

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Communications and Public Affairs  
**AGENDA DATE:** March 17, 2015  
**CONTACT PERSON/PHONE:** Juliet Lozano, 212-1076  
**DISTRICT(S) AFFECTED:** All District

**SUBJECT:**

Approve a Resolution authorizing the City Manager to sign a Television Sub-Channel Lease and Premises License Agreement with El Paso Public Television Foundation d/b/a KCOS-TV for shared use of KCOS studio facilities and equipment on their leased space at 9050 Viscount, Building A (EPCC Administration Building) and lease of sub-channel 13.4 for simultaneous broadcasting of City Cable 15, and be further authorized to execute any related documents necessary to effectuate this agreement, including the Landlord Consent to License Agreement with the El Paso Community College District. In lieu of rental payments, KCOS may use City production and studio equipment and furnishings and fiber optic cable connections to City fiber network acquired and installed for the primary purpose of broadcasting City Cable 15.

**BACKGROUND / DISCUSSION:**

Approving this Resolution will allow for the broadcasting of City 15 on the KCOS sub channel. This will allow citizens without cable television to view City 15 programming on 13.4.

**PRIOR COUNCIL ACTION:**

City Council has not taken previous action on this item.

**AMOUNT AND SOURCE OF FUNDING:**

\$360,000.00, PEG funds will be used to purchase the necessary equipment.

---

**BOARD / COMMISSION ACTION:**

N/A

---

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

---

**(If Department Head Summary Form is initiated by Purchasing, client department should sign also)**  
*Information copy to appropriate Deputy City Manager*

# RESOLUTION

## BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Television Sub-Channel Lease and Premises License Agreement with El Paso Public Television Foundation d/b/a KCOS-TV for shared use of KCOS studio facilities and equipment on their leased space at 9050 Viscount, Building A (EPCC Administration Building) and lease of sub-channel 13.4 for simultaneous broadcasting of City Cable 15, and be further authorized to execute any related documents necessary to effectuate this agreement, including the Landlord Consent to License Agreement with the El Paso Community College District. In lieu of rental payments, KCOS may use City production and studio equipment and furnishings and fiber optic cable connections to City fiber network acquired and installed for the primary purpose of broadcasting City Cable 15.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 2015.

CITY OF EL PASO

\_\_\_\_\_  
Oscar Leeser  
Mayor

### ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
Municipal Clerk

### APPROVED AS TO FORM:

\_\_\_\_\_  
Bertha A. Ontiveros  
Senior Assistant City Attorney

### APPROVED AS TO CONTENT:

\_\_\_\_\_  
Juliet Lozano  
Public Information Marketing Manager

STATE OF TEXAS           §  
   §     **TELEVISION SUB-CHANNEL LEASE AND**  
   §     **PREMISES LICENSE AGREEMENT**  
 COUNTY OF EL PASO    §

THIS SUB-CHANNEL LEASE AND PREMISES LICENSE AGREEMENT (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2015 by and between the **EL PASO PUBLIC TELEVISION FOUNDATION dba KCOS-TV**, a Texas nonprofit corporation, hereafter referred to as the “Lessor” or “KCOS”, and **CITY OF EL PASO**, a home rule municipal corporation, hereinafter referred to as the “Lessee” or “City.”

**WHEREAS**, the Lessor is a community-owned public television station broadcasting non-commercial programs through direct transmission via Channel 13 and cable Channel 12 (“Channels”) and holds a license issued by the Federal Communications Commission (“FCC”) with a current expiration date of August 1, 2022 for the El Paso and southern New Mexico region; and

**WHEREAS**, the Lessor has excess digital capacity on its Channels and pursuant to the Telecommunications Act of 1996, the FCC permits the leasing of such digital television sub-channels for the transmission of programming by unaffiliated entities; and

