10) day period, PCC shall either correct the nonperformance or request a hearing before the City Council to determine whether PCC has failed to perform and whether, in the determination of Council, the Agreement should be terminated. If a hearing is requested, it shall be scheduled at a regular or special meeting of the City Council, and the decision of the City Council after hearing shall be deemed final and conclusive.

(b) For Convenience. Either party may terminate this Agreement upon ninety (90) days' prior written notice to the other Party.

6. ASSIGNABILITY.

This Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party. Any assignment or attempted assignment made in violation of this provision shall, at the non-assigning Party's election, be deemed void and of no effect whatsoever.

7. INDEPENDENT CONTRACTOR.

PCC is performing services under this Agreement as an independent contractor, and nothing hereby shall be construed to make PCC or any of its agents, employees or students the agents or employees of City. No student, teacher, PCC employee, parent, personal representative or other person, firm or entity shall be granted or have any private right of action, claim or civil liability remedy against the City or PCC, or their respective officers, employees or agents, by virtue of this Agreement. Nothing in this Agreement shall be construed to create any liability, or to waive any of the immunities, limitations on liability or other provisions of the Governmental Immunity Act, '24-10-101 et seq., C.R.S., or to waive any immunities or limitations on liability otherwise available to the City, PCC, or their officers, employees or agents.

8. LIABILITY.

As to the City, PCC agrees to assume the risk of all personal injury, including death and bodily injury, and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in conjunction with or arising out of the performance or nonperformance of this Agreement by PCC or by the conditions created thereby; provided, however, that nothing in this paragraph is intended, nor should it be construed, to create or extend any rights, claims or benefits or assume any liability for or on behalf any third party, or to waive any immunities or limitations otherwise conferred under or by virtue of federal or state law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et. seq. PCC shall provide and maintain Workers' Compensation insurance coverage for self insurance on its employees complying with the requirements of State law.

9. NO CREATION OF DEBT BY CITY.

This Agreement is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Pueblo, contrary to Article X, §20 of the Colorado Constitution or an other constitutional, statutory or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of City which may arise under this Agreement in any fiscal year after 2010, in the event the budget or other means of appropriations for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure shall not constitute a default by or breach of this Agreement, including any attachment or exhibit thereto, by the City.

10. MISCELLANEOUS.

(a) Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either Party by the other Party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to the City, Attention: City Manager, 1 City Hall Place, Pueblo, Colorado, or to PCC, Attention: Colleen Armstrong, 900 W. Orman Avenue, Pueblo, Colorado, 81004. Either Party may change its address for the purpose of this paragraph by giving written notice of such change to the other Party in the manner provided in this paragraph.

(b) Entire Agreement. This instrument contains the entire agreement between the Parties concerning the subject matter hereof, and any other written or oral agreement or representation respecting the subject matters hereof or the duties of either Party in relating thereto not expressly set forth in this instrument and its attachments is null and void.

(c) Amendments. No amendments to this Agreement shall be made nor be enforceable unless made by written amendment signed by an authorized representative of each Party.

(d) Equal Employment Opportunity. In connection with the performance of this Agreement, PCC shall not discriminate against any employee or student or applicant for employment because of race, color, religion, sex, marital status, sexual preference, national origin, disability or age. PCC shall endeavor to insure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, marital status, sexual preference, national origin, disability or age.

11. SIGNATURES. The persons signing this Agreement on behalf of each party represent and warrant that such persons and their respective party have the requisite power and authority to enter into, execute and deliver this Agreement and that this Agreement is a valid and legally binding obligation of such party enforceable against it in accordance with its terms.

IN WITNESS WHEREOF, the parties have entered into this Agreement the day and year first written above.

