

AS AMENDED ON JANUARY 25, 2010

RESOLUTION NO. 1885

A RESOLUTION OF THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH PAC 14, INC. PROVIDING FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL PROGRAMMING TO BE MADE AVAILABLE THROUGH THE CABLE TELEVISION SYSTEM OR SYSTEMS SERVING THE CITY

WHEREAS, the Mayor and City Council of the City of Salisbury desire to provide support for the use of cable television public, educational and government (PEG) access channels provided pursuant to federal law; and

WHEREAS, the City Code provides for the reservation of channels on the cable television system or systems serving the community for PEG access; and

WHEREAS, PAC 14, Inc. has been providing PEG programming to the community through the cable television system for ten years under an informal arrangement with the City; and

WHEREAS, the Mayor and City Council desire to formalize the relationship with PAC 14 for the provision of PEG programming.

NOW, THEREFORE, BE IT RESOLVED that the Salisbury City Council hereby authorizes the Mayor to sign the attached Contract with PAC 14, Inc. providing for PEG programming to be made available through the cable television system or systems serving the city

THE ABOVE RESOLUTION was introduced and duly passed at a meeting of the Council of the City of Salisbury, Maryland held on the 25th day of January, 2010 and is to become effective immediately upon adoption.


ATTEST:


Brenda J. Colegrove
CITY CLERK


Louise Smith
PRESIDENT, City Council

APPROVED by me this 26th day of

January, 2010.


James Vreton, Jr.
MAYOR, City of Salisbury

CONTRACT BETWEEN CITY OF SALISBURY, MARYLAND
AND

PAC 14, INC.

AGREEMENT

This Agreement is made this 2nd day of FEBRUARY, 2010, by and between the City of Salisbury a municipal corporation ("City"), and PAC 14 Inc. a nonprofit corporation, who agree as follows:

RECITALS

1. The City desires to provide support for the use of cable television public, educational, and government ("PEG") access channels provided pursuant to federal law.
2. The City has granted a franchise to Comcast Cable to operate a cable television system in the City.
3. The franchise agreement with Comcast Cable provides for three (3) PEG Access channels (1 Public, 1 Educational, and 1 Governmental).
4. The franchise agreement with Comcast Cable provides that certain ongoing payment may be made by Comcast for PEG access support upon joint agreement of the City and Comcast.
5. Salisbury City Code Section 5.22.270 establishes that the City will dedicate a portion of the franchise fee that it receives from cable operators to support PEG access.

6. PAC 14 Inc., as the access management entity designated by the City, has indicated its interest in serving the community by providing PEG access programming and services.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

SECTION 1. SCOPE OF SERVICES. In exchange for the funding provided by the City to PAC 14 Inc., pursuant to this Agreement, PAC 14 Inc., shall provide the following services:

- A. *OPERATE PUBLIC, EDUCATIONAL, AND GOVERNMENT ACCESS CABLE CHANNEL (S).* Operate PEG access channel(s) as required pursuant to the cable franchise agreements for public/community/educational/government access programming purposes in a manner which is consistent with City Ordinance 1669. Public access channels shall be operated in a manner whose primary purpose is to administer, coordinate, and assist those requesting access on a first come non-discriminatory basis.
Operate the educational and government access channel(s) for community access programming purposes with the primary purpose being to administer, coordinate, and assist governmental and educational institutions requesting access on a non-discriminatory basis, which includes the broadcast of live and taped local governmental programs.
- B. *OPERATE A COMMUNITY ACCESS CENTER.* Manage a video production facility and equipment, available for public use at such hours and times as are determined by PAC 14 Inc. Access to equipment and facilities shall be open to all who satisfactorily complete training class(es) provided by PAC-14 or who receive a certification from PAC-14 identifying said person(s) as having satisfied training requirements through means other than PAC-14 training classes.

