

COVER SHEET – AGENDA ITEM #R3

For Commission Meeting: June 18, 2018

“MHCRC/Open Signal Capital Funding Grant Agreement”

Staff Recommendation

Staff recommend that the Commission approve the Grant Agreement between the Mt. Hood Cable Regulatory Commission and Portland Community Media, an Oregon nonprofit benefit corporation doing business as Open Signal, to provide capital support.

Background/Discussion

As has been discussed at past MHCRC meetings and the annual retreat, the renewal of Open Signal’s grant agreement is taking the form of two separate, but related, agreements: One with the City of Portland for operations funding and one with the MHCRC for capital funding. This construct better reflects the source and authority of the funding provided to Open Signal for its operating and capital needs in the provision of services to the community.

MHCRC and Open Signal staff have reached agreement on Exhibit A: Scope of Work; and Exhibit B: Grant Status Reports.

Attachments: Draft MHCRC/Open Signal Capital Grant Agreement with Exhibits A & B

Prepared By: Scott Ellertson

June 14, 2018

DRAFT GRANT AGREEMENT (DRAFT 6.13.18 – MHCRC Meeting Packet)

This Grant Agreement (Agreement) is between the Mt. Hood Cable Regulatory Commission (“MHCRC”) and Portland Community Media, an Oregon nonprofit public benefit corporation doing business as Open Signal (Grantee), to provide capital support.

RECITALS:

1. Grantee is an Oregon nonprofit public benefit corporation, which provides media and broadband technology training, tools and distribution platforms to diverse communities throughout East Multnomah County to engage broad participation in civic and cultural life, and to provide video programming of, by, and for the community over local public, educational and governmental access cable channels.
2. Through an ascertainment of community needs, the MHCRC found that historically underrepresented and non-English speaking communities and other marginalized populations face disparities in using and accessing media and broadband technology which, among other things, may lead to inequities in opportunities for education, civic engagement and workforce development. Grantee is uniquely situated to assist the MHCRC in meeting certain technology and broadband access goals.
3. The City of Portland (“City”) has entered into cable services franchise agreements (“Cable Franchises”), which, among other things, provide financial and technology resources dedicated for public, educational and government uses by access providers as designated by the MHCRC.
4. The City is a party to an intergovernmental agreement (MHCRC IGA), which among other things, delegates responsibility to the MHCRC for ensuring compliance with PEG Cable Franchise requirements, overseeing and allocating certain PEG resources, including collecting and allocating PEG/I-Net Fee funding, and entering into grant agreements as necessary to accomplish the general purposes of the MHCRC IGA.
5. The City and Grantee have entered into a separate grant agreement governing the provision of operations funding to support the operational needs of Grantee to provide services identified in this Agreement.
6. MHCRC designates Grantee as a PEG Access provider, and assigns control and management of certain PEG resources provided under the Cable Franchises.
7. The MHCRC and Grantee desire to enter into this Agreement for the provision of MHCRC PEG funds to support the capital needs of Grantee to provide services to the community.
8. Continued annual Grantee funding support for fiscal years through the term of this Agreement are provided for under Article IV(A). Each fiscal year begins July 1 and ends June 30. Funds are anticipated to be available for this purpose in the MHCRC’s budget, subject to annual appropriation by the City and other jurisdictional parties to the MHCRC IGA.

ARTICLE I. SCOPE OF WORK

Grantee shall use the funds provided under this Agreement exclusively for the purposes described in Exhibit A (Scope of Work.), attached and incorporated herein.

ARTICLE II. TERM

The term of this Agreement is July 1, 2018, through and including June 30, 2022, unless terminated in accordance with Article V(B). This Agreement shall be effective when passed by the MHCRC and the Agreement is executed by all the parties, as shown by their signatures below.

