

COVER SHEET – AGENDA ITEM #R2

For Commission Meeting: June 15, 2015

“Community Technology Grant Agreement: PSU.TV”

Recommendation

Staff recommends that the Commission approve the revised 2015 Community Technology Grant agreement with PSU.TV for \$101,500.

Background

At its June 15 meeting, the Commission approved a grant agreement with PSU.TV for \$101,500. Upon approval by the Commission, staff transmitted the agreement to PSU.TV for signature. While processing the contract for signature, PSU.TV staff soon learned that PSU Sponsored Projects Administration staff, upon closer review, was requesting changes to contract language before signing the agreement. Changes requested included a change to how PSU appeared as a named party to the contract (opening paragraph), a request to expand indemnification language (Section 11) to include both parties, a clarification of early termination and material failure language (Sections 15 & 16), and the addition of a contact from the Sponsored Projects Administration office as a recipient of formal notices under the agreement (Section 24).

MHCRC legal counsel, Ben Walters, reviewed PSU’s requested changes and worked with staff to negotiate language edits as they appear in the attached redlined version of the contract. The most significant edits were to Sections 11, 15 & 16. These edits are discussed below:

Indemnification: The previous language required the Grantee to indemnify the Commission. Because the Commission isn’t doing any work under the agreement other than distributing funds and monitoring compliance, the contract did not include language to require the Commission indemnify the Grantee. The new language supports mutual indemnification. Staff and legal counsel believe this change does not pose significant risk to the Commission.

Early Termination: The previous language required the full amount of grant funds be returned upon early termination of the agreement regardless of any satisfactory work completed. Staff agreed with PSU that this language was unduly limited and did not accurately reflect intent. Upon early termination, the new language allows more flexibility for the Commission to determine, with the Grantee, the terms of termination, including activities to be completed and grant funds expended/returned. Combined with the next section (Material Failure to Perform), staff and legal counsel believe the grant funds, and the Commission’s ability to recover grant funds, are well protected should a grant project go terribly wrong.

Material Failure to Perform: The previous language gave the Commission, at its sole discretion, the broad ability to recover grants funds, regardless of whether grant funds were spent properly. However, upon review and discussion, staff and legal counsel determined that the intent is not to require re-payment of grant funds that were properly spent towards the intended project purpose. Rather, the intent is to recover grant funds that were *improperly expended*, which may be the full amount of grants funds paid, in addition to any unexpended amounts. Staff and legal counsel believe the proposed edits better reflect the intent.

PSU's request to revisit the grant contract language has delayed project implementation, however PSU.TV staff have used the time to prepare and conduct equipment purchase research in hopeful anticipation of contract approval. If approved, staff will work closely with PSU.TV staff to make the necessary adjustments to the project implementation plan and timeline in support of the project's intended outcomes.

Attachment: Draft Revised Community Technology Grant Agreement – redlined

Prepared By: Rebecca Gibbons
September 14, 2015

AGREEMENT FOR COMMUNITY TECHNOLOGY GRANT

This Agreement is between the Mt. Hood Cable Regulatory Commission (Commission or MHCRC), through the Office for Community Technology (OCT), and [Portland State University](#) as PSU.TV (~~Portland State University~~)(Grantee) (together referred to as the “Parties”).

RECITALS:

This Agreement is entered into for the purpose of providing the Commission's 2015 grant funds for the Grantee's PSU.TV Student Empowerment Through Video Production Program 2015 project.

AGREEMENT:

1. Grant Amount, Use of Grant

Grantee is awarded a total amount of \$101,500 for specific capital costs related to the Grant project. Grantee shall use the Grant funds exclusively for the purposes outlined in its Grant Application (the "Grant"). The Grant Application is attached to this Agreement as Attachment 2. Grantee shall not use the Grant funds for any other purpose than that set forth in Attachment 2.

2. Project Manager

The Commission's Project Manager shall be Rebecca Gibbons or such other person as shall be designated in writing by the OCT Director.

