

185058

**AMENDMENT NO. 2**  
**GRANT AGREEMENT NO. 52904**  
**GRANT AGREEMENT (CITY/PORTLAND COMMUNITY MEDIA)**

Grant Agreement No. 52904 between the City of Portland and Portland Community Media is amended as follows:

1. Section 3.3 of the Agreement is amended by inserting a new subsection F, to read as follows:

(F) (1) Within 30 days of the effective date of this amendment, GRANTEE shall hire an outside, expert financial system consultant, from the Nonprofit Association of Oregon or an entity or individual of commensurate expertise, to conduct a detailed assessment of GRANTEE'S current financial systems and practices, including, but not limited to:

- Internal controls
- Inventory controls
- Financial systems
- Restricted capital fund controls
- Financial protocols and policies

The consultant shall file a report, including findings and recommendations, with the City no later than January 16, 2012. GRANTEE'S Board of Directors shall confirm to the City, in writing, that the consultant's recommendations have been implemented by February 9, 2012, including any necessary action by GRANTEE'S Board on any procedures and/or policies related to such recommendations.

(2) GRANTEE acknowledges that, prior or subsequent to the effective date of these amendments, the City may sequester Access Corporation Capital Costs fund payments under Section 3.3(A)(4) until such time as the City determines that GRANTEE has successfully concluded the conditions in Section 3.3(F). The City shall provide written notice to GRANTEE of any decision to sequester Access Corporation Capital Costs fund payments. GRANTEE waives all claims against the City in connection with City action to sequester payments under this section.

2. Section 4.1 of the Agreement is amended to read as follows:

**4.1 REMEDIES.**

(A) In addition to any rights set out elsewhere in this Agreement, or such other rights as may be available to the City under law or equity, the City reserves the right at its discretion to apply any of the following remedies, alone or in combination, in the event GRANTEE violates any material provision of this Agreement.

- (1) Commence litigation seeking recovery of monetary damages or specific performance of this Agreement, as such remedy may be available;
- (2) Reduce the duration of the term of this Agreement on such basis as is reasonable; or
- (3) Terminate this Agreement.

(B) **TERMINATION.** If, through any cause, GRANTEE shall fail materially to fulfill in a timely and proper manner its obligations under this Grant Agreement, or if GRANTEE shall violate any of the covenants, agreements, or stipulations of this Grant Agreement, the City shall have the right to terminate this Grant Agreement

as provided in Section 4.1(C) by giving written notice to GRANTEE of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination.

(1) During the 30-day period City is under no obligation to continue providing grant funds and GRANTEE is not authorized to perform services or take actions that would require the City to pay additional grant funds to GRANTEE.

(2) During the 30-day period, GRANTEE shall not spend unused grant funds.

(3) Section 3.3(C) notwithstanding, this Agreement may be terminated upon a determination by resolution of the City Council that:

a. Funds or assets the GRANTEE has acquired from the City or from or on account of a City cable services franchise are in immediate danger of waste;

b. After reasonable opportunity to do so, the GRANTEE has not complied with reasonable terms imposed by the City Council on the expenditure of funds by the GRANTEE as provided in Section 3.3(E);

c. After reasonable opportunity to do so, the GRANTEE has not remedied the deficiencies giving rise to the City Council determinations under Section 3.3(D) or Section 3.3(E); or

d. After reasonable notice and opportunity to do so, the GRANTEE has failed to remedy any violation by GRANTEE of a material provision of this Agreement.

e. In the event of termination by the City due to a breach by the GRANTEE, then the City may complete the work under this Agreement either itself, by agreement with a third-party provider, or by a combination thereof. In such circumstances, the GRANTEE shall cooperate in making available to the City or any provider access to equipment and facilities to avoid any interruption in services and programming.