ARTICLE III. SPECIFIC CONDITIONS OF THE GRANT

- A. MHCRC Grant Manager. The MHCRC hereby appoints Julie Omelchuck, City of Portland Office for Community Technology, as its Grant Manager for this Agreement. The MHCRC may, from time to time, designate another person to act as the MHCRC Grant Manager and will inform Grantee in writing, in accordance with Article III(F), of any change in Grant Manager. The MHCRC Grant Manager is authorized to approve billings and invoices submitted pursuant to this Agreement and to carry out all other MHCRC actions and responsibilities in accordance with this Agreement.
- B. Grantee Project Manager. Grantee hereby appoints Justen Harn, Executive Director, as its Project Manager for this Agreement. Grantee may, from time to time, designate another person to act as the Grantee Project Manager and will inform the MHCRC in writing, in accordance with Article III(F), of any change in Project Manager.
- C. Program and Fiscal Monitoring. The Grant Manager shall monitor Grantee on an as-needed basis to assure Agreement compliance. Monitoring may include, but is not limited to, on-site visits, telephone interviews and review of required reports. Monitoring will cover both programmatic and fiscal aspects of the 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 Agreement.
- D. Publicity. Grantee shall use its best efforts to mention the MHCRC's grant funding in publicity regarding the program(s) that will be supported by the funds under this Agreement. Grantee shall work with the Grant Manager to ensure that the Access resources provided under the Cable Franchises are appropriately acknowledged.
- E. MHCRC Board Appointee.
 - 1. The MHCRC shall appoint one non-voting member of Grantee's Board of Directors. Grantee accepts and shall seat the MHCRC's designee as a member of its Board.

2. Grantee shall provide the MHCRC Board Appointee and Grant Manager adequate notice of the time, date and location of all meetings of Grantee's Board of Directors and committees thereof; and provide all relevant materials distributed prior to, at or subsequent to such meetings.
3. The MHCRC Board Appointee shall have the same rights as the other members of Grantee's Board of Directors to monitor and participate in all Board-related affairs of Grantee.
4. Grantee shall, upon reasonable request, provide MHCRC Board Appointee and Grant Manager with copies of all relevant information regarding Grantee's financial affairs, internal business affairs, and accounting and inventory systems.

F. Notice. All notices provided under this Agreement shall be sufficient if:

Emailed to the receiving party's address specified below, or in writing to the address specified below and: (1) delivered personally to the addressee listed below; (2) deposited in the United States Mail, postage prepaid, certified mail, return receipt requested; or (3) sent by courier (return receipt requested). Any notice given by email shall be effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.

Any changes to the contact information below shall be sent to the other party by email or in writing:

If to the Grantee:

Justen Harn
Executive Director
Open Signal
2766 N.E. Martin Luther King, Jr. Blvd.
Portland, OR 97212
email: justen@opensignaldpx.org

If to the Grant Manager:

Julie Omelchuck
Program Manager, MHCRC
c/o City of Portland, Office for Community Technology
111 SW Columbia St., Suite 600
Portland, OR 97201
Email: Julieo@mhcr.org

G. Reports and Records.

1. Grantee shall maintain all financial and organizational records, documents and papers related to this Agreement for three (3) years after MHCRC makes the final Agreement payment, Grantee files its final reports under Exhibit B (Grant Status Reports) attached and incorporated herein, or termination of this Agreement, whichever is later. Grantee shall provide MHCRC prompt access to these records

upon request and permit copying as MHCRC may require.

2. 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.
3. Grantee shall provide the Grant Manager, initially and within ten (10) business days of any change, current documentation of Grantee's tax-exempt status under the Internal Revenue Code.
4. Grantee shall provide the Grant Manager, initially and within ten (10) business days of any change, a copy of current policies and procedures described in Exhibit A.
5. Status Reports. Within forty-five (45) calendar days after the close of each fiscal year six-month period, the Grantee shall submit a status report to the Grant Manager in a format subject to approval by the Grant Manager. Such approval shall not be unreasonably withheld. Six-month status reports shall contain information as described in Exhibit B, unless otherwise approved by the Grant Manager.
6. Financial Reports. Within forty-five (45) calendar days after the close of each fiscal year quarter, the Grantee shall submit a financial report, approved by Grantee's Board of Directors, to the Grant Manager based on the Grantee's fiscal year budget. Unless the Grantee and the Grant Manager agree to a different report format or different report parameters, the quarterly financial report shall contain information on Grantee's revenues, and capital expenditures including, among other items:
 - a. Sources and amounts of revenue;
 - b. Capital expenditures (amounts, and percent of total), by budgetary line item and capital expenditures made from grant funds received under Article IV (A)2; and
 - c. Year-to-date balance sheet.
2. Annual Capital Report. Within 45 calendar days after the close of a Fiscal Year, Grantee shall submit an annual capital financial report to the Grant Manager based on the Grantee's fiscal year budget. Unless the Grantee and the Grant Manager agree to a different report format or different report parameters, the annual capital financial report under this Agreement, including, among other items:
 - a. capital beginning balance;
 - b. actual revenue;
 - c. actual expenditures by budget line item, including capitalized wages; and
 - d. copies of paid receipts or other evidence for actual expenditures.

