

RESOLUTION NO. 109-95

AUTHORIZING A 20-YEAR TRANSMITTER SITE AND ACCESS ROAD LEASE
TO THE COUNCIL FOR PUBLIC TELEVISION

WHEREAS, the City of Grand Junction is the owner of a certain tract of land commonly known as the "Somerville Ranch" in an area geographically known as the Grand Mesa situated within the County of Mesa, State of Colorado; and

WHEREAS, the Council for Public Television, a Colorado non-profit corporation, is desirous of securing a 20-year transmitter site and access road lease for the premises described in the attached Exhibit "A" and depicted on Exhibit "B" for the installation and operation of a transmitting facility and related appurtenances; and

WHEREAS, the City Council of the City of Grand Junction has determined that such action would be beneficial to the inhabitants of the City of Grand Junction and the County of Mesa.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

That the City Manager is hereby authorized, on behalf of the City and as the act of the City, to execute and enter into the attached Lease Agreement with the Council for Public Television allowing the use, operation, maintenance, improvement and repair of the real property therein described and for the purposes therein described.

PASSED and ADOPTED this 6th day of December, 1995.

Attest:

/s/ Stephanie Nye
City Clerk

/s/ Ron Maupin
President of the City Council

LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into as of the 1st day of January, 1996, between The City of Grand Junction, a Colorado home rule city, hereinafter referred to as "the City", and Council for Public Television, Channel 6, Inc., a Colorado non profit corporation, hereinafter referred to as "the Lessee".

WITNESSETH:

A. The Lessee desires to lease from the City that certain real property described on Exhibit "A" and depicted on Exhibit "B" attached hereto and incorporated herein by reference, for the purpose of constructing, installing, operating and maintaining a transmitting facility and related appurtenances.

B. The City has agreed Lessee the Property to the Lessee under the terms, covenants and conditions of this Lease Agreement.

NOW, THEREFORE, In consideration of the mutual covenants contained herein, the parties agree as follows:

1. The City leases to the Lessee and the Lessee leases from the City, the "transmitter site" and "access road" as described on the attached Exhibit "A" and depicted on the attached Exhibit "B" (the transmitter site and access road as described and depicted are hereinafter collectively referred to as the "Property").

2. The term of this Lease shall be for a period of Twenty (20) years (the "basic term"), commencing on January 1, 1996 (hereinafter the "Commencement Date"), and shall continue until December 31, 2015, at which time this Lease shall expire unless this Lease is extended pursuant to provisions of paragraph 4, or unless this Lease is otherwise terminated as provided herein. The term "lease year" shall mean a period of twelve successive calendar months following each anniversary of the Commencement Date.

3.1 The Lessee agrees to pay to the City, at the address of the City as set forth in paragraph 12 or at such other address as the City may from time to time designate in writing, an annual rent for the use of the Property as set forth herein. The annual rent for the first five (5) years of the basic term shall be in the amount of \$4,200.00 per lease year (the "Base Rent") and shall be payable in advance and without demand by the City.

3.2 Effective with the fifth anniversary of the Commencement Date of the basic term and upon each successive fifth anniversary date, the Base Rent for the succeeding five (5) lease years shall be increased by an amount equivalent to the percentage increase in the cost of living since the Commencement Date of the preceding five (5) lease years. The Adjusted Base Rental shall be calculated using the number for All Items under the categories of All Urban Consumers, U.S. City Average in the Consumer Price Index published by the Bureau of Labor Statistics of the U.S. Department of Labor (the Index), as follows:

A. The Index number for December, 1995 shall be the base Index number (B.I.N.), and the Index number for each November that immediately precedes the five (5) lease years for which the Adjusted Base Rent is to be determined shall be the current Index number (C.I.N.). By way of example but not by way of limitation or exclusion, if the sixth lease year of this Lease commences on January 1, 2001, and ends on December 31, 2005, the B.I.N. would be the Index number for December, 1995, and the C.I.N. would be the Index number for November, 2000.

B. The Adjusted Base Rent for any given five (5) lease years shall then be calculated by multiplying the Base Rent by the quotient obtained by dividing the C.I.N. by the B.I.N. as follows:

$$\text{Preceding five lease years base rent X } \frac{\text{C.I.N.}}{\text{B.I.N.}} = \text{Succeeding five lease years base rent}$$

C. In the event the Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Index and the Index number shall be used in lieu of the Index and the Index number.

D. In the event there is a decrease in the cost of living in any lease year, the Adjusted Base Rent for the immediately ensuing five (5) lease years shall not be adjusted but shall remain the same. In no event shall the Adjusted Base Rent during any five (5) lease year period be less than the Adjusted Base Rent in the immediately preceding five (5) lease years.

