

AN ORDINANCE 2008-12-04-1095

**APPROVING A FIVE-YEAR ANTENNA LICENSE AGREEMENT WITH BELO CORPORATION, INC. D/B/A KENS 5 TV FOR THE PURPOSE OF OPERATING AND MAINTAINING AN ELECTRONIC NEWS GATHERING RELAY STATION AND ASSOCIATED EQUIPMENT AT THE TOWER OF THE AMERICAS FOR A TOTAL REVENUE OF \$108,306.37 OVER THE FIVE-YEAR TERM**

\* \* \* \* \*

**WHEREAS**, KENS 5 TV presently has a license agreement for space on the Tower of the Americas for an electronic news gathering relay station, consisting of an antenna and associated equipment; and

**WHEREAS**, KENS 5 TV paid a total of \$11,458.00 for 2008 and wishes to continue its use of the Tower of the Americas site for a new five (5) year term; and

**WHEREAS**, in 2008, the City hired RCC Consultants, Inc. to complete a market study and they recommend a license fee of \$20,400.00 per year with a 3% annual increase over the five (5) year term; and

**WHEREAS**, the new license agreement is for a five year term with an option to extend for an additional five (5) year period, subject to City Council approval; and

**WHEREAS**, KENS 5 TV will pay an initial annual license fee of \$20,400.00 for the period of January 1, 2009 - December 31, 2009, with annual 3.00% increase to follow thereafter; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager or her designee, or the Director of the Downtown Operations Department or her designee, is authorized to execute a five-year Antenna License Agreement with Belo Corporation, Inc. d/b/a KENS 5 TV for the purpose of operating and maintaining an electronic news gathering relay station and associated equipment at the Tower of the Americas for a total revenue of \$108,306.37 over the five-year term. A copy of the Antenna License Agreement is attached hereto and incorporated herein for all purposes as **Attachment I**.

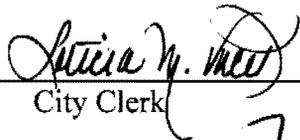
**SECTION 2.** Funds generated by this ordinance will be deposited in Fund 11001000 General Fund, Internal Order 219000000008 Tower of the Americas, General Ledger 4407712 Antenna Rental.

**SECTION 3.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 4.** This ordinance shall be effective on and after December 14, 2008.

PASSED AND APPROVED this 4<sup>th</sup> day of December, 2008.

  
M A Y O R

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
for City Attorney



Request for  
**COUNCIL**  
**ACTION**

City of San Antonio



## Agenda Voting Results - 34

<b>Name:</b>	7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 29, 31, 32, 33, 34, 38, 39, 40, 41, 43B, 43C, 43D, 43E, 43F, 43G, 43H, 43I, 43J, 43K, 43L, 45, 46, 47, 48A, 48B, 49, 51, 52, 53, A, B, C, D
<b>Date:</b>	12/04/2008
<b>Time:</b>	01:50:29 PM
<b>Vote Type:</b>	Motion to Approve
<b>Description:</b>	An Ordinance approving a five-year Antenna License Agreement with Belo Corporation, Inc. d/b/a KENS 5 TV for the purpose of operating and maintaining an electronic news gathering relay station and associated equipment at the Tower of the Americas for a total revenue of \$108,306.37 over the five-year term. [Pat DiGiovanni, Deputy City Manager; Paula X. Stallcup, Director, Downtown Operations]
<b>Result:</b>	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1	x					
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6	x				x	
Justin Rodriguez	District 7	x					x
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9	x					

John G. Clamp	District 10		x				
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**TOWER OF THE AMERICAS  
ANTENNA LICENSE AGREEMENT**

This License Agreement ("AGREEMENT") is entered into by and between the City of San Antonio, Downtown Operations Department (hereinafter called "CITY") and Belo Corporation, Inc. d/b/a KENS 5 TV (hereinafter called "LICENSEE") for the purpose of operating and maintaining an electronic News Gathering Relay station and associated equipment (hereinafter called "EQUIPMENT") at the Tower of the Americas (hereinafter called "TOWER"), in HemisFair Park. This AGREEMENT is pursuant to approval by the City of San Antonio City Council (hereinafter called "City Council") through Ordinance Number \_\_\_\_\_ approved on \_\_\_\_\_, 2008, and the following terms, conditions, and covenants:

**1. LICENSED PREMISES**

1.1. CITY hereby grants access to the following real property ("the Premises") to LICENSEE for use in operating and maintaining EQUIPMENT during the times indicated below:

1.1.1. Tower of the Americas, Level 6, 600 HemisFair Park Plaza, San Antonio, TX 78205

1.1.2. LICENSEE may operate and maintain approved EQUIPMENT in a location mutually approved by CITY and LICENSEE, CITY retains a superior right on the location and installation of all LICENSEE equipment, including the right to have LICENSEE move any equipment as necessary.

