

Carson City
Agenda Report

LATE MATERIAL

MEETING DATE 5/15/14
ITEM # 12

Date Submitted: June 25, 2012

Agenda Date Requested: July 5, 2012

Time Requested: 15 mins

To: Mayor and Supervisors
From: Purchasing and Contracts

Subject Title: For Possible Action: Presentation by the Brewery Arts Center and possible action to approve an agreement between Carson City and Brewery Arts Center to provide public, education and governmental access programming and services from July 1, 2012 through June 30, 2015 with a fiscal impact of \$140,000 annually to be paid from the General fund. (Contract File 1213-061)(*Kim Belt*)

Staff Summary: John Shelton and Darla Bayer from the Brewery Arts Center will provide a brief presentation on the operations and activities regarding the cable access channels.

The current agreement with Brewery Arts Center (BAC) expires on June 30, 2012. This agreement provides for continued operation of our community access television stations.

Type of Action Requested: (check one)

Resolution Ordinance
 Formal Action/Motion Other (Specify)

Does This Action Require A Business Impact Statement: () Yes () No

Recommended Board Action: I move to approve an agreement between Carson City and Brewery Arts Center to provide public, education and governmental access programming and services from July 1, 2012 through June 30, 2015 with a fiscal impact of \$140,000 annually to be paid from the General fund. (Contract File 1213-061)(*Kim Belt*)

Explanation for Recommended Board Action: The Brewery Arts Center currently operates our community access stations. Without this agreement, the City would have to seek out another operator to ensure continuation of service.

Fiscal Impact: \$140,000

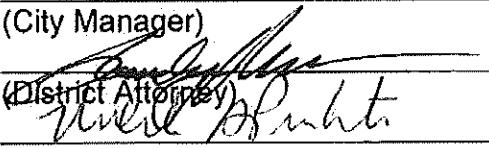
Funding Source: General Fund.

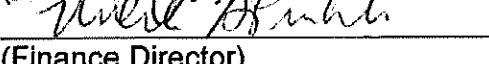
Supporting Material: Proposed agreement.

Prepared By: Kim Belt, Purchasing and Contracts Manager

Reviewed By:


(City Manager)


(District Attorney)


(Finance Director)

Date: 6/26/12

Date: 6/26/12

Date: 6/26/12

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____

(Vote Recorded By)

AGREEMENT TO PROVIDE PUBLIC, EDUCATIONAL AND
GOVERNMENT ACCESS PROGRAMMING 2012-2015

This Agreement is made this _____ day of _____, 2012, by
and between the City of Carson City, a consolidated municipality ("City"), and the
Brewery Arts Center, a Nevada non-profit corporation ("BAC"), who agree as follows:

R E C I T A L S:

1. The City desires to provide support for the use of cable access channels provided pursuant to federal law.

Section 1. In exchange for the annual funding of \$140,000.00 provided by the City to BAC pursuant to this Agreement, BAC shall:

A. Provide the Following Services.

1. Maintain www.acctv.org, an archival website.
2. Broadcast LIVE government meetings on Cable

channel 226, from the Sierra Room which shall include cablecast of the following government meetings, currently cablecast on channel 26:

- a. Board of Supervisors
- b. School Board of Trustees
- c. Parks and Recreation Commission
- d. Library Board
- e. Airport Authority
- f. RTC/Campo
- g. Shade Tree Council
- h. Historic Resources Commission

- i. Planning Commission
- j. V&T Railroad Commission
- k. Redevelopment Authority Citizens Committee
- l. Carson River Advisory Committee
- m. Open Space Advisory Committee
- n. Carson City Cultural Commission

In addition to other meetings the City deems appropriate, such as Audit, Debt or City Charter Review, upon notification by City representative. The above meetings will be taped for archival purposes, and at locations having usable facilities, a live cablecast shall be made. Otherwise, a delayed cablecast using videotape is permitted on a temporary basis. BAC will coordinate with the City for the use of its station for emergency broadcasting services. BAC will endeavor to provide continuity of service of all governmental programming on channel 26.

