

**GRANT AGREEMENT NO. 52904**

This Grant Agreement is between the City of Portland, Oregon (“CITY”) and Portland Community Media, an Oregon public benefit corporation (“GRANTEE”).

**1. RECITALS:**

1.1 GRANTEE is a not-for-profit organization, organized originally in 1981 as Portland Cable Access, which provides local access to community media services, training and technology, and programs local cable TV channels on a City-wide basis.

1.2 The City has entered into cable services franchise agreements which require franchisees to provide certain resources dedicated for public, governmental and educational uses.

1.3 In accordance with its cable services franchises, the City may designate Non-commercial Public, Educational and Government (“PEG”) Access providers to control and manage the use of any or all PEG Access facilities and resources provided by the cable services franchisees.

1.4 Under this Agreement, the City designates the GRANTEE as a PEG Access provider, and assigns control and management of certain PEG Access facilities and resources under such cable services franchises.

1.5 Under an intergovernmental agreement to which the City is a party, the City has delegated responsibility to the Mt. Hood Cable Regulatory Commission (“MHCRC”) for ensuring franchisee compliance with PEG Access provisions and allocating certain PEG Access funds.

1.6 Under this Agreement, the City has assigned the MHCRC to be its representative and agent to oversee and manage the terms of this Agreement.

1.7 The MHCRC has annually recommended to the City amounts to provide operational and Capital funds to the GRANTEE, subject to the terms and conditions of the past agreement between the City and the GRANTEE. Continued annual GRANTEE funding for Fiscal Years through the term of this Agreement are provided for under Section 3.3. Funds are anticipated to be available for this purpose in the budgets of the Office of Cable Communications and Franchise Management (“OCC/FM”) and the MHCRC, subject to annual appropriation by the City Council in the City’s budget process.

1.8 The City and GRANTEE have reached an agreement regarding the PEG resources designated for use by the GRANTEE under the City’s cable services franchises, together with the level of PEG Access services to be provided by GRANTEE.

**2. DEFINITIONS**

2.1 “Access” means the availability for use of a cable system by various agencies, institutions, organizations, groups and individuals in the community to acquire, create, and distribute Non-Commercial Programming not under the cable company's editorial control, including, but not limited to:

(A) “Public Access” means Access, on a nondiscriminatory basis, for organizations, groups or individual members of the general public to have editorial control over their Programming;

(B) “Educational Access” means Access where schools are the primary or designated Programmers or users having editorial control over their Programming;

(C) “Government Access” means Access where governmental institutions are the primary or designated Programmers or users having editorial control over their Programming; and;

(D) “PEG Access” means Public Access, Educational Access, and Government Access, collectively.

2.2 “Capital” means the expenditure of funds for services, products or other resources, whose useful life can be expected to exceed a period of one year or longer.

2.3 “Fiscal Year” means the period consisting of a full year, beginning July 1 and ending June 30, unless otherwise provided in this Agreement.

2.4 “Mt. Hood Cable Regulatory Commission” or “MHCRC” means the cable regulatory commission created through an Intergovernmental Agreement to which the City is a party, its successors and assigns. The City has agreed to be bound by the decisions and actions taken by the MHCRC pursuant to powers, duties, and responsibilities delegated to the MHCRC under the Intergovernmental Agreement. Unless specifically stated otherwise herein, the MHCRC shall be the representative and agent of the City in dealing with the GRANTEE under the terms of this Agreement. In fulfilling the terms of this Agreement, GRANTEE is expected to rely upon, look to, communicate with, and comply with the decisions and orders of the MHCRC, its agents, and employees on all Access matters with respect to which the City has lawfully delegated the exercise of the City’s authority under this Agreement.

2.5 “Non-Commercial” means use of the cable system by any public, tax-exempt organization or by any other user for a purpose that is not intended to generate income for the user which may be subject to federal, state, or local income taxes.

2.6 “Programming” means the process of causing television programs or other patterns of signals (any analog or digital electrical or light impulses carried on a cable system, which includes any combination of audio, video, voice or data) to be transmitted on a cable system, and includes all programs or patterns of signals capable of being transmitted on a cable system.

2.7 “Section” means a provision of this Agreement, unless specified as part of another document.

