

Agreement No. _____

Board Resolution No. _____

**MEASURE K GRANT AGREEMENT
BETWEEN THE COUNTY OF SAN MATEO AND PACIFICA COMMUNITY
TELEVISION, INC.**

This Agreement is entered into this 4th day of October, 2022 by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Pacifica Community Television, Inc., hereinafter called "Grantee."

* * *

WHEREAS, the Grantee has applied to the County seeking a grant for the purpose of funding the matters set forth in its Project described in Exhibit A (the "Grant");

WHEREAS, the County has approved the grant of certain funds to Grantee pursuant the terms set forth in this Agreement;

NOW, THEREFORE, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A—Project Description
- Exhibit B—Reporting

2. Grant

County hereby grants to Grantee a sum not to exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000) in consideration of and on the condition that the sum be expended for the sole purpose of carrying out the objectives of Grantee's Project as identified in Exhibit A, and in no event shall the County's total fiscal obligation under this Agreement exceed this amount. Grantee agrees to assume any obligation to secure and furnish any additional funds that may be necessary to carry out its Project.

Funds granted under this Agreement shall not be disbursed until execution of this Agreement by County and Grantee.

The disbursement schedule is as follows:

- County shall disburse the full grant amount of \$100,000 to Grantee's designated Escrow Agent upon execution of this Agreement.

INVOICES: County shall disburse funds to Grantee's designated Escrow Agent upon receipt of an invoice for the disbursement, subject to the terms of this Section 3. The invoice shall be accompanied by documentation satisfactory to the County that the grant funds disbursed to the Grantee will be used to acquire the real property that is the subject of the Project, as described in Exhibit A. Requests for grant disbursement should be (1) on the organization's official letterhead or on Escrow Agent's official letterhead, (2) include date of invoice, amount requested, and Agreement number, and (3) submitted to the attention of:

Joy Limin, Senior Accountant
555 County Center, 4th Floor
Redwood City, CA 94063
jlimin@smcgov.org

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3. Term & Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall begin October 4, 2022 and continue through October 3, 2027. This Agreement will not automatically renew, nor shall it create any reliance on the possibility of future grants.

County may terminate this Agreement based upon the unavailability of Federal, State, or County funds by providing written notice to Grantee within a reasonable time after County learns of said unavailability of funding. Grantee acknowledges that this Agreement may be subject to approval of the Board of Supervisors, and assumes all risk of possible non-appropriation and non-approval of funds.

County may suspend and/or terminate this Agreement if Grantee fails to comply with the terms of this Agreement and may, in its sole discretion, withhold or cancel pending and future disbursements of grant funds and/or require Grantee to return some or all funds disbursed under this Agreement.

4. Relationship of Parties

Notwithstanding any publicity or other references to the County required to be made in connection with the Project as set forth in Exhibit A, Grantee understands and agrees that the Project performed under this Agreement is not performed by Grantee as an independent contractor of the County or as an employee of County and that neither Grantee nor its employees acquire any of the rights, privileges, powers, or advantages of County contractors or County employees. Grantee acknowledges and agrees that it is not, and will not hold itself out as, an agent, partner, or co-venturer of the County, and that this Agreement is not intended to and does not create an agency, partnership, joint venture between the Parties.

5. Project Administration

The Parties agree that the Project as described in Exhibit A shall not be altered without a written amendment to this Agreement, signed by both the County and the Grantee. Grantee shall provide written reports to the County's authorized representative in accordance with Exhibit B.

6. Hold Harmless

Grantee shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services performed of Grantee in furtherance of the Project under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

- (A) injuries to or death of any person, including Grantee or its employees/officers/agents/volunteers;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;
- (C) any sanctions, penalties, or claims of damages resulting from Grantee's failure to comply with any applicable federal, state, or local laws or regulations; or
- (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Grantee's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Grantee to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

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7. Insurance

a. General Requirements

Prior to its receipt of any funds pursuant to this Grant Agreement, Grantee shall obtain all insurance required under this Section and such insurance shall be subject to the approval by County's Risk Management, and Grantee shall use diligence to obtain such insurance and to obtain such approval. Grantee shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Grantee's coverage to include the contractual liability assumed by Grantee pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

Grantee shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Grantee certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing or continuing the performance of Project work for which it would receive grant funds.

c. Liability Insurance

Grantee shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Grantee and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Grantee's operations under this Agreement, whether such operations be by Grantee, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- Comprehensive General Liability... \$1,000,000
(Applies to all agreements)
- Motor Vehicle Liability Insurance... \$1,000,000
(To be checked if motor vehicle used in performing services)
- Professional Liability..... \$1,000,000
(To be checked if Grantee is a licensed professional)

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend any further payment pursuant to this Agreement.

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8. Assignability and Subcontracting

Grantee shall not assign this Agreement or any portion of it to a third party. Except as set forth in Exhibit A, Grantee shall not subcontract with a third party to perform the Project. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice and the County shall have the right to a refund of all funds disbursed under this Agreement.

