

## GRANT AGREEMENT NO.

This Grant Agreement is between the Mt. Hood Cable Regulatory Commission ("MHCRC") and MetroEast Community Media, an Oregon nonprofit public benefit corporation ("Grantee").

### 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 communities of color and other marginalized populations face disparities in using and accessing media, technology and broadband which, among other things, may lead to inequities in opportunities for education, civic engagement and workforce development. The MHCRC anticipates that Grantee's services will aid the MHCRC in addressing these inequities through the term of this Agreement.
3. The cities of Gresham, Troutdale, Fairview and Wood Village and Multnomah County ("Jurisdictions") have 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 Jurisdictions have entered into an intergovernmental agreement, which among other things, delegates responsibility to the MHCRC for ensuring compliance with PEG Access Cable Franchise requirements, overseeing and allocating certain PEG Access resources, and entering into grant agreements as necessary to accomplish the general purposes of the MHCRC IGA. The MHCRC shall perform these responsibilities in regard to this Agreement.
5. In accordance with its authority under the MHCRC IGA, the MHCRC may designate PEG Access providers to control and manage the use of any or all PEG Access resources provided under the Cable Franchises. Under this Agreement, the MHCRC designates Grantee as a PEG Access provider, and assigns control and management of certain PEG Access resources provided under the Cable Franchises.
6. Under the MHCRC IGA, the Jurisdictions have agreed to provide operational funds to Grantee in an annual amount equal to sixty percent (60%) of the franchise fees collected by the MHCRC on behalf of the Jurisdictions, and Capital funds subject to the terms and conditions of this Agreement. Funds are anticipated to be available for this purpose in the MHCRC's budget, subject to annual appropriation by the Jurisdictions.

7. The MHCRC may collect a fee to resource the compliance work required to ensure that the Capital projects funded by Access Corporation Capital funds comply with the Cable Franchises for expenditure of Capital funds. The Grantee may choose to categorize the fee as a capital expenditure for a capital project, consistent with its accounting policies and as documented in its accounting records and books.
8. The MHCRC and Grantee have reached agreement regarding the allocation and level of PEG Access resources under the Cable Franchises designated for use by the Grantee; the scope of work to be undertaken by Grantee; and oversight and monitoring conditions, the reporting requirements, and accountability mechanisms to ensure PEG Access resources and operating and Capital grant funds under this Agreement are appropriately managed and spent in accordance with the requirements of this Agreement.

**AGREED:**

**I. DEFINITIONS**

- A. "Access" means the availability for use of a cable system and associated resources by various agencies, institutions, organizations, groups and individuals in the community to acquire, create, and distribute Programming not intended to generate income which may be subject to federal, state, or local income taxes and not under the Cable Franchisee's editorial control, including, but not limited to:
  1. "Public Access" means Access where organizations, groups or individual members of the general public on a nondiscriminatory basis are the primary users of Access resources and have editorial control over the Programming;
  2. "Educational Access" means Access where educational institutions are the primary or designated users of Access resources and have editorial control over the Programming;
  3. "Government Access" means Access where governmental institutions are the primary or designated users of Access resources and have editorial control over the Programming; and;
  4. "PEG Access" means Public Access, Educational Access, and Government Access, collectively.
- B. "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.
- C. "Fiscal Year" means the period consisting of a full year, beginning July 1 and ending June 30, unless otherwise provided in this Agreement.
- D. "Mt. Hood Cable Regulatory Commission" or "MHCRC" means the cable regulatory commission created through an Intergovernmental Agreement to which the Jurisdictions are parties, or the MHCRC's successors and assigns as designated by the Jurisdictions.

