



Tim Heider  
Interim Director

**Public and Government Affairs**  
Public Services Building  
2051 Kaen Road, Oregon City, OR 97045

May 9, 2019

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of Agreement between Clackamas County and CTV Channel 5 (CTV5), a Public Access Center in Canby**

<b>Purpose/Outcome</b>	Agreement to provide capital funding for CTV5 Public Access Center.
<b>Dollar Amount and Fiscal Impact</b>	There is no financial impact to the general fund. Annual funding is determined by the amount of Public, Educational, and Government (PEG) funds collected from cable franchises in the County.
<b>Funding Source</b>	PEG funds are negotiated with cable franchisees as a pass-through cost from cable television subscribers and are dedicated for use by PEG Access Centers for capital equipment and facilities for programming and broadcast of their access channel.
<b>Duration</b>	Effective the date signed by the Board of County Commissioners, and automatically renews yearly unless terminated by either party.
<b>Previous Board Action</b>	None
<b>Strategic Plan Alignment</b>	Build public trust through good government.
<b>Counsel Review</b>	Yes
<b>Contact Person</b>	Tim Heider, Interim Director, Public & Government Affairs, 503.742.5911

**BACKGROUND:**

CTV5, a non-profit corporation, was established in 1984. It is a community access channel in Canby that provides free access to production equipment for the community to create and share their own non-commercial video programming.

CTV5 provides production training to residents in the Canby-area and in unincorporated Clackamas County through a partnership with the Willamette Falls Media Center.

Clackamas County receives PEG access programming through many of the franchise agreements with cable providers in unincorporated Clackamas County. These funds are received from cable franchisees as a pass-through from cable television subscribers in an amount approved through the Clackamas County Public & Government Affairs annual budget process.

This Agreement will provide for the award of PEG funds from the county to CTV5. The funds are to be used for the purpose of procuring equipment and facilities for production and cablecasting of the CTV5 community access television channel. If County does not receive sufficient PEG funds to pay CTV5's annual budgeted request, CTV5 shall be promptly notified that the funds may be reduced or eliminated in accordance with available funding.

County will disburse the PEG funding upon submittal of appropriate documentation. CTV5 will obtain price quotes for capital equipment and facility purchase using purchasing methods in compliance with Oregon law. This Agreement will become effective when it is signed by both parties and may be amended at any time with the concurrence of both parties.

**RECOMMENDATION:**

Staff respectfully recommends that the Board approve and sign this agreement between Clackamas County and CTV5, a Public Access Center in Canby.

Respectfully submitted,

Tim Heider, Interim Director  
Public and Government Affairs

**AGREEMENT BETWEEN CLACKAMAS COUNTY  
AND  
CTV CHANNEL 5**

**I. Purpose**

- A. This Agreement is entered into between Clackamas County (County), a political subdivision of the State of Oregon, and CTV Channel 5 (CTV5), a non-profit entity.
  
- B. This Agreement provides the basis for citizens residing anywhere in Clackamas County to use the facilities of CTV5 for the purpose of production and cablecasting of public-access television programs. It also provides for reimbursement by County to CTV5 of CTV5's capital cost for construction of cable access facilities and to assist CTV5 with the production and cablecasting of public, educational and government access television channel(s).

**II. Responsibilities**

- A. Under this Agreement the responsibilities of CTV5 will be as follows:
  - 1. Residents of unincorporated Clackamas County will be allowed full access to the CTV5 studio, currently located at 351 NW 2<sup>nd</sup> Avenue, Canby, to produce and edit TV programs for showing on the public access channels, subject to the Operating Rules and Procedures of CTV5 governing board.
  - 2. Residents of Clackamas County will be allowed to cablecast programs on public access channels, using CTV5's facilities, subject to the Operating Rules and Procedures of CTV5.
  - 3. CTV5 will run reader board notices submitted by residents of Clackamas County on its regular reader board computer.
  - 4. CTV5 will use capital funds provided under paragraph 2 (B) only for reimbursement of CTV5's capital costs related to CTV5's production and cablecasting on public, educational and government access channel(s).
  - 5. CTV5 will maintain discrete accounting records of all expenditures for which reimbursement from capital funds is sought under this Agreement. CTV5 shall use and maintain accounting policies, practices, and procedures which are consistent with generally accepted accounting principles, and in accordance with applicable regulations. On request, CTV5 will permit the County to inspect its facilities.
  - 6. CTV5 warrants that the capital funds will not be used to retire any debt or reimburse any person, entity, or municipality for expenditures not related to capital costs.
  - 7. CTV5 will submit requests for capital funds to County, including receipts showing items purchased and prices paid by CTV5.