3. Broadcast public access programming on Cable Channel 210.

4. Simulcast on www.acctv.org and archive government meetings as Video on Demand.

5. BAC shall also provide, to the general public, up to 15 minutes weekly episodes of "It's Your City".

6. Additional video services deemed necessary up to 6 hours of produced program time per year. Any additional video services in excess of 6 produced hours per year will be charged at the going non-profit rate.

7. BAC shall cablecast from 8am until midnight daily on both CH 210 Public Access and 226 Government. All attempts will be made to include first run programming.

8. An electronic bulletin board, available for public and government use, will run during all hours general programming is not running as well as between daily programming where needed to fill time slots.

B. Operate a Community Access Center. Staff and operate a video production facility and equipment which shall be available for public use by appointment. Access to equipment and facilities shall be open to all those who receive training from BAC or who receive a certification from the BAC, identifying said user as having satisfied the training requirements through means other than BAC's training classes.

With the prior approval of the City Manager, BAC shall be entitled to use the City's Sierra Room for production of public affairs programming, provided such use shall not conflict with other meetings or use of the Sierra Room, and such use shall be free of rent, provided, however, that the Sierra Room shall not be used to promote a political party or candidate.

C. Training.

Establish and promote on-going training programs and provide technical assistance, equipment, studio time and channel time to City residents and groups, including youth.

D. Programming

BAC agrees to keep the access channel(s) open to all potential users and free of censorship subject to FCC regulations, the Cable Communication Policy Act of 1984 and other relevant laws. Neither the City, nor BAC shall have the authority to control the content of programming placed on the public access channel(s) so long as such programming is lawful. BAC shall be responsible for insuring the programming does not violate the U.S. or Nevada constitutions or any statute, ordinance provision or governmental regulation applicable to such programming.

E. Maintenance of Equipment. BAC shall provide regular maintenance and repair of all video equipment purchased with monies received pursuant to this Agreement and/or donated, loaned or leased to BAC by the City.

F. Performance Review. The BAC shall, after each year of operation under this Agreement, provide access users, cable subscribers and other interested parties an opportunity to provide input regarding access needs and interests.

G. A video presentation depicting the activities and capabilities of ACCtv shall be prepared and submitted for broadcast, as well as a viewing held at the Board of Supervisors meeting at or near the end of each fiscal year.

Section 2. Indemnification. BAC shall indemnify and hold harmless City, its officers, agents, employees and volunteers from and against any and all claims or other injury, including, without limitations, costs of litigation and attorneys' 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 at equity, which claims result from BAC's use of channels, funds, equipment, facilities or staff funded under this Agreement.

City shall indemnify, defend, and hold harmless BAC, 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, by any act or omission of the City.

Copyright and Ownership. BAC shall own the copyright of any programs which it may choose from time to time to produce to the extent such rights do not interfere with state public records law. Copyright of programming produced by the public shall be held by such person(s) who produces said programming.

Section 3. Distribution Rights.

A. BAC 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 that distribution on channels authorized by this Agreement), so long as such other distribution is consistent with the rules and procedures governing such which shall be promulgated by BAC and filed with the City.

B. Payments required to obtain cable television distribution rights for programs acquired primarily for cablecast use may be made by BAC from funds granted under this Agreement.

C. At the beginning and end of each day that video programming is cablecast on the channels whose use is authorized by this Agreement, BAC shall display a credit stating "Partial funding for the operation of this channel is provided by the City of Carson City."

Section 4. Equipment and Facilities.

City shall own all equipment and facilities acquired by and/or purchased with funds received pursuant to this Agreement, and any equipment transferred by City to BAC. BAC shall own all equipment and facilities donated to grantee or acquired by and/or purchased with funds received by BAC from sources other than the City pursuant to this Agreement, and other than any equipment transferred by City to BAC. BAC shall maintain separate lists of equipment owned by the City and that owned by BAC.

Section 5. Insurance. BAC 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 BAC and shall be included in BAC's annual budget.

A. Comprehensive Liability Insurance. BAC shall maintain 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 a value of, at a minimum, the lesser of fair market value or 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 an additional insured on all policies.

C. Workers' Compensation. BAC shall provide full Worker's Compensation Insurance and Employer's Liability with limits as required by Nevada law with an insurance carrier satisfactory to the City.