- C. *PROVIDE EQUAL ACCESS.* Provide access to the use of the equipment, facilities, channels, and services provided hereunder on a non-discriminatory basis to all members of the community for non-commercial programming purposes, whether individuals, groups, organizations, educational institutions or the City of Salisbury pursuant to operating rules promulgated by PAC 14 Inc., and consistent with the principles set forth in the PAC 14 Policies and Procedures.
- D. *DEVELOP OPERATING POLICIES AND PROCEDURES.* Develop policies and procedures for use and operation of the PEG access equipment, facilities, and channel(s) and file such policies and procedures with the City.
- E. *COMPLIANCE WITH LAWS, RULES, AND REGULATIONS.* Administer the PEG access channel(s) and facilities in compliance with applicable laws, rules, regulations, the Maryland Open Meetings Act, and in accordance with PAC 14 Policies and Procedures.
- F. *TRAINING.* Train City residents, and when requested, City, school and college employees (in the techniques of video production, and provide technical advice in the execution of productions.
- G. *PLAYBACK/CABLECAST.* Provide for the playback/cablecasting of programs, as described in the PAC 14 Inc., Policies and Procedures, on the PEG access channel(s).
- H. *MAINTENANCE OF EQUIPMENT.* Provide regular maintenance and repair of all video equipment purchased with monies received pursuant to this Agreement and/or donated, loaned, or leased to PAC 14 Inc., by the City.

- I. *SPECIAL NEEDS GROUPS.* Support special needs groups, where possible, including but not limited to the hearing impaired, in program production through training and other means.

- J. *PROMOTION.* Actively promote the use and benefit of the PEG access channel(s) and facilities to cable subscribers, the public, and PEG access users.

- K. *PERFORMANCE REVIEW.* PAC 14 Inc., shall, if requested by the City, after three (3) years of operation under this Agreement, contract with an entity expert in access from outside Wicomico County to conduct a performance review of PAC 14 Inc. operations. This review shall include an opportunity for PEG access users and cable subscribers to provide input. Upon completion, a copy of the performance review shall be provided to the City.

- L. *OTHER ACTIVITIES.* Undertake other PEG access programming activities and services as deemed appropriate by PAC 14 Inc. and consistent with the obligation to facilitate and promote access programming and provide non-discriminatory access.

SECTION 2. CHANNELS OPEN TO PUBLIC: PAC 14 Inc. agrees to keep the PEG access channel(s) open to all potential users regardless of their viewpoint, subject to FCC regulations and other relevant laws. Neither the City, nor the Cable Company(s), nor PAC 14 Inc., shall have the authority to control the content of programming placed on the public access channel(s) so long as such programming is lawful. Provided that, nothing herein shall prevent PAC 14 Inc., the City, or Cable Company from producing or sponsoring programming, from underwriting programming, or from engaging in activities designed to promote production of certain types of programming or use by targeted groups as consistent with applicable law and rules for use of channels. PAC 14 Inc., may develop and enforce policies and procedures which are designed to promote local use of the channel(s) and make programming accessible to the viewing public,

consistent with such time, manner, and place regulations as are appropriate to provide for and promote use of PEG access channels, equipment and facilities.

SECTION 3. INDEMNIFICATION. PAC 14 Inc., shall indemnify, defend, and hold harmless the City, its officers, agents, and employees and volunteers from and against any and all claims, suits, actions, causes of action, losses, damage, or liabilities of any kind, nature or description, including, payment of litigation costs and attorneys' fees, brought by any person or persons for or on account of any loss, damage or injury to person, property or any other interest, tangible or intangible, sustained by or accruing to any person or persons, howsoever the same may be caused, directly or indirectly arising or resulting from any alleged acts or omission of the PAC 14 Inc., its officers, employees, agents or subcontractors arising out of or resulting from the performance of this Agreement.

PAC 14 Inc., shall indemnify and hold harmless City, its officers, agents, employees and volunteers from and against any and all claims or other injury, including costs of litigation and attorney's fees, arising from or in connection with claims or loss or damage to person or property arising out of the failure to comply with any applicable laws, rules, regulations or other requirements of local, state or federal authorities, for claims of libel, slander, invasions of privacy, or infringement of common law or statutory copyright, for breach of contract or other injury or damage in law or at equity which claims, directly or indirectly, result from PAC 14 Inc. use of channels, funds, equipment, facilities or staff granted under this Agreement or the franchise agreement.

The City shall indemnify, defend, and hold harmless PAC 14 Inc., its officers, agents and employees from and against any and all claims, losses, liabilities, or damage including payment of reasonable attorneys' fees arising out of or resulting from the performance of this Agreement, caused in whole or part by any act or omission of the City.