**AGREED:**

**3.1 ACTIONS TO BE TAKEN BY GRANTEE**

In consideration of the grant funds provided by CITY, GRANTEE agrees to perform the following actions and/or spend grant funds in the following way:

- (A) Objectives. GRANTEE shall use best efforts to achieve the following objectives:
1. Provide training, technology tools and content distribution platforms to enable community members, non-profit organizations, schools and youth to examine media critically and use media competently.
  2. Engage ethnically and culturally diverse, historically underrepresented and non-English speaking communities in the creation of media content and use of production tools and distribution methods.
  3. Cablecast PEG Access Programming over cable channels and interconnect facilities made available to the GRANTEE for its use.
  4. Maintain policies and procedures to ensure the public will have fair and equitable access to and use of the Public Access facilities and services.
  5. Produce Government Access Programming in partnership with City bureaus and other governmental and quasi-governmental units, in order to promote civic dialogue on issues of importance to community members and their governments.
  6. Increase local access to new media technologies for content creation and distribution.
  7. Work with other organizations to build community media capacity throughout the City.
  8. Maintain generally accepted accounting, budgeting, and business systems and practices for the operation, protection, investment, oversight and management of the resources provided by the City to the GRANTEE.
- (B) Scope of Services. GRANTEE shall:
1. Develop and maintain a detailed manual setting forth policies and procedures which include non-discriminatory practices for the public to use and have access to resources provided under this Agreement which are designated for Public Access purposes.

2. Manage the transmission of Programming on cable channels provided as Public Access channels through the City's cable services franchises. The GRANTEE shall schedule Programming on such channels in accordance with the policies and procedures required under Section 3.1(B)1, except that, in accordance with applicable law, GRANTEE may refuse to transmit programming which the GRANTEE has determined would infringe on a copyright or which has been deemed unprotected speech by a court of competent jurisdiction. GRANTEE shall also serve as the point of origination for Public Access channels under the cable services franchises.
3. Manage the transmission of Programming on cable channels provided as Government Access channels through the City's cable services franchises. GRANTEE shall have scheduling control over Government Access channels. GRANTEE shall also serve as the point of origination for Government Access channels under the cable services franchises.
4. Produce and cablecast Governmental Access Programming for the City, as follows:
  - a. Produce City Council Regular Sessions, including Council work sessions (live from City Hall; videotaped other sites); City Council Budget Sessions (live from City Hall; videotaped other sites); and Police Chief's Forum (videotaped).
  - b. Provide video production services for Government Programming, in addition to programming produced under Section 3.1(B)4(a), up to a total annual value of \$20,000, calculated based on an hourly production services rate of \$50. Both the total annual value and the hourly production rate shall be increased annually by the Consumer Price Index (all goods) for Portland-Salem.
  - c. The Commissioner in Charge of the Office of Cable Communications and Franchise Management, or his/her designee, shall coordinate and determine the programming the GRANTEE is to produce under Section 3.1(B)4(b) within the annual production dollar amount. GRANTEE must receive, in writing, at least a 30-day advance notice of events to be videotaped and a 60-day advance notice for Programming to be distributed live over the Access channels. GRANTEE shall make a good faith effort to accommodate requests received with less than the notice required under this Section.
5. Maintain accessible multi-media content production equipment and facilities for use by the public and organizations, including a vehicle which will allow the transport of equipment for remote video productions Citywide.

6. Provide media education instruction about methods to create media content, use of production equipment, ways to access distribution technologies, and media literacy, taking into account the expertise, needs and schedule requirements of the targeted constituency.
7. Create partnerships and collaborations in order to build capacity citywide to address the rapidly emerging media and technology needs of community-based nonprofits, teachers and youth.
8. Conduct outreach specifically targeted for organizations serving minority, English as a second language and immigrant/refugee populations as well as other underrepresented groups.
9. Tailor media education services to provide appropriate training and support for the production of culturally and linguistically appropriate media.
10. Create opportunities to encourage understanding and collaboration across barriers such as race, culture, class, ideology, gender, age and sexual orientation.
11. Acquire, produce and distribute content and Programming with wide range of community perspectives, including those of groups that have historically been misrepresented or under-represented in traditional media.
12. Manage the transmission of Programming from live origination sites provided under the cable service franchises.
13. Manage the use of Access channel interconnections provided under the cable services franchises.
14. Develop its infrastructure, both technically and organizationally, to keep pace with significant changes in interactive capabilities, distribute mediums and platforms, and web-based technologies.
15. Provide technical expertise to the City and the MHCRC to assist with the oversight of Access requirements as provided under the cable services franchises.
16. Maintain its tax-exempt organization status under the Internal Revenue Code. GRANTEE shall not engage in any activities inconsistent with its tax-exempt status. GRANTEE may only transmit Non-commercial Programming over the Access channels designated to GRANTEE under this Agreement.
17. Develop and maintain any necessary operating agreements with franchisees resulting from GRANTEE's status as a designated Access provider for the City, consistent with the requirements of the cable services franchises.