D. City as Co-Insured or Additional Insured. The City shall be named as co-insured or additional insured on all aforementioned insurance coverages. The policies shall provide that no cancellation, major change in coverage or expiration may be affected by the insurance company or BAC without first giving the City thirty (30) days written notice prior to the effective date of such cancellation or change in coverage. Any insurance of self-insurance maintained by the City, its officers, agents,

employees or volunteers shall be in excess of BAC's insurance and shall not contribute to it.

Section 6. Independent Contractor. It is understood and agreed that BAC is an independent contractor and that no relationship of principal/agent or employer/employee exists between City and BAC. If in the performance of this Agreement any third persons are employed by BAC, such persons shall be entirely and exclusively under the control, direction and supervision of BAC. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment shall be determined by BAC and City shall have no right or authority over such persons or terms of employment. There are no third-parties who are intended to be beneficiaries of this Agreement.

Section 7. City Funds

A. Performance of programming minimums set forth in this section is predicated on City funding of BAC remaining at its current level, \$140,000 per year, paid in equal installments quarterly, in July, October, January, and March of each year, commencing July 1, 2012.

B. The parties recognize that pursuant to NRS 354.626, to the extent that the term of this agreement extends beyond the current fiscal year of City, an annual appropriation of funds will be required in order for this agreement to continue. In the event the Board of Supervisors of City fails to appropriate money for this agreement for the ensuing fiscal year of the term hereof, then the obligations of City incurred under this agreement are extinguished with a minimum 120 days prior notification to BAC.

Section 8. Funding From Other Sources.

A. BAC may, during the course of the Agreement solicit supplemental funds from other sources, including, but not limited to, fund-raising activities, professional production, filming, editing activities. Use of any and all equipment funded by the City is allowed.

B. BAC is strongly encouraged to seek financial participation agreements with other U.S. governments and government agencies, grants, donations, memberships, sponsorships and other sources of funding. Said funds shall be, and remain, the property of BAC.

Section 9. Termination of Agreement; Transfer of Assets

A. Either party shall have the right to terminate this Agreement for breach of any provision of this Agreement, upon sixty (60) days written notice to the breaching party, provided that the breaching party may avoid termination by curing any such breach within sixty (60) days or within the time frame agreed to by City and BAC. Either party may also terminate this Agreement at the expiration of its term, or any extension thereof.

B. Except as provided herein, upon termination of the Agreement, BAC shall immediately transfer to City all equipment, real property, fixtures, contracts, leases, deposit accounts or other assets received by or purchased by BAC pursuant to this Agreement. BAC shall have no obligation to transfer any equipment, real property, fixtures, contracts, leases, deposit accounts or other assets donated to,

received by, or purchased by BAC from sources of funds received other than from the City's Agreements with the cable operator. BAC shall have the opportunity to make the first right of refusal on purchase of equipment from the City.

C. Upon the dissolution of BAC, BAC shall, subject to the approval of the City, transfer all assets of BAC representing funded equipment, funded facilities and/or the proceeds of either to City, or dispose of the same to any non-profit organization created for religious, charitable or educational purposes or to another governmental entity, to be used for any purpose which will provide a substantial benefit to the inhabitants of Carson City. The City must provide for the donation by resolution pursuant to NRS 244.1505.

Section 10. Renewal of Agreement. This Agreement may be renewed or extended for additional periods of three (3) years each, pursuant to the following process:

If the BAC and/or the City indicates its desire to renew this Agreement, BAC shall, on or before March 1, 2015, submit to the City a letter outlining the content of the proposed new Agreement the items which may be pertinent to the renewal process. Further, BAC shall also provide to the City an Access Activities Plan and Budget outlining activities and programs planned for the following year.

Section 11. Time. Time is of the essence in this Agreement and for the performance of all covenants and conditions of this Agreement.

Section 12. Cooperation. Each party agrees to execute all documents and do all things necessary and appropriate to carry out the provisions of this Agreement.

Section 13. Applicable Law. This Agreement shall be interpreted and enforced under the laws of the state of Nevada.

Section 14. Notices. All notices and other communication to be given by either party may be given in writing, by depositing the same in the United States mail, postage prepaid and addressed to the appropriate party as follows:

To BAC: 449 West King Street Carson City, NV 89703

To City: 201 North Carson Street, Suite 2
Carson City, NV 89701

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

Section 15. 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.