4. If the Lessee performs as required pursuant to this Lease and as part of the consideration for the payment of all rentals provided for herein, the City hereby gives and grants to the Lessee an option to extend this Lease for two (2) successive twenty (20) year periods, each commencing upon the expiration of the prior twenty (20) year term, upon the same terms and conditions of this Lease or upon terms and conditions which may hereinafter be negotiated between the parties. In order to exercise the option for each twenty (20) year extended term, the Lessee shall give written notice to the City of its intention to exercise the option to extend not less than ninety (90) days prior to the expiration of the basic term or any extended term of this Lease.

5. (a) During the basic term and any extended term of this Lease, the Lessee agrees to use the Property only to install construct, operate and maintain thereon a guyed tower not to exceed 150 feet in height above the existing ground, an equipment building not to exceed 400 square feet in size, and related facilities including antennae and transmitters. The Lessee shall construct its tower and related facilities subject to the rules, rulings and regulations of any governmental authority either now in effect or hereinafter enacted, including, but not limited to, the Federal Communications Commission ("FCC"), the State of Colorado and the County of Mesa and the City of Grand Junction. The Lessee shall not use nor permit the Property to be used in any other fashion or in any manner contrary to the laws, ordinances or regulations of any governmental unit or agency exercising jurisdiction over the Property or any use thereon.

(b) In order to prepare the land for its intended purpose, the Lessee may grade the transmitter site level (minimizing disturbance and disposing of material in a manner which is acceptable to the City), install instrumentation shelter and antenna tower, fence the instrumentation area of the Property, and bring underground electrical power to the Property. The Lessee agrees that it shall not use any chemicals or regulated substances on the surface of the ground for weed control or for any other purpose. The Lessee further agrees that it will not use explosives of any kind for any purpose.

(c) Prior to construction, the Lessee shall obtain the City's written approval of all plans for improvements to be constructed on the Property by the Lessee. Except as otherwise provided in paragraph 6(c), the City's approval of the Lessee's plans shall not be unreasonably withheld. It is the City's desire that the Property and the improvements to be installed thereon by the Lessee will be reasonably compatible with the landscape of the City's adjacent property. To this end, the Lessee agrees to comply with all reasonable requirements which the City may impose upon the Lessee, including, but not limited to, colorings and aesthetics for the tower and antenna (except as required by the FCC or the FAA), transmitters, landscape improvements, building materials and fencing materials. If, for whatever reason, the City does not approve of the Lessee's plans, the Lessee may terminate this Lease and any moneys paid to the City within the prior twelve months hereunder shall be refunded to the Lessee, without interest thereon. In such event, the Lessee shall restore the Property to a condition which is comparable with or better than that which existed prior to entry upon the Property by the Lessee.

6. The Lessee hereby covenants and agrees as follows:

(a) The Lessee shall maintain and repair all fences and security devices at its own expense. The City and its other existing Lessees, including Lessees of the ranching and grazing rights on the adjacent lands owned by the City, shall not be obligated nor required to repair damages to such fences or security devices caused or created by livestock grazing operations on adjacent lands owned by the City.

(b) The Lessee's use of the access road is non-exclusive. The City shall have the joint right to use said access road and the City may further authorize third parties to use said access road. Livestock shall have the right of way over the Lessee's vehicles at all times.

(c) The City shall have no responsibility for improving, maintaining or repairing the access road. It is the City's intent that the access road remain in a rugged condition that will discourage access by the general public. In the event the access road deteriorates to the extent that it is impassible (as determined solely by the City), the City may allow the Lessee to perform certain repairs to make the access road passible. The Lessee agrees that it shall not make any improvements to the access road nor perform any repairs to the access road without the prior written consent of the City.

(d) The Lessee shall keep all closed gates now or hereafter to be located upon the City's property closed and locked; provided, however that the Lessee shall be responsible for ensuring that the City has copies of keys to all locks installed by the Lessee on gates located across the road, and the City shall make available to the Lessee copies of keys to all locks installed by the City on gates located across the road.

(e) The Lessee hereby and forever indemnifies the City, its officers, employees and agents and hereby and forever holds the City, its officers, employees and agents harmless from any damage(s) which the Lessee, its employees or agents, may cause to the City's property in connection with the Lessee's use and occupancy of the Property. The expense and costs required to repair any such damage(s) will be the responsibility of the Lessee.