1.2. LICENSEE acknowledges that CITY has leased substantially the entire TOWER to WILLIE G'S POST OAK, INC. ("WILLIE G'S") and agrees that provided that LICENSEE is granted access to the Premises within thirty minutes, the access granted herein shall be subject to any reasonable regulation imposed by WILLIE G'S as further detailed in that lease agreement between the CITY and WILLIE G'S authorized and approved by City Council through Ordinance No. 99996 (the "Willie G's Lease"). Subject to the preceding, LICENSEE shall have access at all times, 24 hours per day, 7 days per week, to the TOWER and its EQUIPMENT during the term of this AGREEMENT, and CITY shall ensure that WILLIE G'S provides the access that is required to provide to CITY'S tenants pursuant to Willie G's Lease.

1.2.1. LICENSEE hereby agrees to the following arrangement for access to EQUIPMENT in the TOWER:

1.2.1.1. If LICENSEE requires access to the TOWER, Monday – Friday, between the hours of 7:45 a.m. – 4:30 p.m., LICENSEE must notify CITY'S Downtown Operations Department in order to coordinate access to the TOWER.

1.2.1.1.1. If LICENSEE requires access to the TOWER outside of the days and hours identified above, LICENSEE must notify CITY'S Park Police Dispatch at (210-207-8590) in order to coordinate access to the TOWER.

1.2.1.2. LICENSEE shall use reasonable efforts to notify the CITY at least twenty-four (24) hours in advance of the approximate time at which LICENSEE will need access to the Premises for scheduled maintenance.

1.2.1.3. Except for subcontractors which the CITY has approved, subcontractors used by LICENSEE shall at all times be escorted by a LICENSEE representative when on the Premises.

1.2.1.4. While on the Premises, personnel of **LICENSEE** must wear a suitable photo ID badge, to be provided by **LICENSEE** that includes a nominal 1 ½ square inch personal photo, unique logo and labeling that identifies the employer and the employee by name, and a telephone number where confirmation of employment may be readily confirmed.

1.2.1.5. **LICENSEE** shall at all times assure that the **CITY** has a current list of all of its personnel who are authorized to be on the Premises on its behalf. The **CITY** shall be notified to immediately remove the name of any employee subject to disciplinary probation or termination, and shall be notified of additional personnel to be added to this list. **CITY** shall have the right to exclude any employee, agent, or representative of **LICENSEE** from **CITY** property, for reasonable cause, if deemed by the **CITY** to be necessary for proper security of its facilities or the safety of its employees.

1.2.1.6. **LICENSEE** shall park its maintenance truck or any other vehicle owned or used by **LICENSEE**, in a location as close as possible to the **TOWER** that does not impede **TOWER** operations and/or emergency lane areas. **WILLIE G'S** shall have final authority to determine parking locations. **CITY** hereby acknowledges and agrees that the parking areas depicted on the attached **Exhibit A** (the "Parking Areas") are acceptable areas for parking by **LICENSEE**, at no cost to **LICENSEE**, to be used only when at the **TOWER** to work on **LICENSEE'S EQUIPMENT**.

1.3. **LICENSEE** agrees and specifically understands that this **AGREEMENT** is confined to the privilege to use the Premises and that the permission herein given does not grant **LICENSEE** any interest or estate in the Premises but is a mere personal privilege to conduct certain acts of a temporary nature upon the Premises, and that **CITY** retains dominion, possession, and control of said Premises, including access thereto, at all times, **CITY** reserves the right to enforce all necessary and proper rules for the management and operation of the Premises, and may eject from the Premises, any person or persons to accomplish such ends.

## 2. ACCEPTANCE AND CONDITION OF PREMISES

2.1. **LICENSEE** has had full opportunity to examine the grounds of the Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LICENSEE** taking possession of the Premises shall be conclusive evidence of **LICENSEE'S** acceptance thereof in good order and satisfactory condition, and **LICENSEE** hereby accepts the Premises in its present **AS IS, WHERE IS, WITH ALL FAULTS CONDITION** as suitable for the purpose for which licensed. **LICENSEE** accepts the Premises with the full knowledge, understanding and agreement that **CITY** disclaims any warranty of suitability for **LICENSEE'S** intended commercial purposes.

2.2. **LICENSEE** agrees that no representations, respecting the condition of the Premises, and no promises to decorate, alter, repair or improve the Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **LICENSEE** unless the same are contained herein or made part hereof by specific reference herein.