E. "Section" means a provision of this Agreement, unless otherwise specified.

## II. SCOPE OF WORK

In consideration of the grant funds and other resources provided by MHCRC to Grantee under this Agreement, Grantee agrees to allocate and spend such grant funds and other resources to perform the scope of work as follows:

- 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, and youth to examine media critically and use media and broadband technology competently.
  2. Engage ethnically and culturally diverse, historically underrepresented and non-English speaking communities in the creation, distribution and use of media and Internet content.
  3. Provide local, diverse video content for sharing and distribution across multiple platforms and technologies.
  4. Ensure the public has fair and equitable access to and use of the Public Access channels and other resources provided under this Agreement.
  5. Build multimedia literacy among youth that emphasizes education and community engagement.
  6. Provide local government programming to promote civic dialogue on issues of importance to community members and their governments.
  7. Provide local access to new media and broadband technologies for content creation and distribution.
  8. Work with other organizations to build community media capacity and digital literacy throughout the County.
  9. Cooperate with the Jurisdictions' authorized emergency management agency regarding the dissemination of disaster preparedness information and communication of emergency messages to the public through Grantee channels and facilities.
  10. Maintain generally accepted accounting, budgeting, and business systems and practices for the operation, protection, investment, oversight and management of the resources provided by the MHCRC to the Grantee under this Agreement.

B. Scope of Services. Grantee shall:

1. Manage the transmission of Programming, including the transition to high definition (HD) channel signals, on cable channels provided as Government Access channels through the Cable 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 Franchises.
2. Produce local government programming in partnership with Jurisdictions and other local governmental and quasi-governmental units.
3. Produce and cablecast Jurisdictions' city council and county commission regular meetings, live and videotaped from the Jurisdiction's respective regular meeting location.
  - a. On the effective date of this Agreement, Wood Village City Council has not opted to cablecast its Council meetings. Grantee shall produce and cablecast the Wood Village City Council regular meetings from its city hall within a reasonable amount of time, considering capital and operational requirements and costs to meet such request.
  - b. In order for Grantee to produce and cablecast Programming under Section II (B)3, Grantee must house certain production assets at the Jurisdictions' meeting locations. Grantee shall own, insure and maintain such production assets. The Jurisdictions have separately agreed with Grantee to provide secure, adequate space for the equipment at the Jurisdiction's regular meeting location.
4. Manage the transmission of Programming, including the transition to high definition (HD) channel signals, on cable channels provided as Public Access channels through the Cable Franchises. Grantee shall schedule Programming on such channels in accordance with the policies and procedures required under Section II (B)6, 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.
5. Maintain accessible multi-media content production equipment and facilities for Public Access use by individuals and organizations, including a mobile video production unit which will allow for remote video productions Countywide.
6. 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.
7. Provide media education instruction to individuals residing within the Jurisdictions about methods to effectively create media content and use production equipment.

8. Provide media education and digital literacy services which engage underrepresented and marginalized populations and take into account the expertise, needs and schedule requirements of the targeted population. For example, services could include, among other areas, equipment use, creation and distribution methods for media and online content, and media and digital literacy.
9. Manage the transmission of Programming, including the transition to high definition (HD) channel signals, on cable channels provided as Educational Access channels through the Cable Franchises. Grantee shall have scheduling control over the Educational Access channels. Grantee shall also serve as the point of origination for Educational Access channels under the Cable Franchises.
10. Partner with local school districts, schools and nonprofit organizations serving youth to produce programming, and provide media education and digital literacy services specifically designed to be inclusive of underrepresented and marginalized youth populations.
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. Coordinate and provide local programming for distribution on the Cable Franchisee's video-on-demand (VoD) platform. The VoD platform shall not be considered a Public Access resource under this Agreement. A total of 13 hours shall be available to Grantee at any given time for programming on Cable Franchisee's VoD platform. Grantee shall ensure that it provides programming to fulfill at least 11 of the 13 hours at all times. If the MHCRC determines that the VoD hours are not being effectively used by Grantee to provide local programming, the MHCRC may reduce the hours available to Grantee on the Cable Franchisee's VoD platform.
13. Manage the transmission of Programming from live origination sites provided under the Cable Franchises.
14. Manage the use of Access channel interconnections provided under the Cable Franchises.
15. Develop its infrastructure, both technically and organizationally, to keep pace with significant changes in interactive capabilities, distribution mediums and platforms, and web-based technologies.
16. Provide technical expertise to the MHCRC and the MHCRC to assist with the oversight of Access requirements as provided under the Cable Franchises.