H. Audits

1. Grantee Annual Financial Audit. Within ninety (90) calendar days after the close of each fiscal year, the Grantee shall submit to the Grant Manager Grantee's financial statements prepared in accordance with generally accepted accounting principles and audited or reviewed by an independent Certified Public Accountant. The Grantee's annual financial statements shall fairly represent the overall financial status of the Grantee in accordance with generally accepted audit standards.
2. MHCRC Audits. The MHCRC, either directly or through a designated representative, may conduct a financial or performance audit or review of Grantee records for the billings and services under this Agreement, upon reasonable notice, at any time during this Agreement and during the three (3) year period established in Article III(G). The Grant Manager shall promptly provide Grantee with written notice of the audit or review's conclusions. If an audit or review discloses that payments to Grantee exceeded the amount to which Grantee was entitled, then Grantee shall repay the amount of the excess to MHCRC.
3. Cable Franchisee Audits. As provided under the terms of a Cable Franchise, the holder of such a Cable Franchise ("Cable Franchisee") may conduct a financial review or audit of Grantee for the purpose of verifying whether use of the PEG/I-Net Fee is in accordance with the Cable Franchises. If the MHCRC receives notice in accordance with the terms of the Cable Franchises of such audit or review, the Grant 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 Franchisee seeks to review. The scope of such Cable Franchisee 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 Franchisee'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 Grant Manager shall promptly provide Grantee with written notice of the audit or review's conclusions.

G. Pledge of Assets.

1. For purposes of this Section, "Pledge of Assets" shall mean any form of sale, encumbrance, conveyance, mortgage, assignment, pledge, lease or lien, provided, in whole or in part, by Grantee to a third party other than the MHCRC with respect to Grantee's real property or tangible assets or fixtures with an un-depreciated purchase value of more than \$300,000.00.
2. Grantee shall not provide a Pledge of Assets within the meaning of this Section to a third party other than the MHCRC without prior consent of the MHCRC, which consent shall not be unreasonably withheld, conditioned or delayed. Such consent may be authorized by the MHCRC for any Pledge of Assets with an un-depreciated purchase value of more than \$300,000.00.

3. The MHCRC's granting of consent to a Grantee Pledge of Assets in one instance shall not render unnecessary any subsequent consent in any other instance. Except where consent is specifically provided, Grantee agrees that the MHCRC's interests shall not be subordinated to any other pledge-holder, lienholder or other obligee with respect to any Grantee assets.

ARTICLE IV. PAYMENTS

A. Subject to the terms and conditions of this Agreement, the MHCRC shall pay Grantee an annual grant amount as follows:

1. The total amount of grant fund payments under this Section shall be based on the MHCRC's projected revenues for Access Corporation Capital funds from cable franchisees for the succeeding fiscal year and the Grantee's capital budget, under Article IV(B)(3)(d). The annual payment amount for grant funds under this Section is subject to review by the MHCRC of the Grantee's capital budget, final appropriation in the MHCRC's approved annual budget, and Grantee's adherence to this Agreement.
 - a. Grantee agrees to expend grant funds provided under Article IV(A)(1) only for capital expenditures. Grantee shall account for the grant funds under this Agreement separately in its books of accounts, maintain accurate documentation and inventory of assets acquired with grant funds and follow appropriate procedures for purchasing, amortizing, and disposing of such assets.
 - b. The MHCRC may, notwithstanding the provisions of Article IV(A)(2), accelerate any payments under Article IV(A)(2) if justified by the Grantee.
2. Based on the MHCRC's approved budget appropriation for Grantee, the City shall make four (4) equal payments for annual funding under Article IV(A) by August 15, November 15, February 15 and May 15 of each fiscal year.
3. The MHCRC may consider additional special appropriations of funds as may be requested by the Grantee from time to time.
4. The MHCRC 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 local governments to require cable operators to obtain a cable services franchise agreement for use of the public right-of-way, and to, among other things, pay a PEG/I-Net Fee for such use. The MHCRC and Grantee agree to negotiate modifications to this Agreement to account for any changes in such federal, state, or local law which impair the MHCRC's ability to comply with the funding obligations set out in Article IV(A) or impair Grantee's ability to provide the Scope of Work set out in Exhibit A. If no agreement is reached on such modifications, then the Parties may agree to early termination of this Agreement in accordance with Article V(D).