### 3. OPERATION AND MAINTENANCE OF ANTENNA EQUIPMENT

- 3.1. For the term of this AGREEMENT, LICENSEE will be allowed to operate and maintain, as space allows, within the Premises and as approved by CITY its EQUIPMENT as listed in Exhibit B and further illustrated in Exhibit C.
- 3.2. LICENSEE at its sole cost and expense shall replace EQUIPMENT, as they deem necessary after receiving written approval from CITY as referenced in Section 9.1. CITY shall ensure that LICENSEE has access to the TOWER for their installation needs. LICENSEE agrees to take all safety and security measures necessary to facilitate removal of obsolete equipment and installations of any new equipment, including street closures or partial barricading as approved by the passage of a City of San Antonio ordinance, where necessary. LICENSEE further agrees that fees related to the herein mentioned repairs and security measures will be at the sole expense of LICENSEE. All work must be coordinated with WILLIE G'S.
- 3.3. LICENSEE agrees to clean and remove all trash and debris, replace damaged and/or other damaged real or personal property during and at the conclusion of this AGREEMENT. LICENSEE will restore the TOWER to substantially the same condition at the conclusion of this AGREEMENT as it was prior to this AGREEMENT.
- 3.4. LICENSEE'S rights under this AGREEMENT are solely limited to the right to operate and maintain EQUIPMENT during the authorized time period. LICENSEE will not engage in any other type of activity while utilizing the Premises.
- 3.5. In the event that any equipment installed by LICENSEE on the Premises shall cause any interference with existing installations or future installations by CITY in the Tower during the term of hereof, LICENSEE shall correct said electromagnetic interference, or remove the equipment which is causing such interference within 48 hours of notification by CITY.

### 4. TERM AND TERMINATION

- 4.1. The term of this AGREEMENT shall be for five (5) years beginning with an effective date of January 1, 2009, and terminating December 31, 2013, unless sooner terminated pursuant to the provisions in Article 9. The right is expressly reserved to CITY acting through the City Council, to terminate this AGREEMENT for the following:
  - 4.1.1. In the event this AGREEMENT is deemed to be inconsistent with the public use of the property; or
  - 4.1.2. In the event the use of the Premises shall have been deemed a nuisance by a court of competent jurisdiction.
- 4.2. LICENSEE is hereby granted and shall, if not at that time in default of this AGREEMENT beyond the expiration of any applicable notice or cure period, have, for good and valuable consideration given, an option to extend the term of this AGREEMENT for an additional consecutive five years after the expiration of the initial term hereof, on the same terms, covenants, and conditions, and subject to the same exceptions and reservations herein contained.
  - 4.2.1. Extension shall be exercised by LICENSEE'S delivering to CITY in person or by the United States mail, at any time on or before ninety (90) days prior to the expiration date of the initial term of this AGREEMENT written notice of its desire to extend the term of this AGREEMENT as herein provided. And such shall be

subject to CITY COUNCIL approval, which approval shall not be unreasonably withheld, as evidenced by passage of a City Ordinance.

- 4.3. Holding Over. In the event LICENSEE does not extend the term of this AGREEMENT as provided herein, and holds over beyond the expiration of the term hereof, or if said term is renewed and extended pursuant to Section 4.2 of this AGREEMENT, beyond the expiration of the five year renewal option period, as applicable, such holding over shall be deemed a month-to-month tenancy, at a compensation equal to double the amount of the compensation paid for the last month of the term of this AGREEMENT. Inclusion of the preceding sentence shall not be construed as CITY'S consent for the LICENSEE to hold over.
- 4.4. In the event LICENSEE shall default in the performance of any covenant of agreements contained herein and shall fail, following thirty (30) days' written notice of such default, to remedy same, save and except a ten (10) days notice period will apply in the case of default in the payment of rent.
- 4.5. In the event of termination by City Council in relation to 4.1.1 or 4.1.2 above, the CITY shall give LICENSEE notice in writing at least thirty (30) days prior to the termination date.
- 4.6. Either the CITY or LICENSEE may terminate the AGREEMENT by giving sixty (60) days written notice to the other party.

#### 5. COMPENSATION TO CITY

- 5.1. LICENSEE shall pay ("Compensation") to CITY, the following annual license fee amounts. Compensation of said amounts is required, in advance of the first day of each license year:

License Year	Annual License Fee
January 1, 2009 - December 31, 2009	\$20,400.00
January 1, 2010 - December 31, 2010	\$21,012.00
January 1, 2011 - December 31, 2011	\$21,642.36
January 1, 2012 - December 31, 2012	\$22,291.63
January 1, 2013 - December 31, 2013	\$22,960.38

- 5.2. Compensation for extension period as provided by Section 4.2 will be established at a rate agreeable to both CITY and LICENSEE, prior to commencement of the extension period.
- 5.3. Payments are to be submitted to:

City of San Antonio  
Revenue Division  
P.O. Box 839975  
San Antonio, Texas 78283-3975

## 6. RECORDS, REPORTS, AND AUDIT RIGHTS

- 6.1. **LICENSEE** shall maintain, in San Antonio, Texas, books and records reflecting operations hereunder in accordance with generally accepted accounting principles for three (3) years after the final payment under this AGREEMENT or until all audits, if any, are complete and findings on all claims have been finally resolved, whichever is the greater period of time. Such books, and records, together with any other documentation necessary for verification of **LICENSEE'S** compliance with the terms of this AGREEMENT, shall be made available to **CITY**, upon reasonable request. At **CITY'S** expense, the **CITY** shall have the right to conduct an audit, examine and make excerpts or transcripts from said books, records, and documentation to verify the financial activity for the licensed year.

