RP
9/17/15
Item No. 5

AN ORDINANCE 2015-09-17-0779

APPROVING A PURCHASE AGREEMENT WITH JOSEPH W. SHAFFER FOR THE PURCHASE OF LOW POWER TELEVISION (LPTV) STATION KTDF-LP, CHANNEL 23 (FREQUENCY), INCLUDING THE TRANSFER AND ASSIGNMENT OF THE KTDF-LP FCC LICENSE AND CONSTRUCTION PERMIT, FOR A COST OF $270,000.00; AND AUTHORIZING PAYMENT FROM THE PUBLIC, EDUCATION AND GOVERNMENT (PEG) FUND.

* * * * *

WHEREAS, the City of San Antonio Public, Education, and Government (PEG) access programming is currently only viewable through a paid cable subscription or paid internet service, like that offered by Time Warner Cable, AT&T, and Grande Communications; and

WHEREAS, there is a large population of residents in San Antonio and surrounding areas who do not subscribe to a cable provider, which inhibits their participation and access to content shown on the City's PEG channels; and

WHEREAS, the proposed purchase of Low Power Television (LPTV) Station KTDF-LP, Channel 23 (frequency) from Mr. Joseph W. Shaffer for a total cost of $270,000.00, including the transfer and assignment of KTDF-LP License and Construction Permit by the Federal Communications Commission, is the initial phase of the project that will allow the City to broadcast public, education, and government access content over-the-air to an area that includes approximately 1,960,277 citizens; and

WHEREAS, after the purchase of LPTV Station, the City will purchase equipment necessary to broadcast over-the-air, which will be approximately $100,000.00 and be purchased through a bid process brought to City Council in the near future; and

WHEREAS, funds for the purchase of LPTV Station KTDF-LP, Channel 23 from Mr. Joseph W. Shaffer are available in the Public, Education, and Government (PEG) Fund; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of a Purchase Agreement with Mr. Joseph W. Shaffer for the purchase of Low Power Television (LPTV) Station KTDF-LP, Channel 23, including the transfer and assignment of the KTDF-LP License and Construction Permit issued by the Federal Communications Commission (FCC), for a cost of $270,000.00 are hereby approved.

SECTION 2. The City Manager or her designee is authorized to execute the Purchase Agreement, a copy of which, in substantially final form is set out in **Exhibit A**. Staff is authorized to file the associated applications with the Federal Communication Commission and

to take all other actions necessary for the consummation of the transaction pursuant to the terms of the Purchase Agreement.

SECTION 3. Funds will be appropriated from the Public, Education, and Government (PEG) Fund: from Cost Center 1204010003; General Ledger account 5501000; PEG Fund 11001003.

SECTION 4. This Ordinance shall become effective immediately upon its passage by eight (8) affirmative votes of the City Council. If less than eight (8) affirmative votes are received, then this Ordinance shall be effective ten (10) days after passage.

PASSED AND APPROVED this 17th day of September, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**5**
Date:	09/17/2015
Time:	10:06:45 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the purchase of a Low Power Television Station in an amount up to $270,000.00 from the Public, Education, and Government Fund. [Jeff Coyle, Director, Government & Public Affairs]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				x
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x			x	
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Exhibit A

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made as of _____, 2015 between the City of San Antonio, Texas ("Buyer") and Joseph W. Shaffer ("Seller").

Recitals

A. Seller currently holds a license for analog low power television station KTDF-LP (Facility Id. 28794, Ch. 23, Lic. No. BRTT-20140516AAF) (the "Station") issued by the Federal Communications Commission (the "FCC"). In addition, Seller currently holds a digital "flash cut" construction permit (File No. BDFCDTL-20121207AAB) issued by the FCC for the Station.

B. The governing body of Buyer has prepared and must approve an ordinance authorizing the purchase of the Station Assets (as defined herein), and allocating and appropriating funding for the purchase (the "Ordinance"). The date of the passage of the Ordinance shall constitute the "Effective Date" of this Agreement, and absent such passage, there shall be no Agreement between Seller and Buyer.

C. Pursuant to the terms and subject to the conditions set forth in this Agreement, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Station Assets (as defined herein).

D. The proposed sale of the Station and an application to move the Station's transmission site must be approved by the FCC prior to the closing of this transaction.

NOW, THEREFORE, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1: PURCHASE OF ASSETS

1.1. Assets. Subject to and predicated upon the passage of the Ordinance, and on the terms and subject to the conditions hereof, at Closing (defined below), Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all right, title and interest of Seller in and to the Station, including without limitation, the tangible and intangible property listed in Schedule 1.1(a) hereto (the "Property"), in as-is, where-is condition, and all licenses, permits and other authorizations issued to Seller by the FCC with respect to the Station and listed on Schedule 1.1(b) (the "FCC Licenses"), and any renewals or modifications thereof between the date hereof and Closing. The Property and FCC Licenses shall be collectively referred to herein as the "Assets," and shall be transferred to Buyer free and clear of all liens, claims and encumbrances ("Liens"). All other assets and property of Seller shall be excluded from this sale, and Buyer assumes no liabilities of Seller as part of this transaction.