(f) The Lessee shall maintain all aspects of the transmitter site, including, but not limited to, the appearance and structural integrity of any improvements and landscaping, in good order, good appearance, condition and repair and in a clean, sanitary, orderly and safe condition. The Lessee shall not commit nor permit waste, damage or injury to the Property. If the Lessee refuses or neglects to commence repairs or perform maintenance work required under the terms hereof to be performed or paid for by the Lessee within thirty (30) days after written demand by the City, or fails to complete such repairs or perform such maintenance within a reasonable time thereafter, the City may enter upon the Property and make such repairs or perform such maintenance without liability to the Lessee's operations by reason thereof, and if the City makes such repairs or performs such maintenance, the Lessee shall pay to the City, on demand, as additional rent, the cost thereof with interest at the rate of fifteen percent (15%) per annum from the date of payment by the City for such repairs or maintenance work until paid in full by the Lessee. Any repairs made or maintenance performed by the Lessee or the City shall be completed expeditiously.

(g) The Lessee hereby and forever waives and forgoes any claim, cause of action or demand the Lessee may have against the City, its officers, employees and agents for injury to or destruction of any property of the Lessee that may be lost, injured, destroyed or devalued as a result of the act, or failure to act, of the Lessee or any third person. The Lessee hereby and forever agrees to indemnify the City, its officers, employees and agents, and hereby and forever agrees to hold the City, its officers, employees and agents harmless from any and all claims, damages, actions, costs and expenses of every kind in any manner arising out of, or resulting from the Lessee's use and occupancy of the Property, except for damages which have been proven to be caused by the sole negligence of the City.

(h) The Lessee shall not pledge or attempt to pledge or grant or attempt to grant as collateral or security its interest in any of the Property without the prior written consent of the City.

7. Subject to the first and superior rights of existing leases and tenancies, the City hereby covenants that the Lessee, its successors or assigns, shall have the quiet and peaceable enjoyment of the premises. The City also covenants that it owns the premises in fee simple and that

it has the full right to make this Lease Agreement.

8. The Lessee has inspected the Property and accepts the Property in its present condition. The Lessee agrees that the condition of the Property is sufficient for the purposes of the Lessee. The City makes no warranties, promises or representations, express or implied, that the Property is sufficient for the purposes of the Lessee. If the leasehold premises are damaged due to fire, flood, or other casualty, or if the Property is damaged or deteriorates to the extent where it is no longer functional for the purposes of the Lessee, the City shall have no obligation to repair the Property nor to otherwise make the Property usable or occupiable; damages shall be at the Lessee's own risk, provided, however, that in the event the Property is damaged or deteriorates to the extent where it is no longer functional for the purposes of the Lessee, the Lessee may, at its option, terminate this Lease by giving notice to the City that this Lease is to be terminated. Termination shall be effective thirty (30) days following the date of the notice of termination.

9. Should the Lessee: (a) default in the performance of its agreements or obligations herein and any such default continue for a period of ninety (90) days after written notice thereof is given by the City to the Lessee; or (b) abandon or vacate the Property; or (c) be declared bankrupt, insolvent, make an assignment for the benefit of creditors, or if a receiver is appointed; the City, at the City's option, may cancel and annul this Lease at once and enter and take possession of the Property immediately without any previous notice of intention to reenter, and such reentry shall not operate as a waiver or satisfaction in whole or in part of any claim or demand arising out of or connected with any breach or violation by the Lessee of any covenant or agreement to be performed by the Lessee. Upon reentry, the City may remove the property and personnel of the Lessee and store the property in a warehouse or at a place selected by the City, at the expense of the Lessee and without liability to the City. Any such reentry shall not work a forfeiture of nor shall it terminate the rent to be paid or the covenants and agreements to be performed by the Lessee for the full term of this Lease; and, upon such reentry, the City may thereafter lease or sublease the Property for such rent as the City may reasonably obtain, crediting the Lessee with the rent so obtained after deducting the cost reasonably incurred in such reentry, leasing or subleasing, including the costs of necessary repairs, alterations and modifications to the Property. Nothing herein shall prejudice or be to the exclusion of any other rights or remedies which the City may have against the Lessee, including, but not limited to, the right of the City to obtain injunctive relief based on the irreparable harm caused to the City's reversionary rights; provided, however, that the City acknowledges and agrees that certain improvements on the leased Property are or may be secured by a lien in favor of the United States Government, which lien is or will be prior and superior to the City's rights hereunder, and that representatives of the U.S. Department of Commerce (or its successor agency) shall not be prevented from entering the Property and reclaiming or securing such improvements. In the event of the entry of the Property by representatives of the U.S. Department of Commerce and the reclaiming of improvements on the Property secured by a lien in favor of the United States Government, Lessee shall be responsible to restore the premises to a condition that is substantially similar to that existing prior to the commencement of this Lease or to a condition otherwise acceptable to the City, and such obligation shall be secured by improvements made on the Property not secured by a lien in favor of the United States Government.