(C) Community Needs Assessment and Strategic Plan.

1. GRANTEE shall conduct a community needs assessment by June 30, 2009. The purpose of the assessment is to determine the nature, degree and scope of issues and needs of the City's residents, local governments, libraries, schools and community groups and to provide a strategic way to evaluate the GRANTEE's ability to assist the community in addressing those identified needs and issues. The assessment shall employ a valid and deliberate process, and shall be designed in consultation with the City. The GRANTEE may use research and surveys conducted by other organizations as supplemental information to GRANTEE's assessment.
2. GRANTEE shall submit to the City the results of GRANTEE's community needs assessment and a strategic plan responsive to assessment results.

3.2 SPECIFIC CONDITIONS OF THE GRANT

(A) Grant Manager: Under this Agreement, the City has assigned the MHCRC, through the Director of the OCC/FM, to be its representative and agent to oversee and manage the terms of this Agreement ("Grant Manager"). Separately, the MHCRC has contracted with the City's Office of Cable Communications and Franchise Management to provide staffing and support services. The Grant Manager is authorized to approve work, billings and invoices submitted pursuant to this Grant Agreement and to carry out all other CITY actions referred to herein in accordance with this Grant Agreement.

(B) Notice. All notices provided under this Agreement shall be sufficient if deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, and addressed as follows:

If to the Grantee:  
Executive Director  
Portland Community Media  
2766 N.E. Martin Luther King, Jr. Blvd.  
Portland, OR 97212

If to the Grant Manager/City/MHCRC:  
Director  
Office of Cable Communications and Franchise Management  
Mt. Hood Cable Regulatory Commission  
1120 SW Fifth Ave., Rm 1305  
Portland, OR 97204

(C) Program and Fiscal Monitoring. The Grant Manager shall monitor on an as needed basis to assure Grant Agreement compliance. Such monitoring may include, but is not limited to, on site visits, telephone interviews, and review of required reports and will cover both programmatic and fiscal aspects of the Grant Agreement. The frequency and level of monitoring will be determined by the Grant Manager. Notwithstanding such monitoring or lack thereof, GRANTEE remains fully responsible for performing the services required by this Grant in accordance with its terms and conditions.

- (D) Reports: GRANTEE shall provide such information as deemed reasonably appropriate by the Grant Manager regarding the GRANTEE's activities and use of funds under this Agreement.
1. GRANTEE shall provide the MHCRC with a copy of the policies and procedures, together with any subsequent amendments, under Section 3.1(B)1.
  2. Within 45 days after the close of each Fiscal Year 6-month period, the GRANTEE shall submit an activity report to the MHCRC in a format subject to approval by the MHCRC. Such approval shall not be unreasonably withheld. The City and the MHCRC shall not use this information in any way to control the specific viewpoint or content of any program. Six-month activity reports shall contain at least the following information, unless otherwise approved by the MHCRC:
    - a. Training classes, including topics and number of training workshops offered; numbers of persons attending; and number of persons certified.
    - b. Media education services provided specifically to non-profits, schools or other community-based organizations, including the organization participating, type of training offered, and other services accessed by organization.
    - c. Number of hours the facilities and equipment are used by the public based on the hours available for public use.
    - d. Percentage of participants in media education, project-based classes that achieved the following learning indicators, as is applicable to the class curriculum:
      - ▶ Feel excited about making community media productions and believe that this is within their reach.
      - ▶ Ability to produce a community media project in the field, working as part of a team.
      - ▶ Ability to tell a story using a video medium, including presenting a media project to an audience.
      - ▶ Familiarity with the phases involved in community media production in the studio, including pre-production, production and post-production.
      - ▶ Knowledge of possible distribution methods for their program content.
    - e. Adjustments or changes to media education class topics responsive to media education class evaluations.
    - f. Description of partnerships and collaborations which have leveraged resources under this Agreement to provide media education services specifically to non-profits, schools, youth or other distinct constituencies.

