

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

DEPARTMENT: City Manager's Office

AGENDA DATE: September 17, 2019

PUBLIC HEARING DATE: N/A

CONTACT PERSON NAME AND PHONE NUMBER: Laura Cruz-Acosta – (915) 212-0023

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: Goal No. 5 and Goal No. 6

SUBGOAL:

5.5 Strengthen messaging opportunities through media outlets and proactive community outreach

6.8 Support Transparent and Inclusive Government

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

That the City Manager be authorized to sign a Consent to Assignment of and Amendment to Television Sub-Channel Lease and Premises License Agreement from El Paso Public Television Foundation d/b/a KCOS-TV to Texas Tech University, a Texas public institution of higher education with respect to the City's lease of a sub-channel for the broadcasting of City Cable 15, and for the shared use of studio facilities and equipment leased from El Paso Community College, and to authorize the City Manager to execute any related documents necessary to effectuate this assignment, including any amendments to the Landlord Consent to License Agreement with the El Paso Community College District.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

That the City Manager be authorized to sign a Consent to Assignment of and Amendment to Television Sub-Channel Lease and Premises License Agreement from El Paso Public Television Foundation d/b/a KCOS-TV to Texas Tech University, a Texas public institution of higher education with respect to the City's lease of a sub-channel for the broadcasting of City Cable 15, and for the shared use of studio facilities and equipment leased from El Paso Community College, and to authorize the City Manager to execute any related documents necessary to effectuate this assignment, including any amendments to the Landlord Consent to License Agreement with the El Paso Community College District.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

On March 17, 2015, the City Council approved a resolution authorizing a Television SubChannel Lease and Premises License Agreement with El Paso Public Television Foundation d/b/a KCOS-TV.

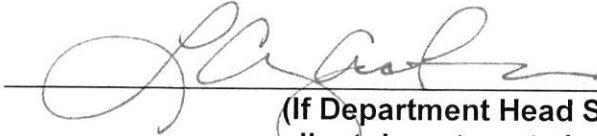
AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

RESOLUTION

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

That the City Manager be authorized to sign a Consent to Assignment of and Amendment to Television Sub-Channel Lease and Premises License Agreement from El Paso Public Television Foundation d/b/a KCOS-TV to Texas Tech University, a Texas public institution of higher education, with respect to the City's lease of a sub-channel for the broadcasting of City Cable 15, and for the shared use of studio facilities and equipment leased from El Paso Community College, and to authorize the City Manager to execute any related documents necessary to effectuate this assignment, including any amendments to the Landlord Consent to License Agreement with the El Paso Community College District.

ADOPTED this ____ day of September, 2019.


CITY OF EL PASO

Dee Margo
Mayor

ATTEST:

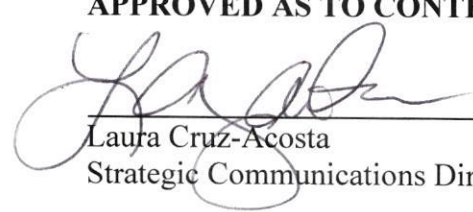
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Elizabeth Ruhmann
Assistant City Attorney

APPROVED AS TO CONTENT:



Laura Cruz-Acosta
Strategic Communications Director

**Consent to Assignment of and Amendment to
Television Sub-Channel Lease and Premises License Agreement**

This Consent to Assignment of and Amendment to Television Sub-Channel Lease and Premises License Agreement ("Amendment") is entered into by and between the City of El Paso, a Texas municipal corporation (herein referred to as the "CITY"), El Paso Public Television Foundation d/b/a KCOS-TV (hereinafter referred to as "KCOS"), and Texas Tech University, a Texas public institution of higher education (herein referred to as "TTU"). Collectively, City and TTU will be referred to as the "Parties."

WHEREAS, on March 17, 2015, CITY entered into a Television Sub-Channel Lease and Premises License Agreement ("Agreement") with KCOS, whereby KCOS granted to CITY a lease of a sub-channel and a license to use a portion of studio space leased by KCOS from El Paso Community College District ("EPCC") (approved by EPCC through a separate Landlord Consent to License Agreement dated March 17, 2015, which is attached as Exhibit "A" to the Agreement), for the purpose of expanding the broadcast reach of the CITY's non-commercial government access television channel; and

WHEREAS, after entering into said Agreement, KCOS and TTU have agreed that TTU will acquire all of the assets and licenses of KCOS, and that TTU will take over the complete operation of KCOS; and

WHEREAS, pursuant to the asset purchase and partnership agreement between KCOS and TTU, KCOS shall assign all agreements to which it is a party to TTU; and

WHEREAS, the Television Sub-Channel Lease and Premises License Agreement between the City and KCOS provides that it is not assignable without the written consent of the other party; and

WHEREAS, KCOS has requested that the CITY approve an assignment of the Agreement to TTU; and

WHEREAS, TTU has agreed to be responsible for all duties and obligations under the Agreement, as amended by this Agreement; and

WHEREAS, the CITY therefore agrees to the assignment of and amendment to the Agreement, as set forth herein.