SECTION 4. COPYRIGHT CLEARANCE. Before cablecasting video transmissions PAC 14 Inc. shall require all users to agree in writing that they shall make all appropriate arrangements to obtain all rights to all material cablecast and clearances from broadcast stations, networks, sponsors, music licensing organizations' representatives, and without limitation from the foregoing, any and all other persons as may be necessary to transmit its or their program material over the PEG access channels that are operated and managed by PAC 14 Inc.. PAC 14 Inc. shall maintain for the applicable statute of limitations for City's inspection, upon reasonable notice by City and for the term of the applicable statute of limitations, copies of all such user agreements.

SECTION 5. COPYRIGHT AND OWNERSHIP. PAC 14 Inc. shall own the copyright of any programs that it may choose from time to time to produce. Copyright of programming produced by the public shall be held by such person(s) or entity(ies) who produces said programming.

SECTION 6. DISTRIBUTION RIGHTS.

- A. PAC 14 Inc. shall require that all programs produced with funds, equipment, facilities, or staff granted under this Agreement shall be distributed on the channels whose use is authorized by this Agreement. This subparagraph shall not be interpreted to restrict other distribution (beyond distribution on channels authorized by this Agreement), so long as such other distribution is consistent with any pertinent guidelines established in the PEG access operating policies and procedures.
- B. At least at the beginning and end of each day that video programming is cablecast on the PEG access channels whose use is authorized by this Agreement, PAC 14 Inc. shall display and credit the major funding partners.

SECTION 7. EQUIPMENT AND FACILITIES.

- A. PAC 14 Inc. shall be responsible for maintenance of all equipment and facilities owned, leased or loaned to it under this Agreement or purchased with funds provided pursuant to this Agreement.
- B. PAC 14 Inc. shall own all equipment and facilities acquired by it and purchased with funds received pursuant to this Agreement, except that upon termination or non-renewal of this Agreement all such equipment or facilities purchased with funds received pursuant to this Agreement shall become the property of the City and County (in a manner determined by the City and County), which shall ensure that all such equipment or facilities shall be used for PEG access purposes.

To secure all of its obligations under this Agreement, PAC 14 Inc. hereby grants to City a security interest in all of the assets and interests owned or hereafter acquired by PAC 14 Inc. with funds provided by the City, and the proceeds thereof, including but not limited to, PAC 14 Inc. deposit accounts and inventory, and all equipment and fixtures, that are or were acquired with funds provided by the City. PAC 14 Inc. agrees to take all steps reasonably requested by City to perfect and enforce the City's security interest, including the execution and processing of financing statements and continuation statements under the Maryland Uniform Commercial Code. PAC 14 Inc. will also notify any institution with which it now or hereafter maintains any deposit account of the existence of the City's security interest in the account and shall provide the City proof of such notice. The City agrees to subordinate its interest if necessary to finance the purchase of equipment or property. The subordination shall only be with respect to the specific equipment or property that PAC 14 Inc. might wish to finance.

- C. Upon the dissolution of the PAC 14 Inc., it shall, subject to the approval of the City, transfer all assets of PAC 14 Inc. representing City-funded equipment

and facilities, and/or the proceeds of either to the City, or at the City's option, to such organization or organizations designated by the City to manage access which shall at the time qualify as a tax exempt organization(s) under Section 501(c)(3) of the Internal Revenue Code (or the corresponding provisions of any future United States Internal Revenue Law).

- D. Equipment in place at PAC-14 on the effective date of this Agreement has been funded by City of Salisbury and Wicomico County. Such equipment shall continue to be provided to PAC-14 from the purposes of this Agreement. Ownership of such equipment is jointly held by the City of Salisbury and Wicomico County. The disposition of such equipment at such time that PAC-14 is no longer the designated PEG access service provider shall be handled in a manner consistent with Section 7.C. of this Agreement.

SECTION 8. INSURANCE. PAC 14 Inc. shall maintain in full force and effect at all times during the term of this Agreement insurance as required by this Section. The cost of such insurance shall be borne by PAC 14 Inc. and shall be included in PAC 14 Inc. annual budget.