- g. For each channel dedicated for Public Access Programming, the percentage of time, averaged over the quarter, that the following types of Programming were cablecast on the channel:
  - ▶ Produced through GRANTEE's facilities, both in its original cablecast and any repeated playback;
  - ▶ Acquired from local sources, both in its original cablecast and any repeated playback;
  - ▶ Acquired from non-local sources; and
  - ▶ Generated by a bulletin board, event listings, program listings or other types of listings.
  
- h. For each channel dedicated for Government Access Programming, the percentage of time, averaged over the quarter, that the following types of Programming were cablecast on the channel:
  - ▶ Produced by the GRANTEE, both in its original cablecast and any repeated playback;
  - ▶ Acquired from government entities, both in its original cablecast and any repeated playback;
  - ▶ Acquired and sponsored by GRANTEE from local and non-local sources; and
  - ▶ Generated by a bulletin board, event listings, program listings or other types of listings.
  
- i. Government Programming produced under Section 3.1(B)4, including hours of City Council coverage; agencies served and hours of programming.
  
- j. Total hours the vehicle for remote video production, under Section 3.1(B)5, is checked out for use.
  
- k. List of live origination sites and Programming activity from such sites, under Section 3.1(B)12, other than GRANTEE's facility.
  
- l. Description of outreach efforts specifically targeted for organizations serving minority, English as a second language and immigrant/refugee populations as well as other underrepresented groups, and the results of those efforts.
  
- m. Description of efforts, and the results of those efforts, to address language and cultural barriers in order to provide appropriate services to diverse groups (for example, recruitment of bi-lingual and multi-cultural volunteers; increased numbers of bi-lingual and multi-cultural staff; support for and use of translations and subtitles to reach identified populations).

- n. List of professional development trainings, classes or other educational opportunities taken by staff to increase cultural competency, including total number of staff who participated in each training.
  - o. Description of activities where GRANTEE was a catalyst in creating opportunities to encourage understanding and collaboration across potential barriers such as race, culture, class, ideology, gender, age and sexual orientation.
  - p. A list representative of the programs which demonstrate GRANTEE's acquisition, production and/or distribute of content and Programming with wide range of community perspectives, including those of groups that have historically been misrepresented or under-represented in traditional media.
  - q. A description of Capital resource allocations and expenditures which demonstrate pathways to upgrade current technologies and/or integrate new technologies into GRANTEE's services.
3. Within 45 days after the close of each Fiscal Year six-month period, the GRANTEE shall submit a financial report to the MHCRC, based on the GRANTEE's Fiscal Year budget. Unless the GRANTEE and the MHCRC agree to a different report format or different report parameters, the six-month financial report shall contain information on GRANTEE's revenues, and capital and operating expenditures including:
- a. Sources and amount of revenue;
  - b. Capital expenditures (amount and percent of total), by budgetary line item;
  - c. Operating expenditures (amount and percent of total), by budgetary line item and by programmatic area.
4. Within 90 days after the close of each Fiscal Year, the GRANTEE shall submit to the MHCRC financial statements prepared in accordance with generally accepted accounting principles. The GRANTEE's annual financial statements shall be representative of the overall financial status of the GRANTEE and shall be audited by an independent Certified Public Accountant. The annual financial statements shall include, but are not limited to, an accounting of any investment funds including:
- a. Name(s) of fund investment manager(s);
  - b. Fund balance;
  - c. Fund investment income since last report;

- d. Fund disbursements since last report;
- e. Fund balance;
- f. Net change in fund balance since last report.

### 3.3 PAYMENTS

(A) GRANTEE will receive its funding under this Agreement as follows:

1. Subject to the terms and conditions of this Agreement, the City shall pay to the GRANTEE for work performed under this Agreement an annual Grant at the following funding levels. The Grant funding for Fiscal Year 2007-08 shall be \$867,292. The City shall increase the amount of the Grant annually by applying a percentage increase equal to the Annual Growth Rate in the CPI-W.