17. Cooperate with the Jurisdictions and Cable Franchisees as necessary in emergency preparedness, including appropriate community emergency notification systems and emergency message distribution, subject to applicable federal and state laws. At the Jurisdictions' request, Grantee shall provide to the Jurisdictions emergency management agency the contact information for authorized representatives of Grantee who are available 24 hours per day, 365 days per year, in order to coordinate distribution of emergency notices and messages.
18. Develop and maintain any necessary operating agreements with Cable Franchisees resulting from Grantee's status as a designated Access provider, consistent with the requirements of the Cable Franchises.
19. 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 not transmit Programming intended to generate income, which may be subject to federal, state or local income taxes, over the Access channels designated to Grantee under this Agreement.
20. Conduct training at least annually, in consultation with the MHCRC and 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 Jurisdictions under this Agreement and the Cable Franchises.

C. Community Needs Assessment and Strategic Plan.

1. Grantee shall conduct a community needs assessment at least every two years. The purpose of the assessment is to determine the nature, degree and scope of issues and needs of the Jurisdictions' 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. The Grantee may use research and surveys conducted by other organizations as supplemental information to Grantee's assessment.
2. Grantee shall submit to the MHCRC the results of Grantee's community needs assessment and a strategic plan responsive to assessment results and to support the objectives of this Agreement.

**III. SPECIFIC CONDITIONS OF THE GRANT**

- A. Grant Manager: Under this Agreement, the MHCRC has assigned the City of Portland's Director of the Office for Community Technology (OCT) or the Director's designee to be its representative and agent to oversee and manage the terms of this Agreement ("Grant Manager"). The Grant Manager is authorized to approve work, billings and invoices submitted pursuant to this Agreement and to carry out all other MHCRC actions referred to herein in accordance with this Agreement.

B. 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 member 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 any and all relevant materials distributed prior to, at or subsequent to such meetings.
3. The MHCRC member of Grantee's Board of Directors 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. Upon reasonable request by the Grant Manager, Grantee shall provide the MHCRC member of Grantee's Board of Directors and Grant Manager with copies of all relevant information regarding Grantee's financial affairs, internal business affairs, accounting and inventory systems.
5. Grantee accepts and agrees that the Grant Manager or the MHCRC-appointed member of Grantee's Board of Directors may request MHCRC review of Grantee Performance Indicators and potential implementation by the MHCRC of Remedies under Section V (B) if the Grant Manager or the MHCRC-appointed member of Grantee's Board of Directors, upon reasonable information and belief, report to the MHCRC that Grantee's performance is or may be materially inconsistent with the requirements of this Agreement.

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

1. Emailed in accordance with Section III (C)3; or,
2. 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) or sent by courier (return receipt requested) addressed as follows, or to such other address as the receiving party hereafter shall specify to the sending party in writing:

If to the Grantee:  
Executive Director  
MetroEast Community Media  
829 NE 8th St  
Gresham, OR 97030

If to the Grant Manager/MHCRC:  
c/o Director  
Office for Community Technology  
Mt. Hood Cable Regulatory Commission