1.2. Purchase Price. In consideration for the sale and transfer of the Assets to Buyer, Buyer shall pay Seller the sum of Two Hundred Seventy Thousand Dollars ($270,000) (the "Purchase Price").

1.3. Closing. The consummation of the sale and purchase of the Property and transfer of the FCC Licenses provided for in this Agreement (the "Closing") shall take place on or before the fifth business day after the date the FCC shall have granted the FCC Assignment Application (as hereinafter defined) without any provision or condition adverse to Buyer or the Station and such grant shall have become Final (as hereinafter defined) and be in full force and effect, or on such other day after such consent as Buyer and Seller may mutually agree, subject to the satisfaction or waiver of the conditions set forth in Articles 3 or 4 below. The date on which the Closing is to occur is referred to herein as the "Closing Date."

1.4. FCC Matters.

(a) Within five (5) days of the Effective Date, Seller shall file an application with the FCC (the "FCC Assignment Application") requesting FCC consent to the assignment of the FCC Licenses to Buyer (the date of such filing being herein referred to as the "FCC Assignment Application Date"). FCC consent to the FCC Application without any provision or condition adverse to Buyer, Seller or the Station is referred to herein as the "FCC Consent". Buyer and Seller shall cooperate in the preparation of and diligently prosecute the FCC Assignment Application and otherwise use their commercially reasonable efforts to obtain the FCC Consent as soon as possible.

(b) Within ten (10) days of the Effective Date, Seller shall file an application with the FCC (the "FCC Modification Application") requesting modification of the "flash cut" construction permit (File No. BDFCDTL-20121207AAB) to the transmission site of Buyer's communications tower. Buyer and Seller shall cooperate in the preparation of and diligently prosecute the FCC Modification Application and otherwise use their commercially reasonable efforts to obtain a grant of the FCC Modification Application as soon as possible.

(c) Buyer and Seller shall notify each other of all documents filed with or received from any governmental agency with respect to this Agreement or the transactions contemplated hereby. Buyer and Seller shall furnish each other with such information and assistance as the other may reasonably request in connection with their preparation of any governmental filing hereunder.

1.5. Risk of Loss. Seller shall bear the risk of any loss of or damage to any of the Property at all times until the Closing, and Buyer shall bear the risk of any such loss or damage thereafter.

1.6 Final Order.

(a) For purposes of this Agreement, the term "Final" shall mean that action shall have been taken by the FCC (including action duly taken by the FCC's staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or *sua sponte* action of the FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, certiorari or for the taking of any such *sua sponte* action by the FCC shall have expired or otherwise terminated.

(b) If the Closing occurs prior to a Final FCC Consent, and prior to becoming Final the FCC Consent is reversed or otherwise set aside, and there is a Final order of the FCC (or court of competent jurisdiction) requiring the re-assignment of the FCC Licenses to Seller, then the purchase and sale of the Station Assets shall be rescinded. In such event, (i) Buyer shall re-convey to Seller the Station Assets; (ii) Seller shall repay to Buyer the Purchase Price and (iii) unless otherwise agreed, the parties shall dismiss the FCC Modification Application if the same remains pending, or make such filings as required to return the Station to its authorized site as of the date hereof.

(c) Any such rescission shall be consummated on a mutually agreeable date within thirty (30) days of such Final order (or, if earlier, within the time required by such order). In connection therewith, Buyer and Seller shall each execute such documents (including execution by Buyer of instruments of conveyance of the Station Assets to Seller) and make such payments (including repayment by Seller to Buyer of the Purchase Price) as are necessary to give effect to such rescission.

ARTICLE 2: REPRESENTATIONS AND COVENANTS

2.1 Authorization. Each of Buyer and Seller represents and covenants that it has the full right and legal authority to enter into and fully perform this Agreement in accordance with the terms and conditions hereof, subject to the FCC Consent.

2.2 Seller's Covenants. Between the date hereof and Closing, except as permitted by this Agreement or with the prior written consent of Buyer, which shall not be unreasonably withheld, delayed or conditioned, Seller shall not modify, and shall maintain in full force and effect, the FCC Licenses.

2.3 Seller's Representations. Seller represents to Buyer that (a) Seller is legally qualified to execute this Agreement and there are no legal impediments to the execution or consummation of the transaction contemplated herein; (b) Seller holds good and valid title to the Property; (c) Seller holds the FCC Licenses for the Station listed on Schedule 1.1(b) hereto pursuant to Final Order; (d) the FCC Licenses are in full force and effect and other than the Station's status as a secondary station under the FCC's rules, are not subject to any restriction or condition which would limit in any respect the operation of the Station; (e) the FCC Licenses may be assigned by Seller to Buyer without any adverse condition arising from any Seller act or omission; and (g) Seller knows of no reason that the contemplated transaction cannot be consummated as proposed herein.