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Approved at a regular meeting of the Board of Trustees of the Brewery Arts Center on the _____ day of _____, 2012.

Brewery Arts Center, a Nevada non-profit corporation.

By: _____
Scott Anderson, President

Approved at a regular meeting of the Board of Supervisors of Carson City,
Nevada, on the _____ day of _____, 2012.

City of Carson City, Nevada
201 N. Carson Street, Suite 2
Carson City, NV 89701

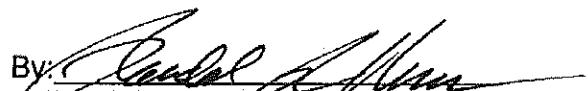
By: _____
Robert L. Crowell, Mayor

Attest:

Alan Glover, Clerk/Recorder

Approved as to legal form:

Neil A. Rombardo, Esq.
Carson City District Attorney

By: 
Randal R. Munn, Esq. Chief Deputy District Attorney

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further question, he advised that each participating county has a separate grant application. "Carson City's input to the Tri-Net Narcotics Task Force is two officers. Douglas and Lyon Counties each present one officer into the task force."

Mayor *Pro Tem* Aldean entertained additional Board member questions or comments and, when none were forthcoming, public comments. When none were forthcoming, she entertained a motion. Supervisor Walt moved to accept the Office of Criminal Justice Assistance Grant, TRI-Net Narcotics Task Force, in the amount of \$102,000.00; fiscal impact of required matching funds in the amount of \$106,249.00 which is already included in the FY 2013 Sheriff's Office budget. Supervisor Abowd seconded the motion. Motion carried 4-0.

17. CITY MANAGER - PRESENTATION BY THE BREWERY ARTS CENTER AND POSSIBLE ACTION TO APPROVE AN AGREEMENT BETWEEN CARSON CITY AND BREWERY ARTS CENTER TO PROVIDE PUBLIC, EDUCATION, AND GOVERNMENTAL ACCESS PROGRAMMING AND SERVICES, FROM JULY 1, 2012 THROUGH JUNE 30, 2015, WITH A FISCAL IMPACT OF \$140,000 ANNUALLY TO BE PAID FROM THE GENERAL FUND (CONTRACT NO. 1213-061) (8:55:09) - Mayor *Pro Tem* Aldean introduced this item, and ACCTV Digital Arts Manager Darla Bayer introduced Brewery Arts Center Executive Director John Shelton. Ms. Bayer introduced a video presentation on ACCTV, which was displayed in the meeting room. She distributed her business card to the Board members and staff, and responded to questions regarding the availability of government meetings on ACCTV. In response to a further question, she and Mr. Werner discussed issues associated with the availability of government meetings via Charter Communications service. Supervisor McKenna requested to further discuss the matter with Ms. Bayer; Mr. Werner offered to follow up as well.

In response to a further question, Mr. Werner provided background information on the current version of the subject contract. He discussed consideration given to creating additional meeting capacity at the Brewery Arts Center. Ms. Bayer expressed a willingness to discuss recommendations. She provided an overview of the remainder of the video presentation, and discussed the ACCTV's future goals. In response to a further question, she reviewed statistical information regarding viewership. Supervisor McKenna inquired as to the possibility of cost savings if ACCTV was to be used in place of City staff to record meetings. Mr. Werner offered to check into the possibility. In response to a question, Ms. Bayer reviewed the process and time frames associated with converting video recordings to the Internet. In response to a further question, she discussed existing equipment and the ACCTV "wish list." In response to a further question, she discussed costs associated with utilizing the BAC as an alternative meeting location.

Mayor *Pro Tem* Aldean invited Mr. Shelton to provide comments. (9:19:33) Mr. Shelton advised that the media arts division "is incredibly overtaxed in order to do everything that needs to be done. It's a great addition to the Brewery Arts Center because it connects us to the public in a lot of other ways that are relevant to public service. And it crosses lines of culture and arts into other things as well which is really part of what we're trying to do at the Brewery Arts Center ..." In response to a question, Mr. Shelton discussed maintenance of, and future plans for, the landscape on the west side of the Brewery Arts Center property.