B. Grantee shall annually submit to the Grant Manager:

1. By April 1, a proposed budget for the succeeding fiscal year; and

2. By June 30, a budget adopted by Grantee's Board of Directors.
 3. The budget shall include, at a minimum:
 - a. Actual revenues and expenditures, by line item, for the past two 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 Article IV(A) will be used to support the Scope of Work in Exhibit A.
 4. The budget shall be in a format acceptable to the Grant Manager. If the Grant Manager wishes to require any changes from a current budget format, the Grant Manager will notify Grantee of the required changes no less than forty-five (45) calendar days prior to the due date for budget submission.
 5. Prior to February 1 of each year, the Grant Manager shall provide to Grantee a projection of the annual funding provided under Article IV(A) for the succeeding fiscal year.
 6. Grantee shall submit to the Grant Manager any amendments or revisions to the budget within ten (10) business days of approval by Grantee's Board of Directors.
- C. Prior to July 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:
1. That the budget fails to support the Scope of Work described in Exhibit A or requirements under Article III;
 2. That funds or assets the Grantee has received or is to receive from the MHCRC, or from or on account of a Cable Franchise, will be spent or applied for purposes unrelated to the Scope of Work in Exhibit A;
 3. That funds the Grantee has received or is to receive from the MHCRC, or from a Cable Franchise, will be endangered by waste, substantial damage, destruction, foreclosure or other similar jeopardy without sufficient, reasonable explanation or justification therefore; or,
 4. 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 Grantee's planned expenditures.

- D. If at any time the Grant Manager determines that one or more of the conditions listed in Article IV(C)(1-4) exists, then notice of such determination together with recommended action shall be given to the Grantee and MHCRC.
- E. Upon disapproval of the Grantee's budget as provided in Article IV(C), or on a determination by resolution of the MHCRC confirming a determination of the Grant Manager under Article IV(D), the MHCRC may impose reasonable terms on the expenditure of the funds provided to Grantee in Article IV(A) to protect against such fiscal deficiencies pending correction thereof by the Grantee.

ARTICLE V. ENFORCEMENT

A. Compliance Remedies.

1. If the Grant Manager reasonably determines Grantee's performance is inconsistent with any requirements of this Agreement, then the Grant Manager shall provide written notice of such determination to Grantee, with a copy to the MHCRC. Grantee shall have thirty (30) calendar days after receipt of the notice to cure the inconsistency and document such cure to the Grant Manager. The Grant Manager may shorten the cure period only in the event that funds are being misapplied or wasted. The Grant Manager may lengthen the cure period if Grantee demonstrates a good faith effort to cure and the time period to cure may reasonably require a longer period. If, after the cure period, the Grant Manager reasonably determines that Grantee's performance is inconsistent with the requirements of this Agreement, the MHCRC may direct one or more of the following compliance tools be implemented until the MHCRC determines that the Grantee's performance is consistent with the requirements of this Agreement:
 - a. Undertake a MHCRC audit or review of Grantee's records in accordance with Article III(H)(2).
 - b. Reduce or suspend quarterly payments to Grantee. Funds withheld by the MHCRC may be used to support an audit or review in accordance with Article III(H)(2);
 - c. Require Grantee to return to the MHCRC all or any portion of funds received by Grantee under this Agreement that have been determined to have been spent outside of the scope or the requirements of this Agreement;
 - d. Terminate this Agreement in accordance with Article V(B).
2. Any funds withheld in accordance with Article V(A)(1)(b) may be released to the Grantee, net of any funds used under Article V(A)(1)(b), after the MHCRC is reasonably satisfied that Grantee's performance inconsistencies have been satisfactorily remedied and Grantee is in substantial compliance with the requirements of this Agreement.
3. a. If a Cable Franchisee audit under Article III(H)(3) becomes final, determining

that PEG/I-Net Fee funds received by Grantee have not been used in accordance with restrictions of the applicable Cable Franchise, then, with 30-calendar days prior notice to Grantee, the MHCRC may require that Grantee expend non-capital funds to achieve the stated purposes of the PEG/I-Net Fee funds not spent in accordance with the Cable Franchise; or, upon demand by the MHCRC, Grantee shall return to the MHCRC the full amount of funds not spent in accordance with the applicable Cable Franchise; or