3. Payments

Grantee shall submit periodic invoices for actual capital costs incurred by Grantee related to the approved Grant budget. The invoice shall be on Grantee's letterhead, signed and dated by an authorized representative of Grantee and addressed to “MHCRC c/o City of Portland.” The invoice shall include an invoice number and a breakout of the invoice amount by line items which accord with the approved Grant project budget. Upon submission by the Grantee of an invoice, and upon certification by the Project Manager that the invoice is in accordance with this Agreement and any restrictions upon use of the Grant funds, the Commission shall pay to the Grantee the amount as specified in the invoice, not to exceed the total Grant amount of \$101,500 within thirty (30) days from date of the invoice. If the Project Manager finds that the invoice is not in accordance with this Agreement, the Project Manager shall notify the Grantee of the reasons for the disallowance and non-payment.

All invoices for Grant project capital costs must be received by the Commission at least thirty (30) days prior to the expiration date of this Agreement in order to be paid under the Agreement terms. No invoices shall be accepted after the expiration of this Agreement.

4. Financial Records

Along with the periodic invoices, Grantee shall submit copies of receipts or other evidence of payment for actual grant funded capital costs incurred by Grantee related to the Grant. The Project Manager, at her/his sole discretion, may require additional financial documentation of Grant project expenditures.

Grantee agrees to keep accurate and complete financial records that will enable the Commission to easily determine the use of Grant funds and the allocation method of Matching Funds committed by Grantee and Project Partners in the Grant for the project.

5. Reports

Grantee shall submit Interim Reports and a Final Report (collectively referred to as 'Report(s)' herein) to the Project Manager using the Commission's online grants management system. The Reports shall include both programmatic and financial information as established by the Commission. A sample of Report information is attached to this Agreement as Attachment 1. For a Report to be accepted by the Project Manager, the Grantee shall document and clearly describe the progress of the grant in accordance with the reporting schedule defined below.

Interim Reporting periods are July 1, 2015 through December 31, 2015; January 1, 2016 through June 30, 2016; July 1, 2016 through December 31, 2016; January 1, 2017 through June 30, 2017; July 1, 2017 through December 31, 2017. Interim Reports are due within thirty (30) days of the end of each reporting period. Grantee shall submit a Final report thirty (30) days after the project end date of June 30, 2018 summarizing the activities and accomplishments of the entire Grant.

Grantee shall immediately provide notice in writing by electronic mail to the Project Manager when Grantee anticipates or realizes any deviation in the Grant project which may result in Grantee's inability to fulfill the Grant project as originally submitted and approved by the Commission.

Grantee shall also provide other financial or program reports as the Commission deems reasonably necessary or appropriate. Grantee shall make its books, general organizational and administrative information, documents, papers and records that are related to this Agreement or Grantee's performance of services available for inspection by the Project Manager or other Commission representatives during reasonable business hours following five (5) business days advance written notification from the Project Manager.

6. Project and Fiscal Monitoring

The Commission and the Project Manager shall monitor the Grantee's performance on an as needed basis to assure compliance with this Agreement. Such monitoring may include, but are not limited to, on site visits at reasonable times, telephone interviews and review of required reports and will cover both programmatic and fiscal aspects of the Grant. The frequency and

level of monitoring will be determined by the Project Manager. Grantee shall remain fully responsible at all times for performing the requirements of this Agreement.

7. Audit

Because grant funds are derived from the cable franchises, the cable companies may conduct a financial review or audit of Grantee for the purpose of verifying whether use of capital grant funds is in accordance with the requirements of cable franchises related to use of capital grant funds. If the MHCRC receives notice from a cable company in accordance with the terms of the cable franchises of such audit or review, the Commission's Project Manager shall notify Grantee within 5 business days of receiving the notice, and shall identify to Grantee the relevant financial records of Grantee that the cable company seeks to review. The scope of such audit or review of Grantee shall be consistent with the terms of the applicable cable franchise. Grantee agrees to make such relevant financial records available to cable company's authorized representative for inspection and copying. Such records shall be reviewed during normal business hours at a time and place made available by Grantee. The Commission's Project Manager shall promptly provide Grantee with written notice of the audit or review's conclusions.