**WHEREAS**, the Lessee is a municipality that operates City Cable 15, a non-commercial government access television channel carried by cable television operators providing cable television services in the City, and desires to lease a sub-channel from Lessor to expand the coverage of Lessee’s governmental programming to more households within the City of El Paso; and

**WHEREAS**, Lessor desires to lease to Lessee that certain digital television sub-channel identified as Channel 13.4 (the “Leased Sub-Channel”) and Lessee desires to lease the Leased Sub-Channel from Lessor; and

**WHEREAS**, the Lessor has leased from El Paso Community College District (“EPCC”) certain space for Lessor’s operation, including studio space that is currently underused and available for licensing to Lessee for Lessee’s use to produce non-commercial governmental programming; and

**WHEREAS**, it is to the mutual benefit of the Lessor and Lessee to enter into this Agreement;

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:**

**1. Lease of Sub-Channel and License of Premises.**

(a) On and after the Effective Date, which shall be the date above-written, the Lessor leases and grants to the Lessee the exclusive right to use that certain sub-channel identified as Channel 13.4 (the "Leased Sub-Channel") up to twenty-four (24) hours per day, seven (7) days per week, for the broadcasting of non-commercial governmental programming developed by Lessee.

(b) The programming to be broadcast on the Leased Sub-Channel shall be primarily developed for the City Cable 15, and the Lessee will simultaneously broadcast City Cable 15 programming on the Leased Sub-Channel.

(c) Lessor leases space in a building owned by El Paso Community College located at 9050 Viscount, Building A, El Paso, Texas 79925, and EPCC has consented to Lessor's license of the use of a portion of the leased area used as studio facilities to Lessee (the "Licensed Premises"), as provided in the Landlord Consent, attached hereto as Exhibit A. The Lessee's use of the Licensed Premises is non-exclusive and shall be subject to the Lessor's rights and use thereof under Lessor's lease with EPCC. The Licensed Premises are made available to Lessee in order for Lessee to produce and broadcast non-commercial governmental programming. In the event the lease between EPCC and Lessor is terminated or not renewed by its terms, such that Lessor is no longer authorized or able to occupy the space owned by EPCC, Lessor shall promptly notify Lessee by telephone or fax of the termination date, and Lessor shall secure and protect Lessee's Equipment until Lessee shall have reasonable opportunity to remove same from the Licensed Premises.

(d) Lessee will have full access to the Licensed Premises. In order to protect the security of Lessee's Equipment and Lessee's employees, access to the Licensed Premises shall at all times be locked and secured, and available only to individuals with specific permission from Lessor or Lessee. A written record shall be kept by Lessor of the identity and affiliation of all individuals to whom it has allowed access to the Licensed Premises. Unauthorized persons shall not be allowed access to the Licensed Premises or to Lessee's Equipment.

(e) Lessor shall establish a production schedule that will accommodate Lessee's needs and Lessor's scheduled productions and studio use. Lessor shall be given at least seven (7) days prior notice that Lessee wishes to use the studio on non-designated days. If Lessee wishes to utilize any of Lessor's staff, either full-time or on an on-call basis, for a production, this use must be arranged under a separate compensation agreement.

(f) The non-commercial governmental programming produced by Lessee for City Cable 15 shall also be broadcast by Lessor on the Leased Sub-Channel, in accordance with FCC rules and policies. Lessee is subject to the same standards as required for City Cable 15, and shall not run any commercial or political advertising spots on the Leased Sub-Channel. Lessee understands that broadcast program content, like the programming on City

Cable 15, must comply with certain proscriptions, including but not limited to those governing the broadcast of obscenity and indecency, presentation of contests, lottery information, broadcast of telephone conversations, and political access. Lessee's programming shall be in compliance with such restrictions.

(g) The Lessor covenants and agrees that so long as Lessee is not in breach of this Agreement, Lessee may peaceably and quietly enjoy the Licensed Premises, and Lessor covenants and agrees that so long as Lessee is not in breach of this Agreement, Lessee may peaceably and quietly enjoy the Leased Sub-Channel, throughout the Term.