## 7. LICENSEE'S EMPLOYEES

- 7.1. **LICENSEE** shall provide and train, at its sole cost and expense, a sufficient number of employees to comply with its contractual obligations hereunder. Such employees of **LICENSEE** shall in no way be construed as **CITY** employees nor shall they be entitled to any compensation or benefits from or by the City.
- 7.2. **LICENSEE** shall develop and enforce a policy of employee standards for on-the-job conduct, appearance, and demeanor; this shall include official **LICENSEE** identification for all employees.
- 7.3. **LICENSEE** must ensure that **LICENSEE'S** employees are properly attired in dress that is clean and neat at all times.
- 7.4. **LICENSEE** accepts full responsibility for filing all applicable tax returns (if any) and paying all applicable taxes (if any), that may be required by law or due for **LICENSEE'S** employees under the terms and conditions of this AGREEMENT.

## 8. IMPROVEMENTS

- 8.1. **LICENSEE** shall not construct, or allow to be constructed, any improvements or structures on the Premises nor shall **LICENSEE** make or allow to be made, any alterations to the Premises without the prior written approval of **CITY** through the Downtown Operations Department Director (hereinafter "DIRECTOR") and any and all other necessary departments, boards, commissions, or City Council, including, but not limited to, the Historic and Design Review Commission.
- 8.2. **LICENSEE** covenants that it shall not bind, or attempt to bind, **CITY** for the payment of any money in connection with the construction, repair, alteration, addition or reconstruction in on or about the Licensed Premises. Further, **LICENSEE** agrees to remove, within thirty (30) days after filing, by payment or provision for bonding, any mechanic's or material man's lien filed against the Licensed Premises and to indemnify to extent allowed by law, **CITY** in connections with such liens to the extent of any damages, expenses, attorney's fees, or court costs incurred by **CITY**.

## 9. TERMINATION PROVISIONS

- 9.1. The **CITY** shall have the authority to terminate this **AGREEMENT** in the event that **LICENSEE** does not comply with the terms listed herein, and includes, but is not limited to:
  - 9.1.1. **LICENSEE** personnel not in compliance with the terms of this **AGREEMENT**;
  - 9.1.2. Engaging in any sub-licensing activities that do not have prior written approval by **CITY**, acting through its City Council;
  - 9.1.3. Failure to pay Compensation fees to **CITY** within given due date period;
  - 9.1.4. Failure to procure and provide proof of required insurance coverage and documentation as provided herein.

## 10. MAINTENANCE OF PROPERTY

- 10.1. **LICENSEE** shall, during the term of this **AGREEMENT**, keep or cause to be kept the Premises free of litter, trash, paper, and other waste caused by **LICENSEE** use and shall place same in standard trash containers, provided by **LICENSEE**, and shall conform to all applicable garbage, sanitary and health regulations of the City.
- 10.2. Other than as provided herein, **LICENSEE** shall be responsible for the condition of the Premises immediately adjacent and attributable to **LICENSEE'S** use during the term of this **AGREEMENT**. **LICENSEE** shall repair any damage to the Premises caused by **LICENSEE** and its invitees, and shall maintain, or caused to be maintained, the Premises in a clean, neat, attractive and sanitary condition.
- 10.3. **LICENSEE** will, at the termination of this **AGREEMENT**, return the Premises to **CITY** in as good condition as at the commencement of the term hereof.

## 11. ASSIGNMENT AND SUBLETTING

- 11.1. Without prior written consent through execution of an amendment by City Council, **LICENSEE** shall not assign this **AGREEMENT**, or allow same to be assigned by operations of law or otherwise, or sublet the Premises or any party thereof. Any assignment or subletting by **LICENSEE** without such permission will cause this **AGREEMENT** to terminate immediately without any opportunity to cure, regardless of any other provision of this **AGREEMENT**.
- 11.2. Without the prior written consent of **LICENSEE**, **CITY** shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this **AGREEMENT** and in the building and property referred to herein; and to the extent that such assignee assumes **CITY'S** obligations hereunder, **CITY** shall, by virtue of such assignment, be released from such obligation.
- 11.3. The receipt by **CITY** of Compensation from an assignee, or occupant of the Premises shall not be deemed a waiver of the covenant in this **AGREEMENT** against assignment and or an acceptance of the assignee, or occupant, or a release of **LICENSEE** from further observance or performance by **LICENSEE** of the covenants contained in this **AGREEMENT**. No provision of this **AGREEMENT** shall be deemed to have been waived by **CITY** unless such waiver is in writing signed by **CITY**.