8. Publicity

Any publicity shall indicate that the project was made possible by a Grant from the Commission through funds provided by the cable companies. Grantee shall notify the Project Manager before releasing information about the Grant to the press or other news media. The Commission may include information regarding the Grant in periodic public reports.

9. No Other Obligations/Complete Agreement

Grantee acknowledges that, except for the Grant, the Commission has no obligation to provide, and the Commission has not led Grantee to believe in any way (whether expressly or by implication) that the Commission will provide any additional or future assistance, financial or otherwise, either to Grantee or for the Grant project.

This Agreement contains the complete agreement of the parties. This Agreement may not be assigned, nor may any of the Commission's rights be waived, except in writing signed by a duly authorized representative of the Commission. The Commission may specifically enforce, or enjoin a breach of, the provisions of this Agreement, and such rights may be freely assigned or transferred to any other governmental entity by the Commission.

10. Representations

Grantee represents that it has full power and authority, and has obtained all necessary approvals, to accept the Grant, to carry out the terms of the Grant and this Agreement, and to conduct the Grant project in compliance with all applicable laws.

11. Indemnification

~~Grantee shall hold harmless, defend, and indemnify the Commission and the Commission's officers, agents, and employees against all claims, demands, actions, and suits (including all attorney fees and costs) brought against any of them arising from Grantee's work or any of Grantee's contractors work under this Agreement. Subject to the limitations and conditions of the Oregon Constitution, Article XI, Sections 7 and 9, and the Oregon Tort Claims Act (ORS 30.260 through 30.300), the parties agree to indemnify and hold one another harmless from any loss, damage, injury, claim, or demand arising from their respective activities in connection with this Grant. Neither party shall be liable for any loss, damage, claim, or demand arising from the negligence of the other party or its agents or employees.~~

12. Compliance with Laws

The Commission and Grantee agree to comply with all applicable local, state and federal laws and regulations that apply to the subject matter of this Agreement.

13. Amendment

The Project Manager is authorized to amend the terms and conditions of this Agreement, provided such changes do not increase the Grant amount or the Commission's financial risks or change the purpose of the Grant. If approved such amendments shall only be effective if in writing, and signed by duly authorized representatives of both Parties. Any change in the amount of the Grant funds or the financial risks under this Agreement must be approved by vote of the Commission.

14. Term of the Agreement

This Agreement becomes effective upon the date of the last signature by a party. The term of this Agreement is through, and including, August 31, 2018.

15. Early Termination of Agreement

This Agreement may be suspended or terminated prior to the expiration of its term by:

(a) Written notice provided to Grantee from the Commission before any obligations are incurred; or

(b) Mutual written agreement of the Parties.

~~Upon termination, Grantee shall return to the Commission the full amount of Grant funds paid by the Commission to the Grantee for the Grant project. Termination of this Grant shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination. However, upon receiving a notice of termination, Grantee shall immediately cease all activities under this Grant, unless expressly directed otherwise in writing from the Commission in the notice of termination. Further, upon termination, the Commission and/or~~

Grantee shall deliver to the other party all works-in progress and other property that are or would be deliverables had the Grant been completed. Grantee shall be entitled to receive just and equitable compensation as provided for under this Agreement for any satisfactory work completed up until the time of notice of termination.

16. Material Failure to Perform

The Project Manager may terminate this Agreement after determining that Grantee has failed to comply with any material term or condition of this Agreement. The Project Manager shall give Grantee written notice of the intent to terminate this Agreement, identifying the reasons for such action.

If Grantee fails to remove or otherwise cure the material failure within thirty (30) days of the written notice of termination, or if Grantee does not undertake and continue efforts satisfactory to the Commission to remedy the failure, then the Commission may, at its sole discretion, require Grantee to refund to the Commission any amounts improperly expended and, any unexpended amounts ~~or the full amount~~ of Grant funds paid by the Commission to Grantee for the Grant project in compliance with the terms and conditions of this Agreement.