1120 SW Fifth Ave.  
Portland, OR 97204

3. Either party may specify receiving notices under this Agreement by email. If email addresses are specified, copies of notices shall be sent to the receiving party's email addresses. 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.
- D. Program and Fiscal Monitoring. The Grant Manager shall monitor Grantee to assure Grantee compliance with this Agreement. 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 this Agreement. Grantee shall fully cooperate with the Grant Manger in connection with such monitoring. The frequency, level and scope 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 in accordance with its terms and conditions.
- E. 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 Grant Manager, initially and within 10 business days of any change, current documentation of Grantee's tax-exempt status under the Internal Revenue Code.
  2. Grantee shall provide the Grant Manager, initially and within 10 business days of any change, copies all current operating agreements with Cable Franchisees under Section II (B)19.
  3. Grantee shall provide the Grant Manager, initially and within 10 business days of any change, a copy of current policies and procedures under Section II (B)6.
  4. Activity Reports. Within 45 days after the close of each Fiscal Year 6-month period, the Grantee shall submit an activity report to the Grant Manager in a format subject to approval by the Grant Manager. Such approval shall not be unreasonably withheld. 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 Grant Manager:
    - a. 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.



- b. For each channel dedicated for Government 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 by the Grantee or through Grantee's facilities;
  - Acquired from government entities; and
  - Acquired and sponsored by Grantee from local and non-local sources.
- c. For each channel dedicated for Educational 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 by the Grantee or through Grantee's facilities;
  - Acquired from educational entities; and
  - Acquired and sponsored by Grantee from local and non-local sources.
- d. The total number of new programming (in its first-run playback) cablecast by Grantee on all Access channels during the reporting period, and related total hours broken out by original cablecast and repeat playback during the reporting period, for the following types of programming:
  - Produced using Grantee's facilities and/or equipment;
  - Created within the local Metro Area, utilizing at least 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.
- e. Government Programming produced under Section II (B)2 & 3, including hours and type of City Council programming.
- f. A list representative of the programs which demonstrate Grantee's acquisition and/or production of educational programming in partnership with local educational institutions.
- g. Number of hours the facilities and equipment are used by the public based on the hours available for public use.
- h. Total hours the mobile video production unit, under Section II (B)5, is checked out for use.

- i. Media education and digital literacy training classes, including topics and number of training workshops offered; the technology competencies or learning indicators applicable to the training curriculum; number and demographics of persons attending; and number and demographics of persons who achieved technology competencies and learning indicators.
- j. A 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 a list of the organizations served and the targeted constituency of the organization receiving the services.
- k. Description of media education and digital literacy services specifically serving youth, including topics and number of training workshops offered; the technology competencies or learning indicators applicable to the training curriculum; number and demographics of youth attending; and number and demographics of youth who achieved technology competencies and learning indicators.
- l. Adjustments or changes to media education topics or trainings responsive to training class evaluations.
- m. Description of outreach and engagement efforts specifically targeted for organizations serving underrepresented and marginalized populations and groups, and the results of those efforts. (For example: partnerships and collaborations with other groups, recruitment of bi-lingual and multi-cultural volunteers; bi-lingual and multi-cultural staff; use of materials in languages other than English; use of subtitles to reach identified populations).
- n. Description of efforts to tailor media education and digital literacy services to provide appropriate training and support for the production of culturally and linguistically appropriate media and digital content.
- o. List of activities, such as professional development trainings educational opportunities and events, engaged in by Grantee staff to increase multi-cultural competencies.
- p. Description of outreach and engagement efforts specifically targeted toward serving underrepresented and marginalized youth populations, and the results of those efforts.
- q. 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.

- r. 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.
  - s. Grantee's criteria for selecting programming to be provided on Cable Franchisee's video-on-demand platform.
  - t. List of live origination sites used and Programming activity from the sites under Section II (B)14.
  - u. A description of Grantee's activities to manage and participate in programming of the community access network (CAN) channel.
  - v. A description of Capital projects resourced, at least in part, from Capital funds provided under this Agreement which demonstrate pathways to upgrade current technologies and/or integrate new technologies into Grantee's services.
  - w. A description of any training for Grantee Board members and Grantee management staff in accordance with Section II (B)21.
5. Financial Reports. Within 75 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 and operating expenditures including, among other items:
- a. Sources and amount of revenue;
  - b. Capital expenditures (amount and percent of total), by budgetary line item, and capital expenditures made from capital funds received under Section IV (A)5;
  - c. Operating expenditures (amount and percent of total), by budgetary line item; and
  - d. Year-to-Date balance sheet.
6. Annual Capital Report. Within 75 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 shall contain information on Grantee's capital revenue and expenditures received and made 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.