(h) The agents and employees of the Lessee are granted ingress and egress access to the Licensed Premises with the prior approval of the Lessor to install, operate, service and maintain the Fiber Network and be accompanied by Lessor's or EPCC's staff if required by Lessor.

(i) The Lessee's use of the Leased Sub-Channel shall at no time interfere with the operation and use of the Lessor's Channels. In the event Lessor, in its sole discretion, determines there is a substantial probability of interference from the Leased Sub-Channel, Lessor shall notify Lessee, and may, if necessary to prevent or resolve such interference, temporarily suspend Lessee's use of the Leased Sub-Channel until such time as Lessee submits a plan to eliminate or reduce interference to a level acceptable to Lessor, and such plan is approved by Lessor.

## **2. Lessee's Equipment.**

(a) Lessee shall purchase and install within the Licensed Premises the transmission, master control, and studio equipment for the Leased Sub-Channel ("Lessee's Equipment"). Lessee's Equipment may include, shall not be limited to, coaxial and fiber optic cables and all other physical connections, production equipment, studio furnishings and sets, production facilities, and other equipment having a useful life of more than one year. Lessee's Equipment to be installed hereunder is as further described in **Exhibit B**. The primary use of Lessee's Equipment shall be for the production and transmission of City Cable 15.

(b) Lessee shall coordinate such installation with Lessor to ensure that Lessee's Equipment does not interfere with Lessor's operations. Lessee may consult with Lessor in order to select Equipment that is in compliance with FCC rules and regulations. Lessee's Equipment shall at all times remain the sole and exclusive property of the Lessee, and may be removed by the Lessee at the termination or expiration of this Agreement, or prior to such termination upon the mutual agreement of the Parties.

(c) During the term of this Agreement, Lessee may choose to add equipment and fiber in addition to the Equipment and Fiber identified on Exhibits B and C. In the event such equipment or fiber are purchased by Lessee and installed on the Licensed Premises, all provisions of this Agreement shall thereafter apply to the subsequently-added equipment and fiber, and Exhibits B and C shall be revised to include such equipment and fiber.

(d) During the term of this Agreement, Lessor may identify additional equipment and fiber that it determines would be mutually beneficial to Lessor and Lessee to have available for their use at the Licensed Premises. In the event Lessor has done so, it may request Lessee to undertake the purchase and installation of such additional equipment and fiber. Lessee is under no obligation to make any additional purchases or installations, but may do so in its sole discretion. If additional equipment and fiber are added under the provisions of this section, all provisions of this Agreement shall thereafter apply to the subsequently-added equipment and fiber, and Exhibits B and C shall be revised to include such equipment and fiber.

(e) If additional equipment or fiber are added as provided in this Section 2(c) or (d), the parties may mutually agree to extend the term of this Agreement.

(f) Lessor acknowledges that property of Lessee, a municipality, is constitutionally-protected from being subject to liens. Lessee's Equipment shall not be regarded as fixtures by virtue of being housed in the Leased Premises, nor shall any of Lessor's creditors have any claim upon Lessee's Equipment, it being understood by the Parties that title remains solely with Lessee. Lessor shall not impose any lien or claim upon Lessee's Equipment.

(g) In Lessee's sole discretion, Lessee's Equipment or Fiber may be removed or replaced, in which event Exhibits B and C shall be revised to reflect such removal or replacement. If Lessee determines, in its sole discretion, that Equipment or Fiber previously installed on the Licensed Premises is no longer useful for Lessee's purposes, Lessee may dispose of such equipment or fiber in accordance with its established policies and practices. Lessee shall give notice to Lessor of its intent to dispose of such property and the procedure for such disposal. If requested by Lessor, Lessee shall enter into good faith negotiations with Lessor for the lease of the property, although neither Party shall be obligated to enter into such an agreement.