STATE OF COLORADO

for the use and benefit of
STATE BOARD FOR COMMUNITY
COLLEGES AND OCCUPATIONAL
EDUCATION

Bill Ritter, Governor

By: Pueblo Community College

Name: Colleen Armstrong
Colleen Armstrong

Title: Vice President of Administration &
Finance

APPROVED:
STATE CONTROLLER

By: Pueblo Community College

Name: Gayle A. Pettinari
Gayle Pettinari

Title: Controller

Date: 3-11-10

CITY OF PUEBLO,
A MUNICIPAL CORPORATION

By: Lawrence W. Altman
President of the City Council

ATTEST:

Gina Ditcher
City Clerk

APPROVED AS TO FORM:

Thos J. Gonzalez
City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

Generally, PCC shall provide three (3) discrete functions: (1) Serving as the designated access provider for the PEG channels under the Comcast Franchise, (2) Providing studio and PEG programming origination services, and (3) Videography, production and origination of City Council meetings.

I. Designated Access Provider

PCC shall serve as City's designated access provider under the Comcast Franchise. In connection therewith PCC shall:

1. Schedule and transmit all content to the headend of Comcast for airing on appropriate PEG channels.
2. Manage the PEG channels on behalf of City, subject to general discretion from City. In general, the public use channel ("P") shall be used for public content, the education channel ("E") for educational or instructional content, and the government channel ("G") for governmental content.
3. (PCC to explain other functions)
4. (PCC to explain other functions)
5. In managing the PEG channels, PCC shall make reasonable efforts to not permit commercial programming or advertising; provided that brief recognition of programming sponsors may be made. PCC shall also make all reasonable effort to avoid transmission of libelous, obscene or otherwise unprotected speech or material prohibited by federal law.
6. Develop rules and regulations for use and management of the PEG channels and submit same to the City Manager for approval. In the event the City Manager requests any changes therein, PCC shall make such changes and resubmit the rules and regulations for approval.
7. Operate and maintain all equipment necessary to support PCC's functions as the designated access provider.
8. PCC is encouraged to provide channel information to Comcast and Comcast's menu programmer in a timely manner in order to enable the program information to appear in the menu. PCC should obtain the menu provider information directly from Comcast.
9. Make reasonable efforts to provide around-the-clock programming on all PEG channels. Excessive service outages during scheduled programming shall be grounds for termination of the Agreement for cause.

10. Notify the City Manager if it determines that activation of an additional PEG channel is needed.
11. Coordinate with City on the information to be provided in the annual Comcast bill insert under Article XXII, §5(a) of the Comcast Franchise Agreement.
12. Promote the use of the PEG channels to content providers and the public.

II. Studio and PEG Origination Services

PCC shall provide a television studio and television production facilities, including all necessary equipment and personnel, in order to record, product and transmit original programming content for all of the PEG channels. PCC shall schedule public forum time for studio use and make the studio available to the public during such schedule periods, consistent with PCC's other studio needs. PCC shall adopt reasonable rules for the use of its studio facilities.

III. Cablecasting City Council Meetings

A. Background. City Council conducts regular meetings generally on the second and fourth Mondays of each month at 7:00 o'clock p.m., except when that day is a City-recognized holiday, in which event the meeting is usually held the following day ("Regular Council Meetings"). City Council usually also holds an executive committee meeting (known as "Work Session") at 5:30 p.m. on the days of Regular Council meetings.

B. PCC Duties.

1. PCC shall provide cameras, personnel, editing and production equipment, and all other things necessary or desirable, in order to record and transmit to Comcast's headend for viewing on the "G" channel, the Regular Council meetings and Work Sessions occurring on the dates of Regular Council Meetings. City may also request PCC provide such services for up to two (2) additional special meetings of the City Council per year.

2. PCC shall transmit the video and audio content of such Council Meetings without alteration, except that (a) at the request of the City Manager for good cause, portions of the meetings may be redacted for any rebroadcast, and (b) PCC shall redact out any obscene, libelous or prohibited matters.

3. PCC shall rebroadcast recorded Council Meetings at such times as it deems appropriate and consistent with its scheduling of other programming on the "G" channel.

4. At such time as City or PCC obtains closed-captioning abilities, PCC shall transmit same to Comcast with the live event cablecast as well as re-cablecasts of Council Meetings.