(4) In the event of termination, or in the event the City does not extend this Agreement beyond the date set forth in Section 5.1, GRANTEE may use funds on hand for payment of costs reasonably incurred in performance of work under this Agreement prior to the termination date, including payment of employee payroll and outstanding contracts for services. If the City Council so directs by resolution, the GRANTEE shall pay to the City any unexpended funds received by the GRANTEE at any time from the City, or from or on account of a City cable services franchises, and shall transfer to the City title to all real and personal property owned by the GRANTEE and all leasehold or other rights held by GRANTEE in real and personal property not owned by GRANTEE, after provision is made for creditors of the GRANTEE, provided that the ownership or rights were obtained by the GRANTEE from the City or from or on account of a City cable services franchises or with funds received at any time from the City or from or on account of a City cable services franchises. The City may, at any time during this Agreement, require the GRANTEE to provide an inventory of all such property, and to provide periodic updates to such inventory.

(5) Nothing herein shall entitle the City to recover funds or property the GRANTEE acquired from sources other than the City or from or on account of a City cable services franchises; nor shall the City be entitled to any funds or property that the recovery of which would prevent full payment of amounts owing to creditors of the GRANTEE.

(C) The City shall not consider the content of Access Programming, including the GRANTEE's or a producer's choice of subject matter and the point of view expressed, in making any decision regarding the allocation or appropriation of

funds for the GRANTEE, the adequacy of the GRANTEE's budget, or the termination of this Agreement.

- (D) CAPITAL FUNDS. If there is a final determination that Capital funds provided under Section 3.3(A)4 of this Agreement have been expended for anything other than Capital expenses in accordance with the limitations set forth in the cable services franchises, then within 30 days, one of the following actions shall occur:
- (1) If the City determines that the recipient has access to sufficient unrestricted funds, the City may require either:
    - a. That the GRANTEE expend its unrestricted funds to achieve the stated purposes of the original PEG/I-Net funding not spent in accordance with the cable services franchises; or,
    - b. Upon demand, the GRANTEE shall return the full amount of the PEG/I-Net funding amount not spent in accordance with this Agreement to the PEG/I-Net funding account.
  - (2) If the City determines that the GRANTEE does not have access to sufficient unrestricted funds, the City may decide to directly reimburse the PEG/I-Net funding account for the amount not spent in accordance with this Agreement, and then reduce future payments GRANTEE to recapture these amounts.
  - (3) The decision as to any of these options to exercise shall be at the City's sole discretion.
- (E) GRANTEE shall not be relieved of its obligations to comply promptly with this Agreement by reason of any failure of the City to enforce prompt compliance. The City's failure to enforce shall not constitute a waiver of any term, condition, or obligation imposed upon the GRANTEE under this Agreement; nor a waiver of rights by the City or acquiescence in GRANTEE's conduct. A specific waiver of a particular term, condition, or obligation imposed upon GRANTEE under this Agreement shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation. The acts or omissions of Affiliates are not beyond the GRANTEE's control, and the knowledge of Affiliates shall be imputed to GRANTEE.
- (F) Subject to applicable law, the remedies provided for in this Agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any other available rights which might be available to the City under law or equity.
- (G) In addition to its other rights and remedies as set forth in this Franchise, the City shall have the right to terminate this Agreement one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the GRANTEE's business, whether in receivership, reorganization, bankruptcy or other similar action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:
- (1) Within one hundred and twenty (120) days after such appointment, the receiver or trustee shall have fully complied with all provisions of this Agreement and remedied any and all violations or defaults, as approved by the City; and
  - (2) Within said one hundred and twenty (120) days, such receiver or trustee shall have executed an agreement with the City, duly approved by the City and the court having competent jurisdiction, in which such receiver or trustee assumes and agrees to be bound by each and every provision of this Agreement.

2. All other terms and conditions of the Grant Agreement No. 52904 shall remain unchanged and in full force and effect.

185058

**CITY OF PORTLAND**

**GRANTEE**

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

Title:

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

Title:

**APPROVED AS TO FORM:**

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