#### G. Audits

1. Grantee Annual Financial Audit. Within 120 days after the close of each Fiscal Year, the Grantee shall submit to the Grant Manager two copies of 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 be fairly representative of 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 undertake a financial audit or review of the records of Grantee at any time upon reasonable prior notice. If such audit or review 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 MHCRC. Financial audits or reviews undertaken by the MHCRC under this Section will be conducted in accordance with generally accepted auditing standards. The Grant Manager shall promptly provide Grantee with written notice of the audit or review's conclusions.
3. Cable Franchisee Audits. As provided under the terms of a Cable Franchise to which the Jurisdictions are a party, 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.

#### H. 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 \$100,000.00.
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 \$100,000.00.

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.

I. Contributions of Cable Franchisees. Grantee shall work with the Grant Manager to ensure that the contributions of Access resources provided under the Cable Franchises are appropriately acknowledged.

#### IV. PAYMENTS

A. Subject to the terms and conditions of this Agreement, the MHCRC shall pay to the Grantee for work performed under this Agreement an annual Grant at the following funding levels:

1. Operational Funds. Subject to the terms and conditions of this Agreement, the MHCRC shall pay Grantee sixty percent (60%) of the franchise fee revenues received from the Jurisdictions' Cable Franchises in accordance with the MHCRC IGA.

2. Capital Funds.

a. Subject to the terms and conditions of this Agreement, the MHCRC shall pay to the Grantee a portion of the Access Corporation Capital funds received by the MHCRC derived from Cable Franchises. The total amount of Capital fund payments under this Section 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 IV (B)3(d). The annual payment amount for Capital funds under this Section is subject to acceptance by the MHCRC of the Grantee's Capital budget, final appropriation in the MHCRC's adopted annual budget, and Grantee's adherence to this Agreement.

b. Grantee shall pay the MHCRC a fee of not more than 15% of Grantee's expenditures for each Capital project funded by the Access Corporation Capital funds under Section IV (A)2. Such fee amount shall be determined by the MHCRC for each Capital project.

c. Grantee agrees to expend Capital funds provided under Section IV (A)2(a) only for Capital expenditures. Grantee shall account for the Capital funds under this Agreement separately in its books of accounts, maintain accurate documentation and inventory of assets acquired with Capital funds and follow appropriate procedures for purchasing, amortizing and disposing of such assets.

- d. The MHCRC may, notwithstanding the provisions of Section IV (A)2, accelerate any payments under Section IV (A)2 if justified by the GRANTEE.
3. The MHCRC may consider additional special appropriations of funds as may be requested by the Grantee from time to time.
4. The MHCRC shall make payments for annual funding under Section IV (A) on a quarterly basis within 60 days of the end of each Fiscal Year quarter.
5. 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 Jurisdictions to require cable operators to obtain a cable services franchise for use of the Jurisdictions' streets, and to pay franchise fees for such use as well as make PEG Capital contributions. The Parties agree to negotiate modifications to this Agreement to account for any changes in such federal or state law which impair the MHCRC's ability to comply with the funding obligations set out in Section IV (A) or impair Grantee's ability to provide the scope of services set out in Section II (B). If no agreement is reached on such modifications, then the Parties may agree to early termination of this Agreement in accordance with Section V (D).

B. Grantee shall annually submit to the Grant Manager:

1. By April 1, a proposed budget for the succeeding Fiscal Year for MHCRC review; and
2. By June 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 IV (A) will be used to support the Agreement Objectives and Scope of Services.
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, it will notify Grantee of the required changes no less than 45 days prior to the due date for budget submission.