- b. If the MHCRC determines that Grantee does not have access to sufficient non-capital funds, the MHCRC may directly reimburse the Cable Franchisee to account for the amount not spent by Grantee in accordance with the Cable Franchise, and exercise such remedies or take such steps as the MHCRC deems appropriate to provide for repayment or re-crediting of such funds to the MCHRC by Grantee.
- B. Termination for Cause. It shall be cause for termination of this Agreement if Grantee uses grant funds outside the scope of this Agreement, or if Grantee fails to substantially comply with any other requirements under this Agreement. The MHCRC shall provide written notice to Grantee of such termination with a termination date no sooner than thirty (30) calendar days after receipt of the written notice by Grantee.
1. Upon notice of termination, the MHCRC is under no obligation to continue providing grant funds.
 2. Upon notice of termination, Grantee shall not spend unused grant funds except as provided in Article V(B)(3) and Grantee is not authorized to perform services or take actions that would require the MHCRC to pay additional grant funds to Grantee.
 3. The Grantee acknowledges that through the funding provided by the MHCRC under this and prior agreements, and due to the nature of the services provided by Grantee to benefit the citizens of the Jurisdictions, the MHCRC is a stakeholder with respect to the Grantee. In the event of termination in accordance with Article V(B), 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 MHCRC so directs by resolution, the Grantee shall, after paying or making provision for payment of outstanding debts and obligations, pay to the MHCRC any unexpended funds received by the Grantee at any time from the MHCRC, or from a Cable Franchise, and shall transfer into trust, subject to existing liens and encumbrances, with the MHCRC serving as trustee and beneficiary (the "Trust"), 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. In the event such a transfer is required, the MHCRC and Grantee shall execute all necessary and appropriate documents to acknowledge the transfer and Trust's ownership and control of such assets. The Trust shall be established to preserve, and shall preserve, the assets until a new public benefit corporation with a similar mission to Grantee is incorporated and enters an agreement similar to this Agreement with the MHCRC, at which point the MHCRC shall release the Trust assets to the new public benefit corporation on the MHCRC's behalf,

- pursuant to a grant agreement or similar agreement executed by the public benefit corporation and the MHCRC. Grantee may present, at the time of the MHCRC's consideration of such transfer of assets into the Trust, proposals for alternatives to such transfer of assets. In the event of termination by the MHCRC, by agreement or for convenience, or upon non-renewal of this Agreement, the MHCRC forfeits its role as stakeholder and releases any claim it may have to Grantee assets, including any claim of ownership interest in real or personal property.
4. In the event of termination in accordance with Article V(B), 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.
 5. Nothing herein shall entitle the MHCRC to recover funds or assets the Grantee acquired from sources other than the MHCRC or from a Cable Franchise; nor shall the MHCRC be entitled to any funds or assets that the recovery of which would prevent full payment of amounts owing to creditors of the Grantee.
 6. Termination by Agreement or for Convenience. The MHCRC and Grantee may terminate this Agreement at any time by mutual written agreement.
- C. The MHCRC shall not consider the content of Grantee's 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 under Article IV(A), the adequacy of the Grantee's budget under Article IV(C), or the termination of this Agreement in accordance with Article V(B).

VI. GENERAL GRANT PROVISIONS

- A. Amendments. The Grant Manager may execute amendments to this Agreement, provided the changes do not increase MHCRC's financial risk. Amendments increasing the MHCRC's financial risk or the amount of the grant funds under Article IV(A) must be approved by the MHCRC. Amendments must be in writing and executed by the authorized representatives of the parties and approved as to form by the MHCRC's legal counsel.
- B. Non-Discrimination. In carrying out activities under this 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, 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 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, age, handicap, familial status, sexual orientation or national origin. Grantee shall incorporate the foregoing requirements of this paragraph in all its agreements for work funded under this Agreement.