- A. *COMPREHENSIVE LIABILITY INSURANCE.* Comprehensive liability insurance, including protective, completed operations and broad form contractual liability, property damage and personal injury coverage, and comprehensive automobile liability including owned, hired, and non-owned automobile coverage. The limits of such coverage shall be: (1) bodily injury including death, \$1,000,000 for each person, each occurrence and aggregate; (2) property damage, \$1,000,000 for each occurrence and aggregate.
- B. *EQUIPMENT INSURANCE.* Insurance shall be maintained on all equipment and facilities, including fixtures, funded in whole or in part under this Agreement to replacement cost. The insurance shall include, at a minimum,

insurance against loss or damage beyond the user's control, theft, fire or natural catastrophe. City shall be shown as lien holder on all policies.

- C. *WORKERS' COMPENSATION.* Full Workers' Compensation Insurance and Employer's Liability shall be maintained with limits as required by (State) law with an insurance carrier satisfactory to the City.

- D. *CABLECASTER'S ERRORS AND OMISSION INSURANCE.* Insurance shall be maintained to cover the content of productions which are cablecast on the access channel in, at minimum, the following areas: libel and slander; copyright or trademark infringement; infliction of emotional distress, invasion of privacy; plagiarism; intellectual property; misuse of musical or literary materials. This policy shall not be required to cover individual access producers.

- E. *CITY AS CO-INSURED OR ADDITIONAL INSURED.* The City shall be named as a co-insured or additional insured on all aforementioned insurance coverage's. The policies shall provide that no cancellation, major change in coverage or expiration may be affected by the insurance company or PAC 14 Inc. without first giving the City thirty (30) days written notice prior to the effective date of such cancellation or change in coverage. Any insurance or self-insurance maintained by the City, its officers, agents, employees, or volunteers shall be in excess of the PAC 14 Inc. insurance and shall not contribute to it.

- F. *NOTIFICATION OF COVERAGE.* PAC 14 Inc. shall file with the City proof of insurance coverage as follows: (1) Comprehensive Liability and Workers' Compensation upon commencement of the employment of the Executive Director; (2) equipment insurance upon the acquisition of any equipment; (3) cablecaster's error and omission insurance within thirty (30) days of the

commencement of cablecasting of programming on the designated access channel.

SECTION 9. NON-DISCRIMINATION IN EMPLOYMENT AND SERVICE.

- A. PAC 14 Inc. shall not discriminate against any person, employee or applicant for employment or subcontractor on the basis of race, color, creed, religion, sex, sexual orientation, marital status, ancestry, national origin or physical or mental handicap.
- B. Grantee shall not discriminate in the delivery of services on the basis on race, color, creed, religion, sex, sexual orientation, marital status, an ancestry, national origin or physical or mental handicap.

SECTION 10. INDEPENDENT CONTRACTOR. It is understood and agreed that PAC 14 Inc. is an independent contractor and that no relationship of principal/agent or employer/employee exists between the City and PAC 14 Inc.. If in the performance of this Agreement any third persons are employed by PAC 14 Inc., such persons shall be entirely and exclusively under the control, direction and supervision of PAC 14 Inc.. All terms of employment, including hours, wages, *working conditions*, discipline, hiring and discharging or any other term of employment shall be determined by PAC 14 Inc. and the City shall have no right or authority over such persons or terms of employment.

SECTION 11. ASSIGNMENT AND SUBLETTING. Neither this Agreement nor any interest herein shall be assigned or transferred by PAC 14 Inc., except as expressly authorized in writing by City.

SECTION 12. QUARTERLY AND ANNUAL REPORTS.

A. Quarterly Reports. PAC-14 shall submit a quarterly report to the City no more than 30 days after the end of each calendar quarter. This report shall contain, at a minimum, the following information:

1. Statistics on programming and services for the previous quarter.
2. Quarterly financial statements.

B. Annual Reports. Prior to September 15 of each year, PAC 14 Inc. shall submit to City an annual report for the preceding fiscal year (July 1 - June 30). This report shall contain, at a minimum, the following information:

1. Statistics on programming and services provided;
2. Current and complete listing of Grantees' Board of Directors;
3. Year-end financial statements audited by an independent certified public accountant.

SECTION 13. RECORDS, FISCAL AUDIT.