17. Suspension of Work

The Project Manager may at any time give notice in writing, by electronic mail, to Grantee to suspend work and expenditure of funds provided under this Agreement. The notice of suspension shall specify the date of suspension and the estimated duration of the suspension. Grantee shall promptly suspend work and expenditure of funds to the extent specified. During the period of the suspension Grantee shall properly care for and protect all projects in progress including materials, supplies, and equipment that are on hand for performance of the Grant. The Project Manager may, at any time, withdraw the suspension of work as to all or part of the suspension in written, by electronic mail, notice to Grantee specifying the effective date and scope of withdrawal. Grantee shall then resume diligent performance of the work. In no event shall Grantee be entitled to any incidental or consequential damages because of suspension.

The causes for suspension of work include, but are not be limited to, Project Manager's concerns about Grantee's ability to complete the Grant in accordance with this Agreement or any other non-compliance with the Agreement.

18. Non-Discrimination

In carrying out activities under this Agreement, Grantee shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, age, sex, marital or economic status, familial status, national origin, sexual orientation, disability or source of income. Grantee shall take actions to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, age, sex, marital or economic status, familial status, national origin, sexual orientation, or disability. 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 state that all qualified applicants will receive consideration for employment without regard to race, color, religion, age, sex, marital or economic status, familial status, national origin, sexual orientation, disability or source of income. In regard to carrying out activities under this Agreement, Grantee shall further not arbitrarily refuse to provide services to any person and shall not discriminate in offering services on the basis of race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, disability or source of income.

19. 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 considered stricken.

20. Choice of Law and Choice of Forum

This 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 Commission and Grantee arising under this Agreement or out of work performed under this 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.

21. Survival

As of the date of termination of this Agreement, any pre-existing unresolved claim or dispute by either Party, including but not limited to, money owed, performance due, or any other obligations of the Parties, that is the result of the other Party's performance or non-performance, will, by their terms, survive termination of this Agreement and will be resolved in accordance with the terms and conditions of this Agreement. All indemnity and unperformed obligations will survive termination of this Agreement. The obligation under Section 5 to submit a Final Report shall also survive termination of this Agreement.

22. Assignment

This Agreement or any interest therein may not be assigned or subcontracted without the prior written consent of the Project Manager. In the event of transfer without prior written consent, the Commission may refuse to carry out this Agreement with either the transferor or the transferee and yet retain and reserve all rights of action for any breach of contract committed by Grantee.

Notwithstanding Grantee's use of any subcontractor for performance of this Agreement, Grantee shall remain obligated for full performance hereunder, and the Commission shall incur no obligation other than its obligations to Grantee under this Agreement. Grantee agrees that if subcontractors are employed in the performance of this Agreement, the Grantee and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

23. Electronic Means

The parties agree the Commission and Grantee may conduct this transaction, including any contract amendments, by electronic means, including the use of electronic signatures.

24. Notice

Any notice provided for under this Agreement shall be sufficient if in writing and (1) delivered personally to the following addressee, (2) deposited in the United States mail, postage prepaid, certified mail, return receipt requested, (3) sent by overnight or commercial air courier (such as Federal Express), or (4) email addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the Commission:

Attn: Rebecca Gibbons, Project Manager:
Mt. Hood Cable Regulatory Commission
c/o City of Portland/ OCT
P.O. Box 745
Portland, OR 97207-0745
Email: rgibbons@mhrc.org

If to Grantee:

Attn: Jyunmi Hatcher, Station Manager
PSU.TV
1825 SW Broadway
Portland, OR 97201
Email: manager@psu.tv

[Attn: Jennifer Ward,](#)
[Associate Director,](#)
[Sponsored Projects Administration](#)
[Portland State University](#)
[PO Box 751-SPA](#)
[Portland, OR 97207](#)
[Email: awards@pdx.edu](#)

Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of actual delivery, three (3) business days after depositing in the United States mail as aforesaid, one (1) business day after shipment by commercial air courier as aforesaid or the same day an email transmission is sent (or the first business day thereafter if sent on a Saturday, Sunday or legal holiday).