C. Indemnification.

1. Grantee shall indemnify, defend and hold harmless the MHCRC, and the MHCRC's officers, agents and employees, from any liability for claims, damages, costs, expenses, demands, actions, and suits, including without limitation copyright infringement, defamation, and any other claims (including court and appeal costs and reasonable attorney fees) brought against any of them, arising from the Grantee, its agents or employees' work under this Agreement, or by reason of any negligence or omission by the Grantee, its agents or employees, but not if arising out of any negligence or willful misconduct by the MHCRC, their officers, agents or employees. Except where the Grantee is primarily at fault under common law principles, the Grantee's obligation under this paragraph shall not apply to claims, demands, actions or suits arising from the City of Portland's Government Access cablecasting activities under this Agreement. The MHCRC shall provide Grantee prompt notice of any claim which the Grantee shall defend with counsel of its own choosing. No settlement or compromise of such claims will be done without the prior written approval of the MHCRC, which approval shall not be unreasonably withheld. Grantee shall consult and cooperate with the MHCRC while conducting its defense of the MHCRC, and the MHCRC shall fully cooperate with Grantee.
2. The MHCRC shall not be liable for any obligations incurred by the Grantee. The Grantee shall not represent to any person that the MHCRC is liable for any of Grantee's obligations.

D. Insurance

Grantee shall obtain and maintain in full force at its expense, throughout the duration of the Agreement and any extension periods, the required insurance identified below. The MHCRC reserves the right to require additional insurance coverage as required by statutory or legal changes to the maximum liability that may be imposed on Oregon cities during the term of this Agreement.

1. Workers' Compensation Insurance.

- a. Grantee, its contractors, if any, and all employers working under this Agreement, are subject employers under the Oregon Workers' 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 will maintain workers' compensation insurance coverage for the duration of this Agreement.
- b. In the event Grantee's workers' 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. Grantee will provide the MHCRC with certification of workers' compensation insurance renewals, as such insurance renewals occur.

2. Commercial General Liability Insurance.

Grantee shall maintain commercial general liability and property damage insurance that protects Grantee and the MHCRC and its officers, agents and employees from all claims, demands, actions and suits for damage to property or personal injury, including death, arising from Grantee's work under this Agreement. Grantee's insurance shall also name as additional insureds the cable franchisees, as required under the Cable Franchises, with respect to any claim for injury, damage, loss, liability, cost or expense arising from programming or other transmission placed by Grantee on PEG access channels or the Cable Franchise Institutional Network (but not if arising out of any act done by the cable franchisee or its officers, agents or employees).

The insurance shall provide coverage for not less than \$1,000,000 per occurrence and an aggregate limit of not less than \$2,000,000. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the MHCRC 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-calendar days' written notice first being given to the MHCRC. If the insurance is canceled or terminated prior to termination of the Agreement, Grantee shall provide a new policy with the same terms. Grantee agrees to maintain continuous, uninterrupted coverage for the duration of the Agreement.

3. Automobile Liability Insurance. Grantee shall have automobile liability insurance with coverage of not less than \$1,000,000 each accident. The insurance shall include coverage for any auto or all owned, scheduled, hired and non-owned autos. This coverage may be combined with the commercial general liability insurance policy.
4. Equipment Insurance. Grantee shall maintain insurance for all equipment and facilities, including fixtures, funded in whole or in part under this Agreement to replacement cost. This coverage may be combined with the commercial general liability insurance policy, at a minimum, insurance against loss or damage beyond the user's control, theft, fire or natural catastrophe. The MHCRC will be named as an additional insured on the policies for such insurance. The proceeds of such insurance will be applied to the replacement, restoration or repair of equipment and facilities, including fixtures.