5. Prior to February 1 of each year, the Grant Manager shall provide to the Grantee projections of the annual funding provided under Section IV (A) for the succeeding Fiscal Year.
  6. Grantee shall submit to the Grant Manager any amendments or revisions to the budget within 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 under Section II or performance indicators under Section V (A)2.
  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 Agreement's Scope of Services under Section II (B);
  3. That the Grantee's Capital expenditures under Section IV (B)3(d) do not adhere to the limitations set forth in this Agreement;
  4. 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 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, prudent 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 Grant Manager determines that one or more of the conditions listed in Sections IV (C)1-6 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 Section IV(C), or on a determination by resolution of the MHCRC confirming a determination of the Grant Manager under Section IV (D), the MHCRC may impose reasonable terms on the expenditure of the funds provided to Grantee in Section IV hereof, to protect against such fiscal deficiencies pending correction thereof by the Grantee.

## V. ENFORCEMENT

A. Material Requirements. The following terms and conditions constitute material obligations and requirements of Grantee under this Agreement. Enumeration of material these requirements in this Section is not intended to be exclusive, and shall not guide any contract interpretation to eliminate other requirements of this Agreement, if failure to perform would be a material breach by Grantee.

### 1. Financial Requirements.

- a. Submittal of Grantee's annual Capital Report, in accordance with Section III (F)6;
- b. Submittal of the annual financial audit under Section III (G)1;
- c. Separate accounting for Capital funds in accordance with Section IV (A)2(c) and generally accepted accounting principles;
- d. Submittal of quarterly financial reports, in accordance with Section III (F)5.
- e. Ongoing maintenance of Fixed Asset/Capitalization Policy in accordance with Section IV (A)2(c); and,
- f. Adherence to the inventory and asset disposal policy and process under Section IV (A)2(c).

### 2. Performance Indicators.

- a. Grantee insurance is current and consistent with the requirements of this Agreement;
- b. Minutes of all Grantee Board and committee meetings provided in a timely manner to Grant Manager and MHCRC appointee to Grantee's Board;
- c. Grantee monthly financial reports provided in a timely manner to Grant Manager and MHCRC appointee to Grantee's Board;
- d. Grantee Board packets and related meeting materials provided in a timely manner to the Grant Manager and to MHCRC appointee to Grantee's Board;
- e. Training conducted not less often than once annually for Grantee Board members and management staff, in accordance with Section II (B)16.

### B. Compliance Remedies.

1. If the Grant Manager or the MHCRC appointee to Grantee's Board of Directors reasonably determines Grantees' performance is inconsistent with any of the requirements of this Agreement then the Grant Manager shall provide written notice



of such determination to Grantee, with a copy to the MHCRC. The notice shall allow Grantee up to 30 days to cure the inconsistency and document such cure to the MHCRC or respond to the written notice. The Grant Manager may shorten the cure period 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 MHCRC reasonably determines that Grantee's performance is inconsistent with the requirements of this Agreement, then the MHCRC may direct one or more of the following compliance tools be implemented until Grantee's performance is determined to be consistent with the requirements of this Agreement:

- a. The MHCRC, either directly or through a designated representative, undertake a financial audit or review of the records of Grantee in accordance with Section III (G)2.
  - b. The MHCRC, either directly or through a designated representative, undertake a performance audit or review of Grantee.
  - c. Reduce or suspend quarterly Capital payments to Grantee, which have not yet been paid;
  - d. Reduce or suspend quarterly operating payments to Grantee, which have not yet been paid. Funds withheld by the MHCRC may be used to support an outside audit or review of Grantee financial or operating systems;
  - e. Require Grantee to return to the MHCRC all or any portion of funds received by Grantee under this Agreement; and,
  - f. Require Grantee to repay any Capital fund amount improperly expended to Grantee's separate Capital account under IV (A)2b.
2. Any funds withheld in accordance with V(B)1 may be released to the Grantee, net of any funds used under Section 6.2(C), 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 Section III (G)3 becomes final, determining that Capital funds received by Grantee have not been used in accordance with restrictions of the applicable Cable Franchise, then, with 30 days prior notice to Grantee the MHCRC may require that Grantee expend non-Capital funds to achieve the stated purposes of the Capital 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 Capital 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.