### 3. **Consideration.**

(a) As consideration for the Lessee's use of the Licensed Premises and the Leased Sub-Channel pursuant to the terms and conditions of this Agreement, Lessee shall purchase and install Lessee's Equipment at the Licensed Premises. In addition, Lessee shall install fiber optic cable as described in **Exhibit C** ("Lessee's Fiber"). Lessee shall make available Lessee's Equipment to Lessor for Lessor's use in producing and broadcasting programming on Lessor's Channels, as provided herein. Lessor and Lessee shall develop mutually-agreeable guidelines and policies that will govern the use of Lessee's Equipment by Lessor. Lessor's use of Lessee's Fiber and Equipment shall be incidental to its primary purpose, which is the production and transmission of Lessee's governmental programming on City Cable 15.

(b) The Parties agree that the value of the Equipment and Fiber to be purchased and installed by Lessee, if prorated through the term of the Agreement, would be in the minimum amount of Six Thousand and no/100 Dollars (\$6,000.00) per month. However, it

is the general intent of the Parties hereto that this Agreement and the rights and obligations provided herein is adequate consideration, and no further monetary payment shall be made by Lessee for use of the Licensed Premises or the Leased Sub-Channel.

4. **Term.** This Sub-Channel Lease and Premises License is granted for a period of five (5) years from the Effective Date. Following the expiration of the initial term and provided that the Lessee is in full compliance with all terms and conditions of this Agreement and that the Agreement has not been earlier terminated as provided herein, Lessee shall have the option to extend this Agreement for one (4) successive term of five (5) years. Lessee may exercise this option by providing written notice to Lessor no later than the expiration date of the then current term.

5. **Lessee's Responsibilities.**

(a) Lessee shall be responsible for all costs associated with the construction of fiber optic cabling from Lessee's nearest point of construction to the Licensed Premises, and for all costs associated with the production and delivery to the Lessor's transmitter site for transmission on the Leased Sub-Channel. Lessee shall also be responsible for all fees to ASCAP, BMI and SESAC, license fees, and for any other copyright fees attributable to its programming broadcast on the Leased Sub-Channel

(b) Except as set forth in this Lease, Lessee shall have full responsibility at its sole cost and expense for the personnel, programming, supplies, and materials required for the development of programming for use by Lessee on City Cable 15 and for broadcasting on the Leased Sub-Channel, in accordance with the terms of this Agreement and in accordance with all applicable local, state and federal laws. Lessee shall use Lessee's Equipment for the production of its programming.

(c) Lessee agrees to cooperate with and facilitate the efforts of Lessor to preserve the license issued by the FCC to Lessor, including but not limited to, providing all information and records necessary to complete the filing of all required applications and reports, the prosecuting of all applications, maintaining the public inspection file, responding to all inquiries from the FCC and enabling Lessor to comply with all of its obligations as an FCC permittee or licensee. However, such activities by Lessee shall not entail the expenditure of any of Lessee's funds.

6. **Lessor's Responsibilities.**

(a) Lessor shall be responsible for all Licensed Premises operating expenses, except for any operating expenses related to the staffing of the Leased Sub-Channel, or to the operation or repair of Lessee's Equipment. If any loss or damage of any nature occurs to the Licensed Premises or Lessor's transmission facilities which results in the interruption of service or the inability of Lessor's Channels to operate, Lessor shall notify Lessee, and shall undertake such repairs as necessary to restore the full-time operation of Lessor's Channels with its authorized facilities as soon as possible.

(b) Lessor shall allow the Lessee to access the Licensed Premises and use Lessor's and Lessee's Equipment for on-air transmission on the Leased Sub-Channel, including but not limited to, the television transmitter, broadcast antenna, coaxial cable, transmitter building, auxiliary power supply and all additional miscellaneous equipment customary and necessary for an operational television transmitter site constructed in compliance with FCC and FAA rules and regulations applicable specifically to the Lessor and to television broadcasting facilities generally, and such equipment necessary for the transmission on the Leased Sub-Channel.