## 12. INDEMNIFICATION

- 12.1. **LICENSEE** covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **LICENSEE'S** activities under this AGREEMENT, including any acts or omissions of **LICENSEE**, any agent, officer, director, representative, employee, consultant or subcontractor of **LICENSEE**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT, all without however, waiving any governmental immunity available to the **CITY** under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF **CITY**, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF **CITY**, UNDER THIS AGREEMENT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **LICENSEE** shall advise the **CITY** in writing within 24 hours of any claim or demand against the **CITY** or **LICENSEE** known to **LICENSEE** related to or arising out of **LICENSEE'S** activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at **LICENSEE'S** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **LICENSEE** of any of its obligations under this paragraph.
- 12.2. It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by **LICENSEE** to INDEMNIFY, PROTECT and HOLD HARMLESS, the **CITY** from the consequences of the **CITY'S** OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the **CITY** is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the **CITY** is the sole cause of the resultant injury, death, or damage. **LICENSEE** further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE **CITY** AND IN THE NAME OF THE **CITY**, any claim or litigation brought against the **CITY** and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

## 13. INSURANCE REQUIREMENTS

- 13.1. Any and all employees, representatives, agents or volunteers of **LICENSEE** while engaged in the performance of any work required by the **CITY** or any work related to a License of space or Concession Agreement with the **CITY** shall be considered employees, representatives, agents or volunteers of **LICENSEE** only and not of the **CITY**. Any and all claims that may result from any obligation for which **LICENSEE** may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of **LICENSEE**.

- 13.2. Prior to the commencement of any work under this AGREEMENT, LICENSEE shall furnish an original completed Certificate(s) of Insurance, including endorsements, to the CITY'S Director, Downtown Operations Department, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s), and endorsements, must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the CITY. The CITY shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to the CITY'S Director, Downtown Operations Department, and no officer or employee shall have authority to waive this requirement.
- 13.3. LICENSEE'S financial integrity is of interest to CITY, therefore, subject to LICENSEE'S right to maintain reasonable deductibles in such amounts as are approved by CITY, LICENSEE shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at LICENSEE'S sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNT
Workers' Compensation and Employers Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Environmental Impairment/Impact-sufficiently broad to cover disposal liability.	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
Comprehensive Automobile Liability* a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
Property Insurance: For physical damage to the property of LICENSEE, including improvements and betterment to the Licensed Premises	Coverage for a minimum of eighty percent (80%) of the replacement cost of LICENSEE'S property

\*If Applicable

- 13.4. LICENSEE agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- 13.4.1. Name the CITY and its officers, employees, volunteers and elected representatives as additional insured, by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract

with the CITY, with the exception of the workers' compensation and professional liability policies;

- 13.4.2. Provide for an endorsement that the "other insurance" clause shall not apply to the CITY of San Antonio where the CITY is an additional insured shown on the policy;
- 13.4.3. Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the CITY.
- 13.4.4. Provide thirty (30) calendar days advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for non-payment of premium. All notices shall be given to the CITY at the following address:

City of San Antonio  
Downtown Operations Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

- 13.4.5. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, LICENSEE shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend consultant's performance should there be a lapse in coverage at any time during this AGREEMENT. Failure to provide and to maintain the required insurance shall constitute a material breach of this AGREEMENT.
- 13.5. The CITY may upon LICENSEE'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order LICENSEE to stop the use of the Premises hereunder until LICENSEE demonstrates compliance with the requirements hereof.
- 13.6. Nothing herein contained shall be construed as limiting in any way the extent to which LICENSEE may be held responsible for payments of damages to persons or property resulting from LICENSEE'S or its subcontractors' performance of the work covered under this AGREEMENT.
- 13.7. It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this AGREEMENT.
- 13.8. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this AGREEMENT.
- 13.9. All personal property placed in the Premises shall be at the sole risk of LICENSEE. CITY shall not be liable, and LICENSEE waives all claims for any damage either to the person or property of LICENSEE or to other persons due to the Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Premises, or any other persons; due to the happening of any accident in or about Premises. LICENSEE shall save and hold harmless CITY from any claims arising out of damage to LICENSEE'S property or damage to LICENSEE'S business, including subrogation claims by LICENSEE'S insurers.

#### **14. HOLD HARMLESS AND NO LIABILITY FOR LOSSES INCURRED BY LICENSEE**

- 14.1. **LICENSEE** specifically waives any claim for any loss by **LICENSEE** of funds/revenues, merchandise, equipment, supplies, materials or other goods owned by **LICENSEE** whether due to theft, robbery, break-in, vandalism, acts of God or any other causes.
- 14.2. **LICENSEE** agrees to waive any claim against the **CITY** for any theft, damages or destruction of equipment, goods, and/or other property of **LICENSEE** so left on the Premises after **LICENSEE** vacates the Premises. If said equipment, goods and any other property placed by **LICENSEE** upon the Premises are not removed by **LICENSEE** within one week after the conclusion of this **AGREEMENT**, then the **CITY** may remove same without further notice or liability therefore.