NOW THEREFORE, for good and valuable consideration, the mutuality and sufficiency of which is mutually recognized by the Parties, the Parties recognize and agree to the following:

1. The City consents to the assignment of the rights, duties and obligations under the Television Sub-Channel Lease and Premises License Agreement from KCOS to TTU.

2. TTU shall assume and perform all duties, obligations and responsibilities of KCOS under the Television Sub-Channel Lease and Premises License Agreement upon effectuation of the asset purchase and partnership agreement between KCOS and TTU.

3. CITY recognizes that TTU is a Texas state entity and is subject to certain requirements in its contracts. As a result, any agreement to which TTU is a successor in interest shall be considered to contain the following additional clauses:

- A. TTU, an agency of the State of Texas, is exempt from Texas Sales & Use Tax on goods and services in accordance with §151.309, Texas Tax Code, and Title 34 Texas Administrative Code (“TAC”) §3.322.
- B. Texas Public Information Act (the “Act”). Both parties are public entities subject to the requirements of the Act. All information, documentation, and other material submitted by the Parties for and under this Amendment are subject to public disclosure under the Act (Texas Government Code, Chapter 552). The Parties will strictly adhere to this statute and the interpretations thereof rendered by the Courts and the Texas Attorney General. The Parties will use their best efforts to maintain the confidentiality of all submitted information except where the Parties are required to disclose it under the Act. The Texas Attorney General will ultimately decide whether a Party’s proprietary information must be released to the public; however, the Parties will give notice of all requests for its proprietary information in accordance with the Act. TTU and the CITY cannot represent the other Party’s interests to the Texas Attorney General and any Party seeking to protect their proprietary information will be required to submit a letter, brief, or memorandum to the Attorney General with reasons in support of withholding their information.
- C. CITY agrees that it will not publicize this Amendment or disclose, confirm, or deny any details thereof to third parties, or use TTU’s name or protected marks without TTU’s prior express written approval. TTU agrees that it will not publicize this Amendment or disclose, confirm, or deny any thereof to third parties, or use CITY’s name or protected marks without CITY’s prior express written approval.
- D. All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of the Agreement to TTU will be in writing and will be sent via registered or certified mail, overnight courier, or email, and notice will be deemed given (i) if mailed, when deposited, postage prepaid, in the United States mail, (ii) if sent by overnight courier, one (1) business day after delivery to the courier, (iii) if sent by email, when received:

Contracting Procurement Services
Texas Tech University
Texas Tech Plaza
1901 University Avenue
Suite 408
Lubbock, Texas 79411 contracting@ttu.edu

or such other person or address as may be given in writing by TTU to CITY.

Notwithstanding any other requirements for notices given by a party under the Agreement, if CITY intends to deliver written notice to TTU pursuant to §2251.054, Texas Government Code, then CITY will send that notice to TTU as follows:

Contracting
Procurement Services Texas
Tech University PO Box 41094
Lubbock, Texas 79409

- E. THE PARTIES ARE AWARE THAT THERE MAY BE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF TTU (A STATE AGENCY) AND THE CITY (A LOCAL GOVERNMENTAL ENTITY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS, INCLUDING TERMS AND CONDITIONS (IF ANY) RELATING TO LIENS ON TTU'S AND/OR CITY'S PROPERTY; DISCLAIMERS AND LIMITATIONS OF WARRANTIES; DISCLAIMERS AND LIMITATIONS OF LIABILITY FOR DAMAGES; WAIVERS, DISCLAIMERS AND LIMITATIONS OF TTU'S AND/OR CITY'S LEGAL RIGHTS, REMEDIES, REQUIREMENTS AND PROCESSES; LIMITATIONS OF PERIODS TO BRING LEGAL ACTION; GRANTING CONTROL OF LITIGATION OR SETTLEMENT TO ANOTHER PARTY; LIABILITY FOR ACTS OR OMISSIONS OF THIRD PARTIES; PAYMENT OF ATTORNEYS' FEES; DISPUTE RESOLUTION; INDEMNITIES; ANY PROVISION THAT CREATES AN UNKNOWN OR UNFUNDED LIABILITY; AND CONFIDENTIALITY (COLLECTIVELY, THE "LIMITATIONS"), AND TERMS AND CONDITIONS RELATED TO THE LIMITATIONS WILL NOT BE BINDING ON TTU EXCEPT TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS.
- F. The dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260 will be used by TTU and CITY to attempt to resolve any claim for breach of contract made by CITY that cannot be resolved in the ordinary course of business. The chief procurement officer of TTU will examine CITY's claim and any counterclaim and negotiate with CITY in an effort to resolve such claims. The parties specifically agree that (i) neither the execution of the Contract by TTU nor any other conduct, action, or inaction of any representative of TTU relating to the Contract constitutes or is intended to constitute a waiver of TTU's or the state's sovereign immunity to suit; and (ii) TTU has not waived its right to seek redress in the courts. Any term or provision in the CITY Terms indicating agreement to arbitration, other alternative dispute resolution, or litigation options in the event of a dispute between the parties is expressly rejected and is null and void.
- G. If given access to the personally identifiable information about any student during performance of the services, CITY agrees to abide by the limitations on re-disclosure of personally identifiable information from student records as set forth