5. Cablecaster's Errors and Omission Insurance. Grantee shall maintain insurance to cover the content of productions which are cablecast on an access channel in, at minimum, the following areas: libel and slander; copyright or trademark infringement; infliction of emotional distress or invasion of privacy; plagiarism; misuse of musical or literary materials. This policy shall not be required to cover individual access producers.
 6. Directors' and Officers' Liability Insurance. Grantee shall maintain directors' and officers' liability insurance with coverage in an amount of not less than \$1,000,000, subject to a reasonable deductible which shall be determined by Grantee's Board of Directors.
 7. Officers', Directors', Trustees' and Employees' Fidelity Insurance. Grantee shall maintain fidelity insurance for all officers, directors, trustees and employees of the Grantee and all other persons handling or responsible for grant funds paid to or administered by the Grantee. The total amount of fidelity insurance coverage required shall be in an amount of the greater of either: (1) \$1,000,000; or, (2) the total sum of grant funds provided to Grantee in a fiscal year quarter during the prior calendar year. Such fidelity insurance shall name the Grantee as obligee and shall contain waivers by the issuers of the insurance of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The insurance shall provide that it may not be canceled or substantially modified (including cancellation for nonpayment of a premium), without at least 10-business days' prior written notice to the MHCRC.
 8. Continuous Coverage; Notice of Cancellation. Grantee shall maintain continuous, uninterrupted coverage for the duration of the Agreement. There shall be no termination, cancellation, material change, potential exhaustion of aggregate limits or non-renewal of coverage without 30-calendar days' written notice from Grantee to MHCRC. If the insurance is canceled or terminated prior to termination of the Agreement, Grantee shall immediately notify MHCRC and provide a new policy with the same terms. Any failure to comply with this clause shall constitute a material breach of the Agreement and shall be grounds for immediate termination of this Agreement.
 9. Certificate(s) of Insurance: Grantee shall provide proof of insurance through acceptable certificates of insurance and a CG 2026 additional insured endorsement form (or an equivalent blanket additional insured form) to MHCRC on or before execution of the Agreement and prior to any commencement of work or delivery of goods or services under the Agreement or initial payment of grant funds. The certificate(s) will specify all parties endorsed on the policy as Additional Insureds (or Loss Payees). Insurance coverages required under this Agreement shall be obtained from insurance companies acceptable to MHCRC. MHCRC reserves the right to require, at any time, complete and certified copies of the required insurance policies evidencing the coverage required.
- E. Grantee's Contractor; Non-Assignment. If Grantee utilizes contractors to complete its work under this 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 Agreement as specified in this Agreement. However, Grantee shall remain obligated for full performance hereunder, and the MHCRC shall incur no obligation other than its obligations to Grantee hereunder. This Agreement shall not be assigned or transferred in whole or in part without prior written approval of the MHCRC.

- F. Independent Contractor Status. Grantee, and its contractors and employees, are not employees of the MHCRC and are not eligible for any benefits through the MHCRC, including without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits. Grantee will be responsible for any federal, state or local taxes and fees applicable to payments hereunder.
- G. Oregon Laws and Forum. This Agreement shall be construed according to the laws of the State of Oregon without regard to its provisions regarding conflicts of law. Any litigation between the MHCRC and Grantee arising under this Agreement or out of work performed under this Agreement shall occur in Multnomah County, and if in the federal courts, in the United States District Court for the State of Oregon.
- H. Compliance with Law. Grantee and all persons performing work under this Agreement shall comply with all applicable federal, state and local laws and regulations. Grantee shall maintain its nonprofit and tax-exempt status during this Agreement.
- I. Severability. The MHCRC and Grantee agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- J. Merger. This Agreement contains the entire agreement between the MHCRC 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 Agreement that are not contained herein.
- K. Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement and the Agreement may only be enforced by the parties.
- L. Electronic Transaction; Counterparts. The parties agree that they may conduct this transaction, including any amendments, by electronic means, including the use of electronic signatures. This Agreement, and any amendment, may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

SIGNATURES:

**Mt. Hood Cable Regulatory
Commission**

GRANTEE

Name:

Title:

Name: Justen Harn

Title: Executive Director
Portland Community Media
(ABN: Open Signal)

Open Signal/MHCRC Capital Grant Agreement – Draft

Exhibit A: Scope of Work

Grantee shall allocate grant funds and other resources as follows:

A. Access to Technology

- Provide underrepresented populations, low-income residents, and non-profit organizations access to media and broadband content-production tools, which consider the unique barriers for these populations to produce media content, including, but not limited to, ease of use, level of technology literacy, geographic availability, and disability challenges.
- Provide content sharing and distribution across multiple platforms and technologies.
- Ensure technology provided for career-ready internships is relevant to technology being used in digital economy jobs.

B. Video Distribution

- Portland City Government Programming
 - *Government Access Channels*: Program the cable channels provided as government access channels through the Cable Franchises. Grantee shall have scheduling control over government access channels. Grantee shall serve as the point of origination for government access channels under the Cable Franchises.
 - *Portland City Council Meetings and Budget Forums*: Own, maintain, and insure the following equipment at the Portland City Hall to enable the production, in a high definition format, of gavel-to-gavel video coverage and live cablecast of regular City Council meetings and sessions, including City Council work and budget sessions:
 - City Hall Council Chambers video cameras;
 - City Hall video control room components (video and audio capture, switcher, audio mixer, monitors, video processors, system wiring, equipment rack, etc.) to produce video programs and encode the video signals; and
 - City Hall communications room cable television encoder that transmits video signal to Grantee headend.
 - *Portland City Council Community Budget Forums*: For those Portland budget forums where video coverage is requested and are not conducted in the City Hall Council Chambers, provide the following mobile equipment:
 - Audio system, with microphones and speakers;