(c) Lessor shall comply with all its obligations as an FCC licensee or permittee (as the case may be), including but not limited to the filing of all required applications and reports, prosecuting all applications, maintaining the public inspection file and responding to all inquiries from the FCC, subject to the obligations regarding supervision, control and operation of the Channels imposed upon it as licensee or permittee under the Communications Act of 1934, as amended, and the rules, regulations and policies of the FCC. Lessor shall be solely responsible for obtaining and maintaining the necessary licenses from the FCC that may be required for the leasing of the sub-channel as provided herein.

(d) Lessor shall maintain the structural integrity of its broadcasting facilities and make repairs thereto. The failure of Lessor to maintain the capability of its facilities to broadcast the Sub-Channel described herein will abate, for the period of failure of broadcast capability, the obligation of Lessee to allow Lessor access to Lessee's Equipment, as described herein.

(e) Lessor shall have full responsibility at its sole cost and expense for the installation, servicing, maintenance and operation of its Channels in accordance with all applicable local, state and federal laws.

(f) Lessor shall furnish electrical current for operation of the Leased Sub-Channel without additional charge to the Lessee.

(g) Lessor shall not pledge as collateral or security, or otherwise encumber Lessee's Equipment for the benefit of any third party claiming by, through, or under Lessor.

7. **Liability Insurance.** Lessor shall maintain in force at all times during the Term hereof, for the benefit of Lessor and Lessee, as co-insureds and as their respective interests may appear, the following insurance:

- a. Comprehensive general liability insurance in an amount not less than \$1,000,000 per occurrence, and \$1,000,000 general aggregate, and \$1,000,00 Products/Completed Operations; and
- b. Hazard insurance for injury or damages to persons or property, including Lessee's Equipment, caused by fire, flood, or storm for the Licensed Premises. Lessee shall be added as an additional insured, and the cost of any

additional premium due to the coverage of Lessee's Equipment shall be borne by Lessee.

8. **Force Majeure.** Any failure or impairment of Lessor's Channels or facilities or any delay or interruption in broadcasting programs, or the failure at any time to furnish facilities, in whole or in part, for broadcasting, due to Acts of God, strikes, or threat thereof, or to other causes beyond the control of Lessor or Lessee ("Force Majeure") shall not constitute a breach of this Agreement.

9. **Compliance with Law/FCC.**

(a) In the event that any new law or regulation is adopted that results in a material impact on the terms of this Agreement, the Parties agree to negotiate in good faith to modify this Agreement to conform as closely as possible to the interests of both Lessor and Lessee and, in the event of their inability to so modify this Agreement, Lessee or Lessor may without penalty terminate the Agreement on providing sixty (60) days' notice to the other, or such earlier time as the Federal Communications Commission ("FCC") may require.

(b) If the Agreement is challenged at the FCC, Lessor and Lessee will jointly defend the Agreement. If portions of the Agreement do not thereafter receive the approval of the FCC staff, the Parties shall reform the Agreement or, at either Party's option (and at such Party's expense), seek reversal of the staff decision and approval from the full FCC on appeal.

10. **Indemnification.**

(a) **TO THE EXTENT AUTHORIZED UNDER THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, EACH PARTY SHALL INDEMNIFY THE OTHER PARTY AND ITS DIRECTORS, OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF EITHER PARTY'S BUSINESS ON THE LICENSED PREMISES, EITHER PARTY'S USE OF THE LICENSED PREMISES, OR FROM ANY BREACH ON THE PART OF EITHER PARTY OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF EITHER PARTY, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF EITHER PARTY. HOWEVER, NEITHER PARTY SHALL BE INDEMNIFIED HEREUNDER FOR ANY LOSS, LIABILITY, DAMAGE OR EXPENSE RESULTING FROM ITS SOLE NEGLIGENCE OR WILLFUL MISCONDUCT. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST EITHER PARTY BY REASON OF ANY SUCH CLAIM, THE OTHER PARTY, UPON NOTICE FROM**