AGREEMENT FOR COMMUNITY TECHNOLOGY GRANT: PSU.TV Student Empowerment Through Video Production Program 2015

GRANTEE SIGNATURE:

GRANTEE: PORTLAND STATE UNIVERCITY as PSU.TV ~~(PORTLAND STATE UNIVERSITY)~~

BY: _____ Date: _____

Name: _____

Title: _____

MT. HOOD CABLE REGULATORY COMMISSION SIGNATURES:

By: _____ Date: _____
Mt. Hood Cable Regulatory Commission Chair

Approved as to Form:

By: _____ Date: _____
Mt. Hood Cable Regulatory Commission Attorney

Grant Agreement -- Attachment 1

SAMPLE INTERIM REPORT INFORMATION

OUTCOMES ACTIVITES AND PROGRESS

Describe project activities that focus on the intended outcomes and/or progress made toward the outcomes. Provide both quantitative and qualitative details as they relate to an activity.

LEARNINGS AND EVALUATION

Summarize the key evaluation steps completed or underway. What are the primary lessons learned thus far about the project? Have you had any course corrections or adjustments to your project based on learnings thus far? How might these learnings impact project implementation in the next Reporting Period?

IMPLEMENTATION SUCCESSES AND CHALLENGES

By using the project's original implementation plan/timeline (included in Attachment 2 to the Grant Agreement, The Implementation Plan), provide a mark-up of the plan indicating the status of your project in relation to the original plan/timeline by adding a "status" column to your activities list.

Describe any anticipated and unanticipated successes and challenges.

EXPENDITURE DETAIL

Provide a line item accounting, in context of the original grant budget, of the expenditures incurred during the Reporting Period; including both Grant fund and Matching fund expenditures.

Provide a clear narrative of the expenditures incurred for each line item identified above.

Provide a clear explanation of any expenditure that substantially differs from the original Grant budget.

WORK SAMPLES

Periodically, the MHCRC will use photos and videos (with permission) on our website to highlight the work of the organizations we support. Please send us photos or videos that illustrate the impact of the grant project in the community. (By sharing photos or videos, you acknowledge that any and all material you are providing has been obtained with appropriate signed media releases and may be shared with the MHCRC's stakeholders and broader audiences.)

SAMPLE FINAL REPORT INFORMATION

RESULTS

Describe the significant project activities that took place throughout the life of your project and how these activities contributed to the realization of the original project purpose and outcomes. (As applicable, please quantify your results as they related to your original project outcomes, i.e. numbers of people served, the demographics of those served, the number and type of content created, the number/type of classes/programs offered, etc.)

Outline your evaluation process, including evaluation tools and methods. Detail the results of your evaluation.

Do you have a testimonial story to tell that captures the essence of the project's impact? (Where anonymity is required, please use pseudonyms.)

REFLECTIONS

What did you learn about the problem or issue you were trying to address?

What did you learn about the population served?

What factors contributed to your success?

What, if any, were the significant challenges encountered? How did you address both anticipated and unanticipated challenges in the course of the project?

EXPENDITURE DETAIL

Provide a line item accounting, in context of the original grant budget, of the expenditures incurred during the Project term; including both Grant fund and Matching fund expenditures.

Provide a clear narrative of the expenditures incurred for each line item identified in Step 1.

Provide a clear explanation of any expenditure that substantially differs from the original Grant budget.

SUSTAINABILITY

Will the project/program continue beyond the term of this Grant? If so, what are your next steps and plans for continuing or changing the project/program?

WORK SAMPLES

Periodically, the MHCRC will use photos and videos (with permission) on our website to highlight the work of the organizations we support. Please send us photos or videos that illustrate the impact of the grant project in the community. (By sharing photos or videos, you acknowledge that any and all material you are providing has been obtained with appropriate signed media releases and may be shared with the MHCRC's stakeholders and broader audiences.)