C. Termination for Cause. If, for any reason, Grantee substantially and continuously fails to materially comply with its obligations under this Agreement in a timely and proper manner, then after giving written notice thereof to Grantee and the failure of Grantee to cure within 30 days of such notice, or in the case of any matter that cannot by its nature be cured within 30 days, Grantee fails to commence to cure to the satisfaction of the MHCRC, the MHCRC shall have the right to terminate this Agreement 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.

1. During the 30-day period MHCRC is under no obligation to continue providing grant funds and Grantee is not authorized to perform services or take actions that would require the MHCRC to pay additional grant funds to Grantee.
2. During the 30-day period, Grantee shall not spend unused grant funds except as provided in Section V(C) 4 hereof.
3. The Grantee acknowledges that through the funding provided by the MHCRC under this and prior agreements, and the nature of the services provided to benefit the citizens of the Jurisdictions, the MHCRC is a stakeholder with respect to the Grantee with interests under the Grantee's articles of incorporation in the assets acquired by the Grantee through resources provided by the MHCRC under this and prior agreements. In the event of termination in accordance with Section V(C), or in the event the MHCRC does not extend this Agreement beyond the date set forth in Section VII, 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 pay to the MHCRC any unexpended funds received by the Grantee at any time from the MHCRC, or from or on account of a Cable Franchise, and shall transfer to the MHCRC 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 otherwise subject to pledge rights acknowledged by the MHCRC in accordance with Section III (H) of this Agreement, after provision is made for creditors of the Grantee, provided that the ownership or rights were obtained by the Grantee from the MHCRC or from or on account of a Cable Franchise or with funds received at any time from the MHCRC or from or on account of Cable Franchises. In the event such a transfer is required to be made to the MHCRC as above provided, Grantee shall execute all necessary and appropriate documents to acknowledge the MHCRC's ownership and control of such assets. Grantee may present, at the time of the MHCRC's consideration of such transfer of assets its proposals for alternatives to such transfer of such assets to the MHCRC.

4. Nothing herein shall entitle the MHCRC to recover funds or property the Grantee acquired from sources other than the MHCRC or from or on account of a Cable Franchise; nor shall the MHCRC be entitled to any funds or property that the recovery of which would prevent full payment of amounts owing to creditors of the Grantee.
  5. The MHCRC 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.
- D. Termination by Agreement or for Convenience. The MHCRC and Grantee may terminate this Agreement at any time by mutual written agreement. If the 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.

## VI. GENERAL GRANT PROVISIONS

- A. Amendments. The Grant Manager may execute amendments to the scope of the services or the terms and conditions of 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 Section 1V (A)1 must be approved by the MHCRC. Amendments increasing the amount of the Capital funds under Section IV (A)5 must be approved by the MHCRC. Amendments to this Agreement must be in writing and executed by the authorized representatives of the Parties and approved 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, 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 MHCRC 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 of its agreements for work funded under this Agreement, except agreements governed by Section 104 of Executive Order 11246.
- C. Records. Grantee shall maintain records, books, vendor receipts, evidence of payment for materials and services, time records, payment for program wages/salaries and benefits, general organizational and administrative information, documents, papers, and any other records of Grantee that are related to Grantee's performance under this Agreement.

Grantee shall provide the Grant Manager with prompt access to any and all such records. The MHCRC, 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 under this Agreement. Grantee shall retain these records for inspection, audit, and copying for at least four years after the close of any fiscal year.