**THE INDEMNIFIED PARTY, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO THE INDEMNIFIED PARTY.**

**(b) LESSEE WARRANTS THAT THE BROADCASTING OF ITS PROGRAMS WILL NOT VIOLATE ANY RIGHTS OF OTHERS, AND TO THE EXTENT AUTHORIZED UNDER THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, LESSEE AGREES TO INDEMNIFY AND HOLD LESSOR, THE STATION, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, STOCKHOLDERS, EMPLOYEES, AND SUBSIDIARIES, HARMLESS FROM ANY AND ALL CLAIMS, DAMAGES, LIABILITY, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, ARISING FROM THE BROADCASTING OF SUCH PROGRAMS.**

**(c) Independent Contractor.** The Lessee is, and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and the Lessor shall not be responsible therefore. Lessee shall employ and be responsible for the salaries, taxes, insurance, and related costs for all personnel and borrowed personnel used in the production and transmission of its programming (including without limitation sales people, traffic personnel, board operators and programming staff). Lessee agrees to abide by any and all legal provisions relating to its own employees, including any equal employment policies contained in Title VII of the Civil Rights Act of 1964 or in any other applicable federal, state, or local statute or regulation. All personnel shall be subject to the overall supervision of Lessor consistent with the Lessee's right to use Lessor's equipment and facilities as provided hereunder.

**(d)** Any property of a Party that is damaged or destroyed by another Party incident to the exercise of the privileges herein granted shall be promptly repaired and replaced by the Party damaging or destroying such property to the satisfaction of the owner thereof.

13. Either Lessee or Lessor may terminate this Agreement for its convenience by giving the other sixty (60) days' written notice.

14. Should any Party violate any of the terms and conditions of this Agreement at any time during the Term of this License, the non-offending Party will notify the offending Party in writing giving sixty (60) days to cure the violation. Failure of the offending Party to cure the violation shall, at the non-offending Party's option, result in the immediate termination of this License Agreement. Upon such termination, Lessee shall be given a reasonable period of time, not to exceed ninety (90) days, to remove Lessee's Equipment. During such removal period, and except for Lessee's ability to continue to access the Licensed Premises for such removal, the Parties' obligations and responsibilities hereunder shall not be in effect.

15. All notices or demands of any kind shall be served by mail, a copy of such notice or demand by certified mail to:

LESSOR: El Paso Public Television Foundation  
Attn: Emily Loya  
P.O. Box 26668  
El Paso, Texas 79926-6668  
Fax: (915) 594-5394

With copies to: Stuart R. Schwartz, Esq.  
1100 Chase Tower  
201 East Main Drive  
El Paso, Texas 79901  
Fax: (915) 546-8333

And to: Jerold L. Jacobs, Esq.  
Law Offices of Jerold L. Jacobs  
1629 K Street, N.W., Suite 300  
Washington, D.C. 20006  
Fax: (202) 331-3759

LESSEE: City of El Paso  
Attn: City Manager  
P.O. Box 1890  
El Paso, Texas 79950-1890

With copy to: City Attorney  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890  
Fax: (915) 212-0033

16. This Agreement will not be assigned by any Party without the prior written consent of the other Parties.

17. The governing law for this Agreement shall be the law of the State of Texas. The venue for all causes of action in this matter shall be in the courts of competent jurisdiction of El Paso County Texas.

18. This Agreement is the entire agreement of the parties and supersedes any prior written or verbal negotiations. The Agreement may only be modified or amended by a written agreement signed by the parties.

19. In the event that any of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable, that fact shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.