#### **15. RULES AND REGULATIONS**

- 15.1. **LICENSEE** shall observe and comply with all laws and ordinances of the **CITY** affecting **LICENSEE** business, including but not limited to, the City's noise ordinance.
- 15.2. No advertisements, signs, decorations, improvements or displays shall be placed in on or about the Premises without the prior written approval of the **CITY** through the **DIRECTOR** and any and all other necessary departments, boards or commissions of the **CITY**, including, but not limited to the Historic and Design Review Commission. **LICENSEE** agrees to remove all signs from the Premises when **LICENSEE** vacates the Premises.
- 15.3. Discrimination on account of race, color, sex, age, handicap or national origin, directly or indirectly, in employment or in the use of or admission to the Premises is prohibited.
- 15.4. **LICENSEE** shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal and State statutes and **CITY** ordinances to persons employed in its operations hereunder.
- 15.5. **LICENSEE** agrees, upon provision by the **CITY** of notice to **LICENSEE** of any employee in **LICENSEE** operations that may be reasonably deemed to be discourteous, objectionable, or rude, to take immediate appropriate remedial action, including, but not limited to, removal of said employee from employment on the Premises.
- 15.6. **LICENSEE** shall not place speakers or amplified music on near the Licensed Premises. **LICENSEE** shall comply with **CITY'S** law pertaining to noise as it relates to operations or activities occurring on the Premises. **LICENSEE** agrees to comply with any requests by San Antonio Park Police, San Antonio Police, or City of San Antonio noise abatement officers. Failure to comply with the section may, at **CITY'S** option, constitute a default under this **AGREEMENT**.

#### **16. CONFLICT OF INTEREST**

- 16.1. **CITY** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, from having a financial interest in any contract with the City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares

of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

- 16.2. CITY warrants and certifies, and this AGREEMENT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City or any of its agencies such as City owned utilities.

#### **17. RESERVATIONS: CITY**

- 17.1. CITY reserves the right to enter the Premises at all reasonable times for the purpose of examining, inspecting or making repairs as herein provided. LICENSEE shall not be entitled to an abatement or reduction of Compensation by reason of such entry, nor shall said entry be deemed to be an actual or constructive eviction of LICENSEE from the Premises.
- 17.2. CITY Park Police and other safety personnel shall have the right to entry on and into the Premises as needed to investigate any circumstances, conditions, or person that may appear to be suspicious. LICENSEE shall cooperate with all reasonable requests by such personnel to facilitate public safety and orderly conduct. LICENSEE expressly understands and agrees that CITY has not agreed to act and does not act as an insurer of LICENSEE property and does not guarantee security against theft, vandalism, or injury or whatever nature and kind to persons or property.

#### **18. QUIET ENJOYMENT**

- 18.1. CITY covenants and agrees, subject to the provisions of this AGREEMENT, that LICENSEE, on paying the rental and all other charges in this AGREEMENT provided for and observing and performing the covenants, agreements, and conditions of this AGREEMENT on its part to be observed and performed, shall lawfully and quietly hold, occupy and enjoy the Licensed Premises during the term without hindrance or molestations of any kind whatsoever.

#### **19. SEPARABILITY**

- 19.1. If any clause or provision of this AGREEMENT is illegal, invalid or unenforceable under present or future laws effective during the term of this AGREEMENT, then and in that event it is the intention of the parties hereto that the remainder of this AGREEMENT shall not be affected thereby, and it is also the intention of the parties to this AGREEMENT that in lieu of each clause or provision of this AGREEMENT that is illegal, invalid, or unenforceable, there be added as part of this AGREEMENT a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

#### **20. NOTICES**

- 20.1. Notices to CITY required or appropriate under this AGREEMENT shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to:

City of San Antonio  
Downtown Operations Department  
Contract Services Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966

City of San Antonio  
City Clerk's Office  
P.O. Box 839966  
San Antonio, Texas 78283-3966

Or to such other address as may have been designated in writing by the City Manager of the City of San Antonio from time to time.

Notices to **LICENSEE** shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to **LICENSEE** at:

Belo Corporation, Inc. d/b/a KENS 5 TV  
5400 Fredericksburg Rd.  
San Antonio, Texas 78299

Or at such other address on file with the City Clerk as **LICENSEE** may provide from time to time in writing to **CITY**.

#### **21. PARTIES BOUND**

- 21.1. If there shall be more than one party designated as **LICENSEE** in this AGREEMENT, they shall each be bound jointly and severally hereunder.
- 21.2. The covenants and agreements herein contained shall insure to benefit of and be binding upon the parties hereto; their respective heir, legal representatives, successors, and such assigns as have been approved by **CITY**.

#### **22. RELATIONSHIPS OF PARTIES**

- 22.1. Nothing contained herein shall be deemed or construed by the parties to hereto or by any third party as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationships between the parties hereto.