- Projection system, with a projector and screen;
 - Video production equipment, including closed captioning encoder; and
 - Distribution equipment to transmit video signal to Grantee headend for cable channels, if transmission capability provided at the venue by a cable company, and for web streaming over the Internet if an adequate Internet connection is made available by the venue.
- Public Access Channels

Program the cable channels provided as public access channels through the Cable Franchises. Grantee shall schedule programming on such channels in accordance with reasonable and nondiscriminatory policies and procedures, 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 Franchises.
 - Video on Demand

Enable local programming to be transmitted to the cable franchisee's video-on-demand (VoD) platform. The VoD platform shall not be considered a public access resource under this Agreement.
 - Live Origination Sites

Manage the transmission of programming from live origination sites as provided under the Cable Franchises.
 - Access Channel Interconnects

Manage the use of access channel interconnections provided under the Cable Franchises.

C. Cable Franchise Support

- Provide technical expertise to the City of Portland and the MHCRC to assist with regulatory oversight of access requirements described in the Cable Franchises and community needs ascertainments and related access requirements for franchise renewals.
- Develop and maintain any necessary operating agreements with cable franchisees resulting from Grantee's status as a designated community media provider, consistent with the requirements of the Cable Franchises.

Open Signal/MHCRC Capital Grant Agreement - draft

Exhibit B: Grant Status Reports

- A. Grantee shall conduct training at least annually, in consultation with the Grant Manager, which informs and updates Grantee Board members and Grantee management staff about the funding, requirements, and relationships between and among Grantee, the MHCRC and the City under this Agreement and the Cable Franchises.
- B. Within 45 calendar days after the close of each 6-month period, Grantee shall submit to the Grant Manager a Grant Status Report in accordance with Agreement Article III(G)5, which shall contain at least the following information for the reporting period, unless otherwise approved by the Grant Manager:

1. Digital Inclusion and Training

- a. List of media education and digital literacy trainings and the technology competencies or learning indicators applicable to the training, including topics and number of trainings offered; number and demographics of persons attending; and number, percentage and demographics of persons certified.
- b. Description of additional media education and digital literacy services provided, including a list of the organizations served and the number and demographics of individuals accessing the services and/or of the target constituency of the organization receiving the services.
- d. Description of ongoing processes to assess and identify target populations' needs and to use this data for program and service design and offerings and for acquisition of programming.
- e. Description of efforts to tailor, adjust or change media education and digital literacy services to be responsive to target populations' needs, including data used to inform the changes.
- f. Description of internships provided and structure of internship program.
- h. A list representative of the programs which demonstrate Grantee's acquisition, production and/or distribution of programming content with wide range of community perspectives, including those of groups that have historically been misrepresented or under-represented in traditional media.

2. Content and Video Distribution

- a. The total number of government meetings videotaped and number of hours of government programming cablecast on the Government Access Channel, including both in its original cablecast and any repeated playback:
 - Produced by the Grantee or through Grantee's facilities;

- Acquired from government entities; and
 - Acquired and sponsored by Grantee from local and non-local sources.
- b. For each channel dedicated for Public Access Programming, the percentage of time averaged over the reporting period that the following types of programming were cablecast on the channel, including both in its original cablecast and any repeated playback:
- Produced through Grantee's facilities,
 - Acquired from local Metro Area sources;
 - Acquired from non-local sources; and
 - Generated by a bulletin board, event listings, program listings or other types of character generated listings.
- c. The total number of new programming (in its first-run playback) cablecast by Grantee on all Access channels, and related total hours broken out by original cablecast and repeat playback during, for the following types of programming:
- Produced using Grantee's facilities and/or equipment;
 - Created within the local Metro Area, utilizing minimal Grantee resources for production;
 - Created outside the Metro Area, utilizing little or no Grantee resources for production; and
 - Generated on a bulletin board for community groups' events and services listings, including number of distinct groups served by this programming.
- d. List of video-on-demand programming, including title, program description, average number of hours per month provided by Grantee, and whether the programming was produced by the Grantee, through Grantee's facilities or acquired from another source.
- e. Grantee's criteria for selecting programming to be provided on Cable Franchisee's video-on-demand platform.
- f. List of live origination sites used and programming activity from the sites.
- g. A description of Grantee's activities to manage and participate in programming of the community access network (CAN) channel.