STATE OF TEXAS §  
COUNTY OF EL PASO §

LANDLORD CONSENT  
TO LICENSE AGREEMENT

THIS CONSENT BY LANDLORD TO LICENSE AGREEMENT ("Consent") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015 ("Effective Date") by and between EL PASO COMMUNITY COLLEGE DISTRICT ("Landlord") and EL PASO PUBLIC TELEVISION FOUNDATION d/b/a KCOS-TV ("Tenant"), and CITY OF EL PASO ("Licensee") with reference to that certain Television Sub-Channel Lease and Premises License Agreement ("License") dated \_\_\_\_\_, 2015, between Tenant and Licensee.

WHEREAS, Tenant, as Tenant under the Lease, and Landlord have executed that certain Lease dated April 19, 2005 (the "Master Lease"), covering those certain premises and related improvements located at 9050 Viscount, Building A, El Paso, Texas 79925 (the "Premises"); and

WHEREAS, Tenant desires to license a portion of the Premises to the City of El Paso ("Licensee") for use of studio facilities and equipment in connection with a lease of Tenant's broadcasting sub-channel, and Licensee desires to accept a license in the form attached as Exhibit "A" (the "License"); and

WHEREAS, Landlord is willing to consent to the License on the terms and conditions set forth in this Consent;

NOW, THEREFORE, IN CONSIDERATION OF the foregoing recitals and the mutual promises set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

- 1. Consent to License.** Landlord hereby consents to the License and the transactions contemplated thereby. Landlord's consent to the License shall not be deemed a consent to: (i) any further licensing or subleasing of the Premises; (ii) any licensing or subleasing of any other portion of the Premises; or (iii) the licensing or subleasing of any portion of the Premises to any other licensee or subtenant or on any other or different terms than those stated in the License. Tenant shall provide Landlord with a fully-executed copy of the License promptly after execution, which shall thereafter be attached hereto as Exhibit A.
- 2. Limitation of License and Access to Premises.** Tenant's studio area, designated on Exhibit B attached hereto as "KCOS TV, 8,341 SQFT" is the extent of the Premises licensed to Licensee. Landlord's consent to the License is limited to Licensee's access to Tenant's studio.
- 3. Continuing Liability.** Tenant acknowledges that: (i) Tenant shall remain primarily liable for, and shall not be released from, the full and faithful performance of all terms and conditions of the Master Lease, notwithstanding the existence of (and Landlord's consent to) the License, or any breach committed by Licensee under the License; and (ii) Landlord shall be entitled to pursue all remedies available in the event of Tenant's breach of the Master Lease, without regard to the performance or non-performance of the terms of the License by Licensee.

4. **Licensee Equipment.** Licensee will be installing equipment and a fiber optic network on the Premises (as defined in the License) that will be wholly owned by Licensee. Landlord acknowledges that property of Licensee, a municipality, is constitutionally protected from being subject to liens. Landlord shall not impose any claim, through landlord's lien or otherwise, upon Licensee's equipment or fiber optic network, nor shall Landlord assert that such equipment or fiber optic network becomes a fixture to the Premises upon their installation by Licensee. Landlord shall not pledge as collateral or security, or otherwise encumber, Licensee's equipment or fiber optic network for the benefit of any third party claiming by, through, or under Landlord. Landlord shall not grant any third party access to the Premises unless authorized in writing by Tenant or Licensee. If requested by Tenant, Landlord shall cooperate in the provision of additional security measures to protect the security of the Premises and Licensee's equipment and fiber optic network. If Landlord determines that the requested additional security measures will require the expenditure of funds by Landlord, Landlord shall promptly so notify Tenant and Licensee, and the parties shall agree on a reasonable and equitable apportionment of such costs among themselves. In the event the Master Lease is terminated or not renewed by its terms, Landlord shall allow Licensee access to the Premises in order to safeguard and remove Licensee's equipment and fiber optic network from the Premises.