- A. PAC 14 Inc. shall maintain all necessary books and records, in accordance with generally accepted accounting principles.
- B. Upon reasonable request from City, PAC 14 Inc. shall, at any time during normal business hours, make available all of its records with respect to all matters covered by this Agreement.
- C. PAC 14 Inc. shall prepare (or have prepared) and submit to the City a fiscal audit by a certified public accountant, at least every four 4 years.

SECTION 14. FUNDING AND OTHER RESOURCES. The City agrees to make the following funds and resources available to PAC 14 Inc.

A. PEG Channel Capacity/Bandwidth

1. Comcast has dedicated certain channel capacity for PEG access use (1 Public, 1 Educational, and 1 Governmental). The City agrees to permit PAC 14 Inc. to manage that channel capacity for PEG access programming purposes.
2. In order to provide equivalent PEG access services to all residents of the City regardless of their chosen cable/video franchisee, if the City grants a franchise to provide cable/video services to any other entity during the term of this Agreement, PAC 14 shall have the responsibility of managing the channel capacity for PEG access programming purposes delineated in the franchise agreement with such other entity.

B. Funding for PEG Access from Cable/Video Franchisee(s)

1. In accordance with this agreement the City agrees to act as an enabling partner with PAC 14 Inc. to obtain PEG access funding from the cable/video franchisees in a manner consistent with local, state, and federal law.
2. During the term of this Agreement, the City agrees to provide to PAC 14 Inc. all funds that it receives from Comcast (or any other future cable/video franchisee) for PEG access purposes. PAC 14 Inc. shall utilize such funds for the purchase of equipment and for the purposes delineated in this Agreement. Upon receipt of any such funds from the cable/video franchisee(s), the City shall transfer said funds to PAC 14 Inc. within thirty (30) days written notice by PAC 14 Inc. to the City requesting the funds.

C. Funding for PEG Access from the City.

1. The City shall provide support for PAC 14 Inc. through the dedication of a percentage of the cable/video franchise fees received by the City from Comcast as provided in Section 5.22.270.A. of the Salisbury Municipal Code and any future entity granted a franchise to provide cable/video service in the City of Salisbury. These funds shall be disbursed to PAC 14 on a quarterly basis, in accordance with the timeline specified in Section 17 of this Agreement.

SECTION 15. ANNUAL PLAN AND BUDGET.

- A. On or before December 1 of each year in which this Agreement is in effect, City shall provide PAC 14 Inc. with an estimate of the percentage of the franchise fees as provided in Section 5.22.270.A. of the Salisbury Municipal Code that will be available to PAC 14 Inc. for the upcoming fiscal year. As used herein, the fiscal year begins on July 1 and ends on June 30.
- B. On or before January 30 of each year in which this Agreement is in effect, PAC 14 Inc. shall provide to the City an Annual Plan and Budget outlining activities and programs planned for the following fiscal year with funds and channel(s) received from the City. Such plan shall contain:
 1. A statement of anticipated number of hours of local original PEG access programming;
 2. Training classes to be offered and frequency of classes;
 3. Other access activities planned by PAC 14 Inc.; and
 4. A detailed operating and capital equipment and facilities budget.

SECTION 16. EXPENDITURE OF FUNDS. PAC 14 Inc. shall spend funds received from City solely for the purposes listed in its Annual Plan and Budget and Section 1 (Scope of Services) of this Agreement. Funds not expended in the year covered by the Annual Budget and Activities Plan may be carried over by PAC 14 Inc. into succeeding years. Upon termination of this Agreement all funds of any kind received from City and not expended by PAC 14 Inc. shall be returned to City. PAC 14 Inc. shall provide for such fiscal control and accounting procedures as are necessary to assure proper disbursement and accounting for funds received from City.

SECTION 17. RECEIPT OF APPROVED FUNDING. For each year in which Grantee has submitted the Annual Access Activities Plan and Budget to the City as required under Section 15 of this Agreement, City shall make quarterly payments to PAC 14 Inc. Those payments shall be made on or before the first month of each quarter or July 1, October 1, January 1, and April 1. The payments to PAC 14 Inc. shall reflect a percentage of the franchise fee payments received from Comcast as provided in Section 5.22.270.A. of the Salisbury Municipal Code and any future entity granted a cable/video franchise to serve the City.