#### **23. TEXAS LAW TO APPLY**

- 23.1. THIS AGREEMENT SHALL BE CONSTRUED UNDER IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

#### **24. GENDER**

- 24.1. Words or any gender used in this AGREEMENT shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context other requires.

#### **25. CAPTIONS**

- 25.1. The captions contained in this AGREEMENT are for convenience of reference only and in no way limit or enlarge the terms and conditions of this AGREEMENT.

**26. ENTIRE AGREEMENT/AMENDMENT**

- 26.1. This AGREEMENT, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with CITY being expressly waived by LICENSEE.
- 26.2. No amendment, modification, or alteration of the terms of this AGREEMENT shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.
- 26.3. It is understood that the Charter of the CITY requires that all contracts with the CITY be in writing and adopted by ordinance. All amendments also need approval evidence by an ordinance.

**27. AUTHORITY**

- 27.1. The signer of this AGREEMENT for LICENSEE hereby represents and warrants that he or she has full authority to execute this AGREEMENT on behalf of LICENSEE.

**LICENSOR:**

**CITY OF SAN ANTONIO,  
A Texas Municipal Corporation**

By: \_\_\_\_\_  
City Manager

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

**LICENSEE:**

**Belo Corporation, Inc.  
d/b/a KENS 5 TV**

Richard T. Barton  
Printed Name

  
Signature

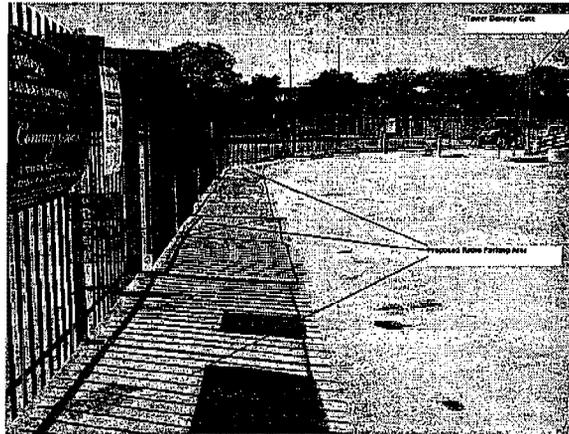
Director of Technology  
Title

5400 Fredericksburg Road  
Address

San Antonio, TX 78229  
City, State, and Zip Code

210-377-8663  
Area Code/Telephone Number

**EXHIBIT A  
APPROVED LICENSEE PARKING AREA**



**Figure 1 - View of approved LICENSEE parking area from TOA Parking Garage Entrance, Bowie Street, looking west. Parallel parking will be adjacent to the property line between the Tower and the Institute of Texan Cultures.**

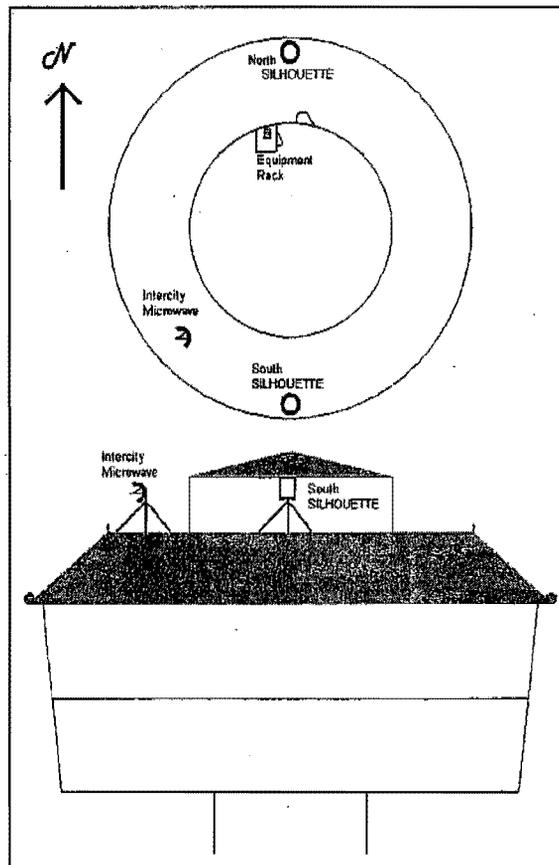
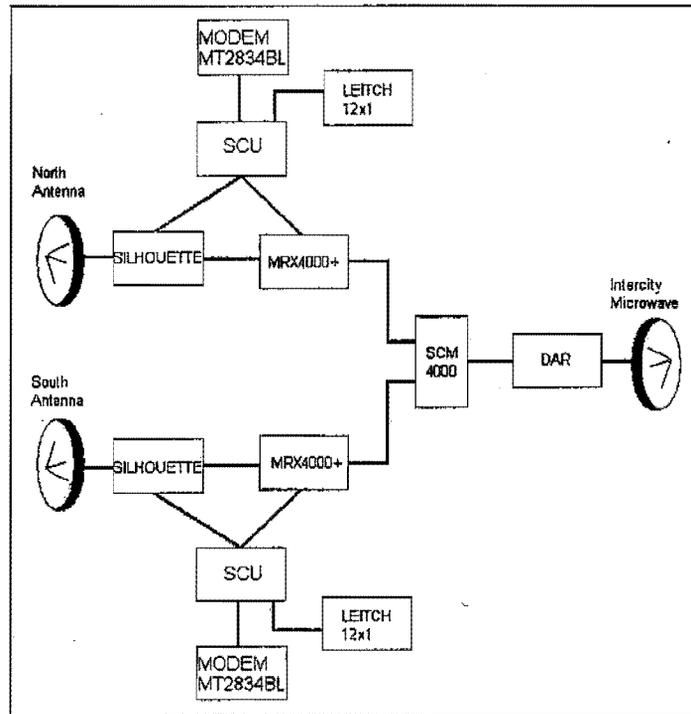