For purposes of this Section, "CPIW" means the ratio of the average Consumer Price Index (all items) for Portland-Salem urban wage earners for January through June of the year immediately preceding the Fiscal Year being calculated, (e.g., January through June 2007 for Fiscal Year 2008-2009), to the average Consumer Price Index for Portland-Salem urban wage earners for January through June of two years preceding the Fiscal Year being calculated, (e.g. January through June 2006 for Fiscal Year 2008-2009) minus one (1).

2. In the case of extraordinary circumstances causing severe financial constraints on the City resulting in the curtailment of City bureau budgets, the City may reduce the annual Grant by an amount not to exceed the average percentage reduction in other City general fund discretionary budgets. If the City reduces the annual Grant under this Section, GRANTEE may reduce its scope of work, commensurate with that reduction, under Sections 3.1(B)4-10. GRANTEE shall submit its service reduction plan to the City prior to implementing service reductions.
3. The City shall consider additional special appropriations of funds as may be requested by the GRANTEE from time to time.
4. Subject to the terms and conditions of this Agreement, the MHCRC shall pay to the GRANTEE a portion of the Access Corporation Capital Costs funds received by the MHCRC, on behalf of the City, derived from the cable services franchises. The total amount of Capital fund payments under Section 3.3(A)4 shall be based on the MHCRC's projected revenues for Access Corporation Capital funds for the succeeding Fiscal Year and the GRANTEE's Capital budget, under Section 3.3(B)3(d). The annual payment amount for Capital funds under Section 3.3(A)4 is subject to acceptance by the MHCRC of the GRANTEE's Capital budget and final appropriation in the MHCRC's adopted annual budget.

5. GRANTEE agrees to expend Capital funds provided under Section 3.3(A)4 only for Capital expenses in accordance with the limitations set forth in the cable services franchises.
  6. The MHCRC may, notwithstanding the provisions of Section 3.3(A)4, accelerate any payments under Section 3.3(A)4 if justified by the GRANTEE.
  7. The City shall make equal payments for annual funding under Section 3.3(A) on a quarterly basis within 45 days of the end of each Fiscal Year quarter.
  8. The City and the GRANTEE have entered into this Agreement under the federal and state laws in effect on the effective date of this Agreement, which allow the City to require cable operators to obtain a cable services franchise for use of the City streets, and to pay franchise fees for such use as well as make PEG Capital contributions. The City reserves the right to request modifications to, or to seek early termination of, this Agreement to account for any changes in such federal or state law which impair its ability comply with the funding obligations set out in Section 3.3(A). The GRANTEE reserves the right to request modifications to, or to seek early termination of, this Agreement to account for any changes in federal, state or local law which impair the GRANTEE's ability to comply with the service obligations set out in Section 3.1(B).
- (B) GRANTEE shall annually submit to the MHCRC:
1. By March 1, a proposed budget for the succeeding Fiscal Year for MHCRC review; and
  2. By May 1, a budget adopted by GRANTEE's Board of Directors.
  3. The budget will include, at a minimum:
    - a. Actual revenues and expenditures, by line item, for the past three Fiscal Years;
    - b. The adopted budget, by line item, for the current Fiscal Year;
    - c. Projected revenues and expenditures, by line item and line item detail, for the proposed Fiscal Year budget;
    - d. Projected Capital revenues and expenditures, by line item and line item detail; and
    - e. A narrative identifying how funds provided under Section 3.3(A) will be used to support the Agreement Objectives, Scope of Services and Community Needs Assessment and Strategic Plan.
  4. The budget shall be in a format acceptable to the MHCRC. If the MHCRC wishes to require any changes from a current budget format, it will notify GRANTEE of the required changes no less than 45 days prior to the due date for budget submission.