10. The Lessee shall not assign or sublease the Property, or any right or privilege connected therewith, or allow any other person, except officers, employees and agents of the Lessee, to occupy the Property or any part thereof without first obtaining the written consent of the City, which consent must be approved and ratified by the City Council of the City. In the event of an assignment of this Lease or a sublease, the Lessee shall not be released from its obligations and duties under this Lease and this Lease shall remain in full force and effect. Any consent by the City shall not be a consent to a subsequent assignment, sublease or occupation by any other party. An unauthorized assignment, sublease or license to occupy by the Lessee shall be void and shall, at the option of the City, terminate this Lease. The interest of the Lessee in this Lease is not to be assignable by operation of law without the formal approval and ratification by the City Council of the City.

11. In the event of the voluntary or involuntary transfer of the City's interest in the Property, the Lessee will attorn to the transferee of, or successor to, the City's interest in the Property, and recognize such transferee or successor as Lessor under this Lease.

12. Except as otherwise provided for (automatic and immediate termination), if the Lessee is in default in the performance of any term or condition of this Lease Agreement, the City may, at its option, terminate this Lease upon giving ninety (90) days written notice. If the Lessee fails within any such ninety (90) day period to remedy each and every default specified in the City's notice, this Lease shall terminate. If the Lessee remedies such default, the Lessee shall not thereafter have the right of ninety (90) days (to remedy) with respect to the same default, but rather, the Lessee's rights shall, with respect to a subsequent similar default, terminate upon the giving of notice by the City.

13. All notices to be given with respect to this Lease shall be in writing delivered by United States certified mail, return receipt requested, postage prepaid, and shall be considered served upon the receiving party as of the date of mailing indicated on the postal receipt. All notices shall be delivered to the following addresses or at such other address as either party may from time to time designate in writing:

To the City: City of Grand Junction
 c/o City Property Agent
 250 North 5th Street
 Grand Junction, Colorado 81501

To the Lessee: Council for Public Television, Channel 6, Inc.
 c/o Director of Engineering
 1089 Bannock Street
 Denver, Colorado 80204

Rental payments shall be sent to: City of Grand Junction Finance Department, Accounts

Receivable, 250 North 5th Street, Grand Junction, Colorado 81501.

Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

14. The parties to this Lease Agreement warrant that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. The City and the Lessee agree to defend, indemnify and hold the other harmless from any claim for real estate brokerage commissions or finder's fees asserted by any other party claiming to be entitled to brokerage commissions or finder's fees arising out of this Lease.

15. (a) If the Lessee files any action to enforce any agreement contained in this Lease, or for breach of any covenant or condition herein contained, the party prevailing shall be entitled to receive, by judgment of the court from the other party, reasonable attorney's fees incurred in such action.

(b) In the event City uses its City Attorney or engages an attorney to enforce the City's rights hereunder, including, but not limited to, suit or any collection efforts, the Lessee agrees to pay for the value or cost of such attorney, plus costs including the costs of any experts.

(c) This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action to enforce any covenant or agreement contained in this Lease shall be in Mesa County, Colorado.

16. This Lease contains the entire agreement between the parties and cannot be changed, modified or terminated except by a written instrument subsequently executed by the parties hereto. This Lease and the terms and conditions hereof apply to and are binding upon the successors and authorized assigns of both parties.

IN WITNESS WHEREOF, each party to this Lease Agreement has caused it to be executed on the date indicated below.

Attest: The City of Grand Junction,
a Colorado home rule municipality

City Clerk Date City Manager Date

Attest: KRMA Public Television,
a Colorado non profit corporation

Secretary Date President Date

EXHIBIT "A"

Transmitting Site: A one-quarter (1/4) acre parcel of land surrounding the following described latitude and longitude point situate in the Northeast Quarter (NE1/4) of Section 32, Township 11 South, Range 97 West of the Sixth Principal Meridian, County of Mesa, State of Colorado:

North Latitude - 39°03'14"

West Longitude _ 108°15'13"

Said 1/4 acre parcel of land is specifically described as follows:

Beginning at the Southeast corner of said parcel from whence the U.S.G.L.O. Brass Cap Monument set for the East 1/4 corner of said Section 32 bears S 48°28'02" E a distance of 720.01 feet;
thence N 90°00'00" W a distance of 104.36 feet;
thence N 00°00'00" E a distance of 104.36 feet;
thence S 90°00'00" E a distance of 104.36 feet;
thence S 00°00'00" W a distance of 104.36 feet to the Point of Beginning,
containing 0.25 acres, more or less.

Access Road: Beginning at a point from whence the U.S.G.L.O. Brass Cap Monument set for the East 1/4 corner of said Section 32 bears S 48°28'02" E a distance of 720.01 feet; thence running generally Easterly through Sections 32, 33, 34 and 35 in said Township and Range to a point in the Northeast Quarter of said Section 35; thence Southerly through said Section 35 to the U.S. Forest boundary, all as presently established on the ground and as shown on the attached Exhibit "B".