**Figure 2 - View of approved LICENSEE parking area from parking attendant guard house looking south.**

## EXHIBIT B LICENSEE EQUIPMENT LISTING

<u>Nomenclature</u>	<u>Model</u>	<u>Manufacturer</u>	<u>Qty</u>	<u>Remarks</u>
Modem	MT2834BL	MultiTech Sys	2	
System Control Unit	SCU-322	BMS	2	
Silhouette Antenna	CRS2	N Systems	2	
Receiver	MRX4000+	MRC	2	
Digital Video Modem	SCM4000	MRC	1	
Digital Radio	DAR	MRC	1	Intercity link
Switcher	Panacea 12x1	Leitch	1	
Tower/Poles			3	Built on site
Equipment Rack			1	Houses all equipmet
Nitrogen Bottle		Air Gas	1	Used to keep lines dry
UPS	1800Watt		1	Generic UPS

# EXHIBIT C LICENSEE EQUIPMENT ILLUSTRATION





**CITY OF SAN ANTONIO**  
**Request for Council Action**

Agenda Item # 34  
Council Meeting Date: 12/4/2008  
RFCA Tracking No: R-4227

**DEPARTMENT:** Downtown Operations

**DEPARTMENT HEAD:** Paula Stallcup

**COUNCIL DISTRICT(S) IMPACTED:**  
City Wide

**SUBJECT:**  
Antenna License Agreement

**SUMMARY:**

This ordinance authorizes a five (5) year Antenna License Agreement with Belo Corporation, Inc. d/b/a KENS 5 TV (KENS 5 TV) for the purpose of operating and maintaining an electronic news gathering relay station and associated equipment at the Tower of the Americas.

**BACKGROUND INFORMATION:**

KENS 5 TV presently has a license agreement for space on the Tower of the Americas for an electronic news gathering relay station, consisting of an antenna and associated equipment. KENS 5 TV paid a total of \$11,458.00 for 2008 and wishes to continue its use of the Tower of the Americas site for a new five (5) year term.

In 2008, the City hired RCC Consultants, Inc. to complete a market study and they recommend a license fee of \$20,400.00 per year with a 3% annual increase over the five (5) year term.

The new license agreement is for a five year term with an option to extend for an additional five (5) year period, subject to City Council approval.

**ISSUE:**

Approval of this Antenna License Agreement is consistent with the City's policy of licensing public facilities to generate revenue.

**ALTERNATIVES:**

City Council has the option to not approve this Antenna License Agreement, which would result in either KENS 5 TV reverting to a monthly license agreement or ceasing operation of their electronic news gathering relay station from the Tower of the Americas.

**FISCAL IMPACT:**

KENS 5 TV will pay an initial annual license fee of \$20,400.00 for the period of January 1, 2009 - December 31, 2009, with annual 3.00% increase to follow thereafter.

Revenue from this Antenna License Agreement will be deposited in the General Fund. The total paid under the terms of this agreement will be as follows:

License Year	Annual License Fee
January 1, 2009 - December 31, 2009	\$20,400.00
January 1, 2010 - December 31, 2010	\$21,012.00
January 1, 2011 - December 31, 2011	\$21,642.36
January 1, 2012 - December 31, 2012	\$22,291.63
January 1, 2013 - December 31, 2013	\$22,960.38
<b>Total</b>	<b>\$108,306.37</b>

**RECOMMENDATION:**

Staff recommends approval of this Tower Antenna License Agreement with Belo Corporation, Inc. d/b/a KENS 5 TV.

**ATTACHMENT(S):**

File Description	File Name
<a href="#">Signed License Agreement and Disclosure Form</a>	signed agreement and disclosure.pdf
<a href="#">Voting Results</a>	
<a href="#">Ordinance/Supplemental Documents</a>	200812041095.pdf

**DEPARTMENT HEAD AUTHORIZATIONS:**

Colleen Swain Assistant Director Downtown Operations

**APPROVED FOR COUNCIL CONSIDERATION:**

Pat DiGiovanni Deputy City Manager