5. Prior to January 1 of each year, the MHCRC shall provide to the GRANTEE projections of the annual Grant and Capital funding provided under Section 3.3(A) for the succeeding Fiscal Year.
  6. GRANTEE shall submit to the MHCRC any budget amendments approved by its Board of Directors.
- (C) Prior to June 1 of each year, the MHCRC may disapprove a budget submitted by the GRANTEE for the succeeding Fiscal Year upon a determination that the budget submitted by GRANTEE reflects one or more of the following conditions:
1. That the budget fails to support the Objectives under Section 3.1(A) or the Scope of Services under Section 3.1(B);
  2. That funds or assets the GRANTEE has received or is to receive from the City, or from or on account of a City cable services franchise, will be spent or applied for purposes unrelated to the Agreement's Scope of Services under Section 3.1(B);
  3. That the GRANTEE's Capital expenses under Section 3.3(B)3(d) do not adhere to the limitations set forth in the cable services franchises for PEG Capital funds;
  4. That funds or assets the GRANTEE has received or is to receive from the City, or from or on account of a City cable services franchise, will be endangered by waste, substantial damage, destruction, foreclosure or other similar jeopardy without sufficient, reasonable explanation or justification therefore;
  5. That revenue reasonably expected to be received by the GRANTEE will be insufficient to meet debt obligations incurred or to be incurred by GRANTEE in light of the GRANTEE's planned expenditures; or,
  6. That the GRANTEE's planned expenditures are otherwise fiscally unreasonable in light of generally accepted business practices for the operation, protection, investment, oversight and management of the GRANTEE's facilities.
- (D) If at any time during the period of this Agreement, the MHCRC determines that one or more of the conditions listed in Sections 3.3(C)1-6 exists, then notice of such determination together with recommended action shall be given to the GRANTEE and City Council.
- (E) Upon disapproval of the GRANTEE's budget as provided in Section 3.3(C), or on a determination by resolution of the City Council confirming a determination of the MHCRC under Section 3.3(D), the City Council may impose reasonable terms on the expenditure of the funds provided to GRANTEE in Section 3.3 hereof, to protect against such fiscal deficiencies pending correction thereof by the GRANTEE.

## **GENERAL GRANT PROVISIONS**

- 4.1 TERMINATION FOR CAUSE. If, through any cause, GRANTEE shall fail materially to fulfill in a timely and proper manner its obligations under this Grant Agreement, or if GRANTEE shall violate any of the covenants, agreements, or stipulations of this Grant Agreement, the CITY shall have the right to terminate this Grant Agreement as provided in Section 4.1(C) by giving written notice to GRANTEE of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination.
- (A) During the 30-day period CITY is under no obligation to continue providing grant funds and GRANTEE is not authorized to perform services or take actions that would require the CITY to pay additional grant funds to GRANTEE.
  - (B) During the 30-day period, GRANTEE shall not spend unused grant funds.
  - (C) Section 3.3(C) notwithstanding, this Agreement may be terminated upon a determination by resolution of the City Council that:
    - 1. Funds or assets the GRANTEE has acquired from the City or from or on account of a City cable services franchise are in immediate danger of waste;
    - 2. After reasonable opportunity to do so, the GRANTEE has not complied with reasonable terms imposed by the City Council on the expenditure of funds by the GRANTEE as provided in Section 3.3(E);
    - 3. After reasonable opportunity to do so, the GRANTEE has not remedied the deficiencies giving rise to the City Council determinations under Section 3.3(D) or Section 3.3(E); or
    - 4. After reasonable notice and opportunity to do so, the GRANTEE has failed to remedy any violation by GRANTEE of a material provision of this Agreement.
  - (D) In the event of termination, or in the event the City does not extend this Agreement beyond the date set forth in Section 5.1, GRANTEE may use funds on hand for payment of costs reasonably incurred in performance of work under this Agreement prior to the termination date, including payment of employee payroll and outstanding contracts for services. If the City Council so directs by resolution, the GRANTEE shall pay to the City any unexpended funds received by the GRANTEE at any time from the City, or from or on account of a City cable services franchises, and shall transfer to the City title to all real and personal property owned by the GRANTEE and all leasehold or other rights held by GRANTEE in real and personal property not owned by GRANTEE, after provision is made for creditors of the GRANTEE, provided that the ownership or rights were obtained by the GRANTEE from the City or from or on account of a City cable services franchises or with funds received at any time from the City or from or on account of a City cable services franchises.
  - (E) Nothing herein shall entitle the City to recover funds or property the GRANTEE acquired from sources other than the City or from or on account of a City cable services franchises; nor shall the City be entitled to any funds or property that the recovery of which would prevent full payment of amounts owing to creditors of the GRANTEE.