in The Family Educational Rights and Privacy Act ("FERPA") 34 CFR, §99.3. CITY agrees that it may create, receive from or on behalf of TTU, or have access to, records or record systems that are subject to FERPA (collectively, the "FERPA Records"). To the extent that CITY has access to "education records" under the Contract, it is deemed a "school official," as each of these terms are defined under FERPA. CITY represents, warrants, and agrees that it will: (1) hold the FERPA Records in strict confidence and will not use or disclose the FERPA Records except as (a) permitted or required by this Contract, (b) required by law, or (c) otherwise authorized by Institution in writing; (2) safeguard the FERPA Records according to commercially reasonable administrative, physical and technical standards that are no less rigorous than the standards by which CITY protects its own confidential information; and (3) continually monitor its operations and take any action necessary to assure that the FERPA Records are safeguarded in accordance with the terms of this Contract. At the request of TTU, CITY agrees to provide TTU with a written summary of the procedures CITY uses to safeguard the FERPA Records. CITY will indemnify and hold harmless TTU from and against all claims, actions and proceedings resulting from CITY's or its subcontractor's or affiliate's breach of any obligations under this paragraph.

- H. If this Contract has a value of \$100,000 or more that is to be paid wholly or partly from public funds of TTUS, and if CITY is a company, other than a sole proprietorship, with ten (10) or more full-time employees, then pursuant to Texas Government Code § 2270.002, CITY affirmatively states that it does not boycott Israel and will not boycott Israel during the term of this Contract. In this paragraph, the terms "company" and "boycott Israel" shall have the meanings described in Texas Government Code § 808.001.
- I. CITY agrees that it will comply with all federal, state, or local laws or regulations applicable to CITY's performance under the Contract. CITY also agrees that pursuant to Texas Education Code §51.9335(h), in any Contract for the acquisition of goods or services to which TTU is a party, any provision required by applicable law to be included in the Contract is considered to be part of the Contract whether or not the provision appears on the face of the Contract or if the Contract contains any provision to the contrary.

4. To the extent any of the above clauses contradict anything in any other agreement to which TTU is a successor in interest, the language, clauses and changes contained in this Amendment shall supersede all prior agreements.

5. CITY recognizes that TTU is a Texas state entity and is self-funded for purposes of liability insurance. As a result, Paragraph 7. Liability Insurance, of the Agreement is deleted to reflect TTU's self-insured status and shall be replaced with the following:

As a Texas public institution of higher education, TTU agrees to maintain in force such types and amounts of property and liability insurance are permitted in accordance with Texas law and determined appropriate by its Director of Risk Management. With the exception of commercial automobile insurance for State-

owned automobiles, it is it the policy of the State not to acquire commercial general liability insurance for torts committed by State employees who are acting within the scope of their employment.

6. The City hereby releases KCOS from future obligations under the Agreement as of the effective date of this Amendment.

7. EFFECTIVE DATE. This Amendment shall be effective as of the closing date of the asset purchase and partnership agreement between KCOS and TTU. TTU and/or KCOS shall provide written notice to CITY of such closing date and the effectiveness of this Amendment.

8. Except as amended herein, the terms and conditions of the Agreement shall remain in full force and effect.

EXECUTED this _____ day of _____, 2019.

(Signatures follow on the next page)

TEXAS TECH UNIVERSITY

By: _____
Name: _____
Title: _____

EL PASO PUBLIC TELEVISION FOUNDATION D/B/A KCOS-TV

By: Emily Loya
Name: Emily Loya
Title: CEO & General Manager

CITY OF EL PASO

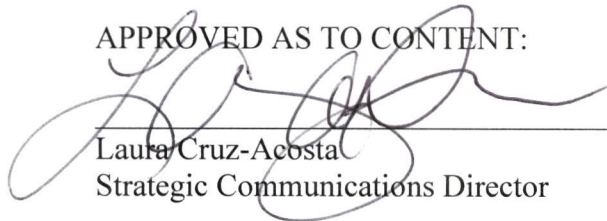
By: _____
Name: Tomas Gonzalez
Title: City Manager

APPROVED AS TO FORM:



Elizabeth Ruhmann
Assistant City Attorney

APPROVED AS TO CONTENT:



Laura Cruz-Acosta
Strategic Communications Director