Mayor *Pro Tem* Aldean entertained additional Board member comments and, when none were forthcoming, public comments. None were forthcoming. Mr. Werner clarified the fiscal impact, as reflected in the agenda report, should indicate \$420,000; \$140,000 per year for the three-year contract. He acknowledged that the \$140,000 annual fee has been consistent over the past several years.

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Mayor *Pro Tem* Aldean entertained a motion. Supervisor Abowd moved to approve an agreement, between Carson City and the Brewery Arts Center to provide public, education, and government access programming and services from July 1, 2012 through June 30, 2015, with a fiscal impact of \$140,000, or \$420,000 for the extent of the three-year contract, annually to be paid from the general fund; Contract File 1213-061. Supervisor Walt seconded the motion. Motion carried 4-0. Mayor *Pro Tem* Aldean thanked Ms. Bayer and Mr. Shelton for their presentation.

18. FINANCE DEPARTMENT - POSSIBLE ACTION TO INTRODUCE, ON FIRST READING, AN ORDINANCE AMENDING THE CARSON CITY MUNICIPAL CODE, TITLE 2, ADMINISTRATION AND PERSONNEL, CHAPTER 2.14, CARSON CITY AUDIT COMMITTEE, AMENDING SECTION 2.14.040, RESPONSIBILITIES OF THE CARSON CITY AUDIT COMMITTEE, BY ADDING ADDITIONAL REVIEW AND RECOMMENDATION RESPONSIBILITIES REGARDING THE ADEQUACY OF CITY DEPARTMENT AND OFFICE PERFORMANCE MEASURES FOR THE PURPOSES OF INTERNAL AUDITS, SETTING FORTH AUDITING STANDARDS, AND REQUIRING THE COMMITTEE TO OVERSEE THE INTERNAL AUDITOR'S CREATION AND IMPLEMENTATION OF FRAUD, WASTE, AND ABUSE IDENTIFICATION PROCESSES AND REPORTING, AND OTHER MATTERS PROPERLY RELATED THERETO (9:24:11) - Mayor *Pro Tem* Aldean introduced this item. Finance Department Director Nick Providenti provided background information and reviewed the agenda materials. In response to a question, he advised that the internal auditor would need to "fold ... these actions into that budget." Mr. Werner provided additional background information on the proposed ordinance. He assured the Board that "the fiscal impact wouldn't be any different today than it would be after the ordinance is passed. If there's something major that they're going to have to look at or hire an auditor to come in and do it, then we'd have to come to the Board ..."

In response to a question, Mr. Providenti advised of Audit Committee ("AC") Vice Chairperson Prowse's intent, relative to the internal auditor, to ensure compliance with internal auditing standards. In response to a question, Mr. Munn advised of having informed AC Vice Chair Prowse that the proposed language could simply be included in a contract. Vice Chair Prowse "felt ... it was necessary that the ordinance asserted that those things be in whatever agreement we have with the internal auditor." Supervisor McKenna expressed reluctance to change the City's municipal code unless absolutely necessary. In response to a question, Mr. Werner expressed no opposition to the proposed ordinance. Following a brief discussion, Mayor *Pro Tem* Aldean suggested deferring action until such time as AC Vice Chair Prowse could be present, and the Board members concurred.

19. PARKS AND RECREATION DEPARTMENT - POSSIBLE ACTION TO APPROVE THE SHADE TREE COUNCIL'S 2012 / 2013 GOALS (9:32:07) - Mayor *Pro Tem* Aldean introduced this item. Parks and Recreation Department Director Roger Moellendorf provided background information, and introduced Shade Tree Council Chair Kyle Horvath. (9:33:10) Shade Tree Council ("STC") Chair Horvath reviewed past accomplishments, discussed the "unique urban forest" in Carson City, and reviewed the 2012 / 2013 goals, as outlined in the agenda materials. He discussed the importance of developing a tree inventory and a tree planting / replacement program. He responded to questions regarding trees to be removed by NV Energy, and discussion followed. Supervisor Abowd suggested approaching service organizations relative to the tree planting / replacement program, and STC Chair Horvath discussed the mission and activities of the Friends of the Urban Forest. In response to a question, he advised that NV Energy currently has no tree planting / replacement program or funding.