D. Indemnification.

1. The Grantee shall indemnify, defend and hold harmless the Jurisdictions and the MHCRC, and the Jurisdictions' 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 or expenses) 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 or by reason of any negligence or willful misconduct by the Jurisdictions/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 Jurisdiction's Government Access cablecasting activities under this Agreement. The MHCRC shall provide Grantee prompt notice of any such 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 Jurisdictions or the MHCRC shall not be liable for any obligations incurred by the Grantee. The Grantee shall not represent to any person that the Jurisdictions or the MHCRC is liable for any of Grantee's obligations.

E. Workers' Compensation Insurance.

1. 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 will maintain worker's compensation insurance coverage for the duration of this Agreement.
2. 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. Grantee will provide the

MHCRC with certification of worker's compensation insurance renewals, as such insurance renewals occur.

F. Liability Insurance.

1. Grantee shall maintain public liability and property damage insurance that protects Grantee and the MHCRC 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 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 place by Grantee on PEG Access Channels or the Institutional Network (but not if arising out of or by reason of any act done by the Cable Franchisee or its officers, agents or employees).
2. The insurance shall provide coverage for not less than \$1,000,000 per occurrence and 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 days written notice first being given to the MHCRC. If the insurance is canceled or terminated prior to completion 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. 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 auto. This coverage may be combined with the commercial general liability insurance policy.
3. Grantee shall maintain on file with the MHCRC certificates of insurance required under this Agreement. The adequacy of the insurance shall be subject to the approval of the MHCRC legal counsel. Failure to maintain the required insurance shall be cause for immediate termination of this Agreement by the MHCRC.

G. 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. The insurance shall include, 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.

- H. 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, invasion of privacy; plagiarism; misuse of musical or literary materials. This policy shall not be required to cover individual access producers.
- I. Grantee shall maintain directors' and officers' liability insurance with coverage in an amount of not less than One Million Dollars (\$1,000,000), subject to a reasonable deductible which shall be determined by Grantee's Board of Directors.
- J. 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 with coverage in an amount of the greater of either: (1) One Million Dollars (\$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 premium,) without at least 10 days' prior written notice to the MHCRC.
- K. 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 thirty (30) 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.
- L. Contractors and Assignment. If Grantee uses contractors to perform any of 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. Grantee agrees that if Grantee's contractors are employed in the performance of this 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 Agreement in whole or in part or any right or obligation hereunder, without prior written approval of the MHCRC.
- M. Independent Status of Grantee. Grantee is independent of the MHCRC. 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 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.

- N. Oregon Laws and 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 MHCRC 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.
- O. Compliance with Laws. In connection with its activities under this Agreement, Grantee shall comply with all applicable federal, state, and local laws and regulations.
- P. Severability. The Parties 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.
- Q. Integration. 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.
- R. Third Party Beneficiaries. There are no third party beneficiaries to this Agreement. This Agreement may only be enforced by the parties.
- S. Assignment. This Agreement cannot be assigned or transferred by Grantee without the prior written permission of MHCRC.
- T. Publicity. Nothing in this Agreement implies MHCRC's endorsement or support of the viewpoints expressed on the Access channels. MHCRC reserves the right to request Grantee clarify MHCRC's disassociation or non-endorsement.

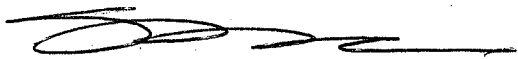
## VII. TERM OF GRANT


The term of this Agreement is from July 1, 2012, through June 30, 2017. 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, and shall remain in effect during any period for which Grantee has received MHCRC funds.

Dated this <sup>SD</sup> 18 day of JUNE, 20 12

**MHCRC**

**METROEAST COMMUNITY MEDIA**

  
Name: Sue Dicycle  
Title: Chair  
Date: 6/18/12

  
Name: Robert Bowling  
Title: CEO  
Date: 6/19/12

Approved as to Form

Benjamin Walters 6/18/12  
Legal Counsel for MHCRC