5. **Consideration.** As consideration for Landlord's consent to the License and the transactions contemplated thereby, Licensee will grant limited access to Licensee's Equipment by qualified and supervised individual students and faculty members of Landlord. Access to the Licensed Premises, however, shall be determined between Tenant and Landlord. Licensee and Landlord will work together to develop mutually-agreeable guidelines and policies that will govern such use of Licensee's Equipment. Because of the significant investment by Licensee in Licensee's Equipment, Licensee shall have the sole and final discretion as to how much access to grant, and to whom. Landlord shall not claim failure of consideration as a result of Licensee's exercise of its authority to restrict access as provided herein.

6. **Indemnification.** TO THE EXTENT AUTHORIZED UNDER THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, EACH PARTY SHALL INDEMNIFY THE OTHER PARTIES AND THEIR DIRECTORS, OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF EITHER PARTY'S BUSINESS ON THE LICENSED PREMISES, EITHER PARTY'S USE OF THE LICENSED PREMISES, OR FROM ANY BREACH ON THE PART OF EITHER PARTY OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF EITHER PARTY, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF EITHER PARTY. HOWEVER, NEITHER PARTY SHALL BE INDEMNIFIED HEREUNDER FOR ANY LOSS, LIABILITY, DAMAGE OR EXPENSE RESULTING FROM ITS SOLE NEGLIGENCE OR WILLFUL MISCONDUCT. IN CASE OF ANY ACTION OR PROCEEDING

**BROUGHT AGAINST EITHER PARTY BY REASON OF ANY SUCH CLAIM, THE OTHER PARTY, UPON NOTICE FROM THE INDEMNIFIED PARTY, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO THE INDEMNIFIED PARTY.**

This Section 6 is subject to the indemnity provisions of the Master Lease (or other such agreement) between Landlord and Tenant. Nothing in this Section 6 shall alter, compromise, or otherwise waive any portion of the doctrine of sovereign or governmental immunity, neither shall it affect the applicability of the limited liability provided by the Texas Tort Claims Act.

7. **Entire Agreement.** This Consent constitutes the entire agreement of Landlord and Tenant pertaining to its subject matter and supersedes any prior or contemporaneous negotiations, representations, agreements and understandings of the parties with respect to such matters, whether oral or written. The Parties acknowledge that they have not relied upon any promise, representation, or warranty, expressed or implied, not contained in this Consent. Parol evidence will be inadmissible to show agreement by and among the Parties to any term or condition contrary to or in addition to the terms and conditions contained in this Consent.

8. **Interpretation; Amendment.** In interpreting the language of this Consent, Landlord, Tenant, and Licensee shall be treated as having drafted this Consent after meaningful negotiations. The language in this Agreement shall be construed as to its fair meaning and not strictly for or against either Party. This Consent may be modified only by a writing signed by Landlord, Tenant, and Licensee.

9. **Counterparts.** This Consent may be signed in counterparts and all counterparts so executed shall constitute one contract, binding on all parties hereto.

10. **Binding Effect.** This Consent shall be binding on Landlord, and inure to the benefit of Licensee, Tenant and their respective heirs, executors, administrators, successors in interest and assigns.

11. **Governing Law; Venue.** The governing law for this Consent shall be the law of the State of Texas. The venue for all causes of action in this matter shall be in the courts of competent jurisdiction of El Paso County, Texas.

12. **Severability.** In the event that any of the provisions contained in this Consent is held to be invalid, illegal, or unenforceable, that fact shall not affect any other provision hereof, and this Consent shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

IN WITNESS WHEREOF, the parties sign and execute this Consent as of the day and year first written above.

LANDLORD:

T

EL PASO COMMUNITY COLLEGE DISTRICT

By: [Signature]

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

[Signature]

[Signature]

TENANT:

EL PASO PUBLIC TELEVISION FOUNDATION

BY: [Signature]  
Emily Loya, General Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_

\_\_\_\_\_

LICENSEE:

CITY OF EL PASO, TEXAS

By: \_\_\_\_\_  
Tomás González, City Manager

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Bertha A. Ontiveros  
Senior Assistant City Attorney

\_\_\_\_\_  
Juliet Lozano  
Public Information Officer