SECTION 18. FUNDING FROM OTHER SOURCES. PAC 14 Inc. may, during the course of this Agreement, receive supplemental funds from other sources, including, but not limited to fundraising activities.

SECTION 19. TERM OF AGREEMENT. This Agreement shall be for a period commencing on January 1, 2010 and ending in accordance with the effective end date of the current Comcast contract, January 10, 2013. This Agreement may be extended, and/or amended, by mutual agreement of the City and PAC 14 Inc., in writing in accordance with Section 21 of this Agreement.

SECTION 20. TERMINATION OF AGREEMENT: TRANSFER OF ASSETS.

- A. The City shall have the right upon one hundred twenty (120) days written notice to PAC 14 Inc. to terminate this Agreement for:
 - 1. Breach of any provision of this Agreement by PAC 14 Inc.;
 - 2. Malfeasance, misfeasance, misappropriation of public funds; or
 - 3. Loss of 501(c)(3) status by PAC 14 Inc.

- B. PAC 14 Inc. may avoid termination by curing any such breach to the satisfaction of the City within one hundred twenty (120) days of notification or within a time frame agreed to by the City and PAC 14 Inc. The City may also terminate this Agreement at the expiration of its term, or any extension thereof.

- C. Upon termination of this Agreement, PAC 14 Inc. shall immediately transfer to the City all equipment, real property, fixtures, contracts, leases, deposit accounts or other assets received by or purchased by PAC 14 Inc. with funds received pursuant to this Agreement.

SECTION 21. EXTENSION OF AGREEMENT. This Agreement may be extended and/or amended pursuant to the following process:

- A. If PAC 14 Inc. seeks an extension of this Agreement it shall on or before 120 days prior to the end of the agreement submit to the City a letter of intent requesting extension.

- B. On or before 90 days prior to the end of the agreement, the City shall respond to PAC 14 Inc.'s letter of intent to request extension. If the City intends to refuse to extend the Agreement, it shall explain the reasons for this

decision in its response to PAC 14 Inc.. The City may not refuse to extend the contract based upon a failure of PAC 14 Inc. to comply with the terms of this Agreement unless the City has provided PAC 14 Inc. a notice of its failure to comply with the terms and the opportunity to cure said noncompliance.

SECTION 22. TIME. Time is of the essence in this Agreement and for the performance of all covenants and conditions of this Agreement.

SECTION 23. COOPERATION. Each party agrees to execute all documents and do all things necessary and appropriate to carry out the provisions of this Agreement.

SECTION 24. APPLICABLE LAW. This Agreement shall be interpreted and enforced under the laws of the State of Maryland.

SECTION 25. NOTICES. All notices and other communications to be given by either party may be given in writing, depositing the same in the United States mail, postage prepaid and addressed to the appropriate party as follows:

To City of Salisbury:

To PAC 14 Inc.:

Any party may change its address for notice by written notice to the other party at any time.

SECTION 26. ENTIRE AGREEMENT. This Agreement is the entire agreement of the parties and supersedes all prior negotiations and agreements whether written or oral. This Agreement may be amended only by written agreement and no purported oral amendment to this Agreement shall be valid.

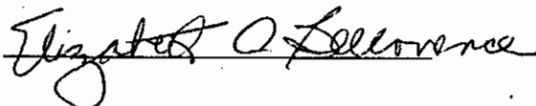
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

CITY OF SALISBURY
a municipal corporation

By: 

Date: 1-26-10

PAC 14 Inc. a nonprofit corporation

By: 


Date: February 2, 2010

INTER

OFFICE

MEMO

Office of the Mayor

To: City Council
From: John R. Pick 
Subject: Contract with PAC 14
Date: January 20, 2010

Attached is a copy of the proposed Contract between the City and PAC 14, Inc. pertaining to the provision of public, educational and governmental programming to City residents and property owners who subscribe to cable television. This proposed Contract has been revised to reflect the discussion by the Council at your November 30, 2009 work session. Attached also is a resolution for consideration by the Council authorizing the Mayor to sign this Contract on behalf of the City.

If you have any questions, please let me know.

cc: Mayor Ireton
Brenda Colegrove