(F) The City shall not consider the content of Access Programming, including the GRANTEE's or a producer's choice of subject matter and the point of view expressed, in making any decision regarding the allocation or appropriation of funds for the GRANTEE, the adequacy of the GRANTEE's budget, or the termination of this Agreement.

4.2 **TERMINATION BY AGREEMENT OR FOR CONVENIENCE.** The CITY and GRANTEE may terminate this Grant Agreement at any time by mutual written agreement. If the Grant Agreement is terminated as provided in this paragraph, GRANTEE shall return any grant funds that would have been used to provide services after the effective date of termination.

4.3 **CHANGES.** The CITY may request changes in the scope of the services or terms and conditions hereunder. Such changes shall be incorporated in written amendments to this Grant Agreement before they become effective.

4.4 **NON-DISCRIMINATION.** In carrying out activities under this Grant Agreement, GRANTEE shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, familial status, sexual orientation or national origin. GRANTEE shall take actions to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, handicap, familial status, sexual orientation or national origin. Such action shall include but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. GRANTEE shall post in conspicuous places, available to employees and applicants for employment, notices provided by the CITY setting out the provisions of this nondiscrimination clause. GRANTEE shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. GRANTEE shall incorporate the foregoing requirements of this paragraph in all of its Grant Agreements for work funded under this Grant Agreement, except Grant Agreements governed by Section 104 of Executive Order 11246.

4.5 **ACCESS TO RECORDS.** GRANTEE shall provide the CITY, or its duly authorized representatives, prompt access to any and all books, general organizational and administrative information, documents, papers, and records of GRANTEE that are related to this Grant Agreement or GRANTEE's performance of services, for the purpose of making audit examination, copies, excerpts, and transcriptions. All required records must be maintained by GRANTEE for four years after the CITY makes final payment and all other pending matters are closed.

4.6 **MAINTENANCE OF RECORDS.** GRANTEE shall maintain records on a current basis to support any billings or invoices submitted by GRANTEE to CITY and to document GRANTEE's performance of services under this Grant Agreement. The CITY, or its authorized representative, shall have the authority to inspect, audit, and copy on reasonable notice, and from time to time may examine any records of GRANTEE regarding its billings or its work hereunder. GRANTEE shall retain these records for inspection, audit, and copying for four years from the date of completion or termination of this Grant Agreement.

4.7 AUDIT. The CITY, either directly or through a designated representative, may audit the records of GRANTEE at any time during the four-year period established by Section 4.6. If an audit discloses that payments to GRANTEE were in excess of the amount to which GRANTEE was entitled, then GRANTEE shall repay the amount of the excess to the CITY.

4.8 INDEMNIFICATION.

- (A) The GRANTEE shall hold harmless, defend, and indemnify the City/MHCRC and the City's/MHCRC's officers, agents, and employees against all claims, demands, actions, and suits, including, without limitation, copyright infringement, defamation, and other claims, (including all court and appeal costs and attorney fees and costs) brought against any of them arising from the GRANTEE's work under this Agreement, but not if arising out of or by reason of any negligence or willful misconduct by the City/MHCRC, its officers, agents or employees. Except where the GRANTEE is primarily at fault under common law principles, the GRANTEE's obligation under this Section shall not apply to claims, demands, actions or suits arising from the City's Government Access cablecasting activities under this Agreement.
- (B) The City or the MHCRC shall not be liable for any obligations incurred by the GRANTEE. The GRANTEE shall not represent to any person that the City or the MHCRC is liable for any of GRANTEE's obligations.

4.9 WORKERS' COMPENSATION INSURANCE.

- (A) GRANTEE, its contractors, if any, and all employers working under this Agreement, are subject employers under the Oregon Worker's Compensation law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers. A certificate of insurance, or copy thereof, shall be attached to this Agreement and shall be incorporated herein and made a term and part of this Agreement. GRANTEE further agrees to maintain worker's compensation insurance coverage for the duration of this Agreement.
- (B) In the event GRANTEE's worker's compensation insurance coverage is due to expire during the term of this Agreement, GRANTEE agrees to timely renew its insurance, either as a carrier-insured employer or a self-insured employer as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration, and GRANTEE agrees to provide the CITY such further certification of worker's compensation insurance a renewals of said insurance occur.