B. Under this Agreement the responsibilities of the County will be as follows:

Capital Funds: County will reimburse CTV5 each year for CTV5's capital costs for facilities and equipment for PEG (Public, Education and Government) access capital costs in an amount approved in the County annual budget process each fiscal year. The County will approve or disapprove requests for PEG funds submitted with receipts by CTV5. Requests for reimbursement shall identify the items for which reimbursement is requested. County will respond within 45 days from its receipt of requests for capital funds. County payments to CTV5 are subject to County's receipt of sufficient PEG access funds from cable franchise agreements, and subject to County's approval of each request for reimbursement by CTV5. If the County does not receive sufficient PEG access funds to reimburse CTV5's capital cost to the full extent approved in the annual budget, CTV5 will be notified by the County and the reimbursement may be reduced or eliminated in accordance with funds available.

**III. Liaison**

Kellie Lute will act as liaison from the County. Her address and phone number are:

Clackamas County Public and Government Affairs  
2051 Kaen Road, Suite 426  
Oregon City, OR 97045  
(503) 742-5902

CTV5's General Manager will act as liaison from WFMC. The address and phone number are:

CTV Channel 5  
351 NW 2<sup>nd</sup> Avenue  
Canby, OR 97013  
(503) 263-6287

**IV. Other Terms and Conditions**

A. The County and CTV5 agree to comply with all applicable local, state and federal ordinances, statutes, laws and regulation, including those on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, sexual orientation, age or disability.

B. To the extent applicable, the provisions of Oregon Public Contracting law are incorporated herein by this reference.

C. Each party is an independent contractor with regard to the other party(s) and agrees that the nonperforming party has no control over the work and manner in which it is performed. No party is an agent or employee of any other.

D. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, each of the parties agrees to hold harmless and indemnify the other, and their elected and appointed officials, agents and employees, from and against all claims, demands, and causes of action of any kind or character, excluding the cost of defense and

attorney's fees thereof, arising on account of personal injuries, death or damage to property caused by or resulting from their own acts or omissions or those of their officials, agents and employees. It is agreed between the parties that, as between them, CTV5 exercises control over the activities of its public access studio and cablecasting facilities, and will defend and indemnify County under this paragraph for claims arising therefrom.

- E. Each party agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.
- F. No party or its employees is entitled to participate in a pension plan, insurance, bonus or similar benefits provided by any other party.
- G. CTV5 agrees that all payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents shall be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- H. The County and its duly authorized representatives shall have access to the books, documents, papers, and records of CTV5 which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcripts.
- I. This Agreement is expressly subject to the debt limitation of Oregon counties, as set for the in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefor. Any provisions herein which would conflict with law are deemed inoperative to that extent.

## **V. Amendment**

This agreement may be amended at any time with the concurrence of both parties. Amendments become part of this Agreement only after the written amendment has been executed by both parties.

## **VI. Term of Agreement**

- A. This Agreement becomes effective when it is signed by both parties.
- B. The initial term of this Agreement extends to June 30, 2020.
- C. This Agreement shall be automatically renewed for successive terms of one year on each July 1, unless terminated as provided in this agreement.

## **VII. Termination of Agreement**

- A. Any previous Agreements between the parties regarding cable television access

funding is hereby rescinded.

B. This Agreement may be terminated upon the expiration of its initial term by either party providing written notice at least 30 days prior to the expiration of the term.

C. This Agreement may be suspended or terminated prior to the expiration of any term by:

1. Written notice provided, with or without cause, by either party at least 30 days prior to the date of termination, or;
2. Written notice in the case of a default under the terms of this agreement, giving at least 21 days' notice of the alleged default, with opportunity to cure within the 21 day period, or;
3. Mutual agreement by the County and CTV5, or;
4. Written notice provided by the County if insufficient PEG funds are unavailable, or if there has been a change in federal, state, or local laws or regulations so that the activity funded by this agreement is no longer eligible for funding. Termination under this paragraph is effective immediately.


D. Termination of this agreement does not terminate obligations of CTV5 that accrued before termination, including but not limited to the obligation to allow audit or inspection.

All the aforesaid is hereby agreed upon by the parties and executed by their duly authorized signatures below.

**CLACKAMAS COUNTY**

**CTV CHANNEL 5**

\_\_\_\_\_  
Jim Bernard, Chair  
Board of County Commissioners

 4-23-19  
\_\_\_\_\_  
CTV5 Board Signature      Date

\_\_\_\_\_  
Recording Secretary      Date

\_\_\_\_\_  
Approved as to Form, County Counsel