

## **FIRST AMENDMENT TO ROOFTOP SPACE LICENSE AGREEMENT**

**THIS FIRST AMENDMENT TO ROOFTOP SPACE LICENSE AGREEMENT** is made by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”) and **CBS TELEVISION STATIONS INC.**, a Delaware corporation with offices located at 1044 Lincoln Street, Denver, Colorado (“Licensee”).

### **WITNESSETH:**

**WHEREAS**, City and Licensee entered into a Roof Space License Agreement dated July 5, 2006 for certain rooftop space at the Denver Public Library (the “Agreement”); and

**WHEREAS**, the parties hereto wish to amend the Agreement to extend the License Term increase the license fee and to otherwise modify the Agreement on the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and obligations herein set forth, the Parties agree as follows:

1. Article 2 of the Agreement entitled “**LICENSE TERM**” is hereby amended to read as follows:

“2. **LICENSE TERM**: The “License term” shall begin on January 1, 2006, (the “Commencement Date”) and shall expire on December 31, 2025, (the “Expiration Date”) unless sooner terminated pursuant to the terms of this Agreement

2. Article 3A of the Agreement entitled “**CONSIDERATION**” is hereby amended to read as follows:

A. From the time of this extension until the Expiration Date, the Licensee shall pay a monthly fee in the amount of Two Hundred Twenty Five Dollars (\$225.00) per month for the use of the Premises and shall continue to pay such fee on the first day of each month thereafter during the Extended Term. Each payment shall be made to the Manager of Revenue and delivered to the City Librarian, Denver Public Library, 10 West 14<sup>th</sup> Avenue Parkway, Denver, Colorado 80204 or to such other address as the City may designate, and shall be due and payable on the first day of each month.

3. Article 9 of the Agreement entitled “**INDEMNITY**” is hereby deleted in its entirety and replaced with the following:

“9. **INDEMNITY:**

a. Licensee agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Licensee or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

b. Licensee’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Licensee’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

c. Licensee shall defend any and all Claims which may be brought or threatened against City and shall pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City will be in addition to any other legal remedies available to City and will not be the City’s exclusive remedy.

d. Insurance coverage requirements specified in this Agreement in no way lessen or limit the liability of the Licensee under the terms of this indemnification obligation. The Licensee is responsible to obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

e. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.”

4. Article 15 of the Agreement entitled “**LICENSEE’S INSURANCE**” is hereby deleted in its entirety and replaced with the following:

“15. **INSURANCE:**

a. **General Conditions:** Licensee agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Licensee shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as “A-”VIII or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the above-described policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Licensee shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City’s contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Licensee. Licensee shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Licensee. The Licensee shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

b. **Proof of Insurance:** Licensee shall provide a copy of this Agreement to its insurance agent or broker. Licensee may not commence services or work relating to the Agreement prior to placement of coverages required under this Agreement. Licensee certifies that the certificate of insurance attached as **Exhibit C**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City’s contract number be referenced on the Certificate. The City’s

acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Licensee's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

c. **Additional Insureds:** For Commercial General Liability, Professional Liability, and Excess Liability/Umbrella (if required) Licensee and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. **Waiver of Subrogation:** For all coverages required under this Agreement, Licensee's insurer shall waive subrogation rights against the City.

e. **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Licensee. Licensee shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Licensee agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

f. **Workers' Compensation/Employer's Liability Insurance:** Licensee shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Licensee expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Licensee's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Licensee executes this Agreement.

**g. Commercial General Liability:** Licensee shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

**h. Business Automobile Liability:** Licensee shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

**i. Additional Provisions:**

(i) For Commercial General Liability, the policy must provide the following:

(a) That this Agreement is an Insured Contract under the policy;

(b) Defense costs are outside the limits of liability;

(c) A severability of interests, separation of insureds provision (no insured vs. insured exclusion); and

(d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(ii) For claims-made coverage:

(a) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

(b) Licensee shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Licensee will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.”

**5.** A new paragraph numbered 30 is hereby added to the Agreement readings as follows:

**“30. NO EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THE AGREEMENT:**

**a.** This Agreement is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the —Certification Ordinance).

**b.** The Licensee certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

**c.** The Licensee also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a sub-consultant or subcontractor that fails to certify to the Licensee that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(4) It is prohibited from using either the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Licensee to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three (3) days. The Licensee will also then terminate such sub-consultant or subcontractor if within three (3) days after such notice the sub-consultant or subcontractor does not stop

employing or contracting with the illegal alien, unless during such three-day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S., or the City Auditor, under authority of D.R.M.C. 20-90.3.

d. The Licensee is liable for any violations as provided in the Certification Ordinance. If Licensee violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Licensee shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Licensee from submitting bids or proposals for future contracts with the City.”

6. A new paragraph numbered 31 is hereby added to the Agreement readings as follows:

“**31. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** is hereby added to the Agreement as follows: Licensee consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.”

7. Except as herein amended, the Agreement is affirmed and ratified in each and every particular.

**SIGNATURE PAGES FOLLOW**

**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_





**Contract Control Number:** BOOKS-RC6A002-01

**Contractor Name:** CBS TELEVISION STATIONS INC.

By: 

Name: \_\_\_\_\_  
(please print) **Kenneth J. Cooper**  
**SVP, Administration**

Title: \_\_\_\_\_  
(please print)

**ATTEST: [if required]**

By: 

Name: LISA Frazier  
(please print)

Title: Administrative Assistant  
(please print)