4.10 LIABILITY INSURANCE

- (A) GRANTEE shall maintain public liability and property damage insurance that protects GRANTEE and the CITY and its officers, agents, and employees from any and all claims, demands, actions, and suits for damage to property or personal injury, including death, arising from GRANTEE's work under this Grant Agreement. GRANTEE's insurance shall also name as additional insureds the cable system franchisees, as required under the City's cable services franchises. The insurance shall provide coverage for not less than \$1,000,000 per occurrence. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the CITY and its officers, agents, and employees. Notwithstanding the naming of

additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that it shall not terminate or be canceled without 30 days written notice first being given to the CITY Auditor. If the insurance is canceled or terminated prior to completion of the Grant Agreement, GRANTEE shall provide a new policy with the same terms. GRANTEE agrees to maintain continuous, uninterrupted coverage for the duration of the Grant Agreement. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by GRANTEE.

- (B) GRANTEE shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required under Section 4.10(A). The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this agreement by the CITY. In lieu of filing the certificate of insurance required herein, if GRANTEE is a public body, GRANTEE may furnish a declaration that GRANTEE is self-insured for public liability and property damage for a minimum of the amounts set forth in Section 4.10(A).

4.11 GRANTEE'S CONTRACTORS AND ASSIGNMENT. If GRANTEE utilizes contractors to complete its work under this Grant Agreement, in whole or in part, GRANTEE shall require any of its contractors to agree, as to the portion contracted, to fulfill all obligations of the Grant Agreement as specified in this Grant Agreement. However, GRANTEE shall remain obligated for full performance hereunder, and the CITY shall incur no obligation other than its obligations to GRANTEE hereunder. GRANTEE agrees that if GRANTEE's contractors are employed in the performance of this Grant Agreement, GRANTEE and its contractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation. GRANTEE's contractors shall be responsible for adhering to all local, state and federal laws and regulations. GRANTEE may not assign this Grant Agreement in whole or in part or any right or obligation hereunder, without prior written approval of the CITY.

4.12 INDEPENDENT STATUS OF GRANTEE. GRANTEE is independent of the CITY. GRANTEE will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. GRANTEE and its contractors and employees are not employees of the CITY and are not eligible for any benefits through the CITY, including without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

4.13 OREGON LAWS AND FORUM. This Grant Agreement shall be construed according to the laws of the State of Oregon, without regard to its provisions regarding conflict of laws. Any litigation between the CITY and GRANTEE arising under this Grant Agreement or out of work performed under this Grant Agreement shall occur, if in the state courts, in the Multnomah County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.

- 4.14 COMPLIANCE WITH LAWS. In connection with its activities under this Grant Agreement, GRANTEE shall comply with all applicable federal, state, and local laws and regulations. GRANTEE shall be EEO certified by the CITY in order to be eligible to receive grant funds.
- 4.15 SEVERABILITY. If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
- 4.16 INTEGRATION. This Agreement contains the entire agreement between the CITY and GRANTEE and supersedes all prior written or oral discussions or agreements. There are no oral or written understandings that vary or supplement the conditions of this Grant Agreement that are not contained herein.
- 4.17 THIRD PARTY BENEFICIARIES: There are no third party beneficiaries to this Grant Agreement. The Agreement may only be enforced by the parties.
- 4.18 ASSIGNMENT: This Agreement cannot be assigned or transferred by GRANTEE without the prior written permission of CITY.

**TERM OF GRANT**

- 5.1 The term of this Agreement is from July 1, 2007, through June 30, 2011. This Grant Agreement shall be effective when an ordinance is passed by City Council and the Grant Agreement is executed by all the parties, as shown by their signatures below, and shall remain in effect during any period for which GRANTEE has received CITY funds.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CITY OF PORTLAND**

**GRANTEE**

\_\_\_\_\_  
 Name:  
 Title:

\_\_\_\_\_  
 Name:  
 Title:

**APPROVED AS TO FORM:**

\_\_\_\_\_  
 Office of City Attorney