9. Compliance With Laws

All services to be performed by Grantee in connection with the Project shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including, but not limited to, any laws related to payment of prevailing wages pursuant to the California Labor Code. In connection with the Project, Grantee bears responsibility to obtain, at Grantee's expense, any license, permit, or approval required from any agency.

10. Merger Clause; Amendments

This Agreement, including Exhibits, constitutes the sole Agreement of the parties regarding the Grant, and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties concerning the Grant that are not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

11. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

12. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:	In the case of Grantee, to:
Rosalinda Jen, Measure K Administrator 555 County Center, 4th Floor Redwood City, CA 94063 Email: rjen@smcgov.org	Martin Anaya, Executive Director Pacific Coast TV 580 Crespi Drive, Pacifica 94044 martin@pacificcoast.tv 650.355.8001

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13. Electronic Signature

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

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* * *

THIS AGREEMENT IS NOT VALID UNTIL SIGNED BY ALL PARTIES. NO FUNDS WILL BE DISTRIBUTED UNTIL THIS DOCUMENT HAS BEEN SIGNED BY THE COUNTY'S AUTHORIZED DESIGNEE.

For Grantee:

DocuSigned by:
Martin Anaya
9815134D510242D...

(signature)
Authorized Representative
Grantee

9/28/2022

Date

Pacifica Community Television, Inc.

Name of Grantee

Martin Anaya

(please print name)
Authorized Representative
Grantee

For County:

(Signature)
Authorized Designee
County of San Mateo

Date

CHIEF FINANCIAL OFFICER

Job Title (please print)

80125-6265

ROBERTO MANCHIA

(please print name)
Authorized Designee
County of San Mateo

Budget Unit

BOSD3

Measure K JL Code

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Exhibit A

The County and Grantee agree that the grant funds shall only be used to further the goals of the following Project, described below and in the October 4, 2022 Board transmittal and resolution, incorporated herein by reference:

- Grantee will use funds to purchase the existing Pacifica Community Television Inc. (commonly known as Pacific Coast TV) studio facility located at 580 Crespi Drive, Unit E, in Pacifica (the "Property").
- Grantee has used and will continue to use the studio facility to pursue its mission of ensuring public access to electronic media and providing a voice to the community through cable TV and new media.

Restrictions and Requirements. The County may monitor the Project to ensure that the Property is being used in compliance with the requirements herein. Grantee agrees to provide County access and records, upon reasonable advance request, in furtherance of this monitoring:

1. The Property shall be used as the studio facility for Pacific Coast TV in a manner consistent with the purposes and uses described in this Agreement, and in the Board memorandum dated October 4, 2022, which is attached hereto and incorporated herein by reference.
2. The Property may not, during the full term of the Agreement, be used for for-profit activities.

Due on Sale, Refinance, or Transfer of Title. Grantee shall not assign its rights under this Agreement without obtaining the prior written consent of the County Executive or their designee, or sell or refinance the Property. In the event of a sale or transfer of the Property or any interest therein without such consent, the grant funds shall be immediately due and payable to the County.

Due on Termination of Services. In the event Grantee breaches any of the terms and conditions of this Agreement, including the obligation to operate the studio facility described in this Exhibit A, after thirty (30) days written notice to Grantee and failure to correct the breach, the Grantee will be in default of the terms and conditions of this Agreement, and the County may demand immediate and full repayment of the grant funds.

Default may result from:

1. Failure of Grantee to perform or observe any terms or provisions of this Agreement, including but not limited to provision operation of the studio facility as described in Exhibit A;
2. Use of funds under this Agreement for purposes not approved by the County; or
3. Occurrence of any other event (whether termed default, event of default, or otherwise), which under the terms of this Agreement will entitle the County to exercise rights or remedies hereunder.

In no event shall the County's fiscal obligation under this Agreement exceed \$100,000.

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Exhibit B

In accordance with the terms of this Grant Agreement, Grantee will provide, or cause to be provided the services for the Project detailed in Exhibit A and will report back to the County regarding various performance measures including, but not limited to, those noted below. Such reporting data shall be delivered to the County no later than June 30, 2023. Within 45 days after the end of each fiscal year thereafter (i.e., on or before August 15 each year during the term of the Agreement), Grantee shall submit a written report to the County, in a format reasonably prescribed by the County, describing the studio facility's operational status, and the programs and services offered during the preceding fiscal year. In addition, Grantee agrees to provide descriptive information about the Project funded by the Measure K grant upon reasonable request of the County, including, but not limited to, the County Executive's Office, the County Communications Officer, or the Supervisorial District Office.

<u>Performance Measure</u>	<u>Target</u>
Purchase the existing Pacific Coast TV studio facility at 580 Crespi Drive, Unit E, in Pacifica.	Complete