2.4 Buyer's Representations. The Buyer represents to Seller that (a) Buyer is legally qualified to execute this Agreement and there are no legal impediments to the execution or consummation of the transaction contemplated herein; (b) Buyer knows of no reason that the contemplated transaction cannot be consummated as proposed herein; and (c) Buyer is legally, financially and otherwise qualified to be the licensee of, acquire, own and operate the Station under the Communications Act of 1934, as amended (the "Communications Act") and the rules, regulations and policies of the FCC.

ARTICLE 3: SELLER CLOSING CONDITIONS

The obligation of Seller to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Seller):

3.1. Representations and Covenants. The representations of Buyer made in this Agreement shall be true and correct on and as of the Closing Date as if made on that date, and Buyer shall have delivered to Seller a duly executed certificate, dated as of the Closing Date, in form and substance reasonably satisfactory to Seller, certifying to the satisfaction of this condition, and the covenants and agreements to be complied with and performed by Buyer at or prior to Closing shall have been complied with or performed in all respects.

3.2. Proceedings. Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

3.3. FCC Authorization. The FCC Consent shall have been granted and such grant shall be in full force and effect.

3.4. Deliveries. Buyer shall have complied with its obligations set forth in Section 5.2.

ARTICLE 4: BUYER CLOSING CONDITIONS

The obligation of Buyer to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Buyer):

4.1. Representations and Covenants. The representations of Seller made in this Agreement shall be true and correct on and as of the Closing Date as if made on that date, and Seller shall have delivered to Buyer a duly executed certificate, dated as of the Closing Date, in form and substance reasonably satisfactory to Buyer, certifying to the satisfaction of this condition, and the covenants and agreements to be complied with and performed by Seller at or prior to Closing shall have been complied with or performed in all respects.

4.2. Proceedings. Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

4.3. FCC Authorization. The FCC Consent shall have been granted and such grant shall be in full force and effect.

4.4. FCC Modification Application. The FCC Modification Application shall have been granted and such grant shall be in full force and effect.

4.5 Deliveries. Seller shall have complied with its obligations set forth in Section 5.1.

4.6 Documents. Seller shall have delivered to Buyer such appropriate instruments of sale and assignment as Buyer or its counsel may reasonably request, duly executed by Seller.

ARTICLE 5: CLOSING DELIVERIES

5.1. Seller Deliveries. At Closing, Seller shall deliver or cause to be delivered to Buyer (i) an assignment of FCC authorizations assigning the FCC Licenses from Seller to Buyer; and (ii) as necessary, a Bill of Sale for the Property in a form acceptable to Buyer and any other instruments of conveyance, assignment and transfer that may be reasonably necessary to convey, transfer and assign the Assets from Seller to Buyer, free and clear of Liens.

5.2. Buyer Deliveries. At Closing, Buyer shall deliver or cause to be delivered to Seller the Purchase Price in accordance with Section 1.2 hereof, and such other instruments or documents as necessary to document the transaction for Seller's purposes.

ARTICLE 6: TERMINATION

This Agreement may be terminated prior to Closing (a) by mutual written consent of Buyer and Seller; (b) by either Buyer or Seller upon written notice if there is a material breach or default under this Agreement by the other party following a fifteen (15) day period for cure by the breaching party following written notice of the breach, provided that the party seeking to terminate is not also then in material default or breach of this Agreement; (c) by either Buyer or Seller upon written notice if the FCC denies the FCC Assignment Application, designates it for a trial-type hearing, or has not granted the FCC Assignment Application within one-hundred twenty (120) days of the FCC Assignment Application Date (or such longer period as Seller may allow in his discretion); (d) by Buyer if the FCC Modification Application is denied or (e) by either Buyer or Seller upon written notice if there shall be in effect any judgment, final decree or order that would prevent or make unlawful the Closing. The termination of this Agreement shall not relieve any party of any liability for breach of this Agreement prior to the date of termination.

ARTICLE 7: DEFAULT; CURE; SPECIFIC PERFORMANCE

7.1 Breaches. A party shall be deemed to be in default under this Agreement only if such party has materially breached or failed to perform its obligations hereunder, and no non-material breaches or failures shall be grounds for declaring a party to be in default, postponing the Closing, or terminating this Agreement.

7.2 Opportunity To Cure. If either party believes the other to be in default hereunder, the former party shall promptly provide the other with written notice specifying in reasonable detail the nature of such default. If the default has not been cured by the earlier of (i) five (5) business days after the scheduled Closing Date, or (ii) within twenty (20) days after delivery of that notice (or such additional reasonable time as the circumstances may warrant provided the party in default undertakes diligent, good faith efforts to cure the default within such twenty (20) day period and continue such efforts thereafter), then the party giving such notice may exercise the remedies available to such party pursuant to this Section 7, subject to the right of the other party to contest such action through appropriate proceedings.

7.3 Seller's Remedy. Buyer recognizes that if the transaction contemplated by this Agreement is not consummated as a result of Buyer's breach of this Agreement, Seller would be entitled to compensation, the extent of which is extremely difficult and impractical to ascertain.

To avoid this problem, the parties agree that if this Agreement is not consummated due to Buyer's breach, as its sole remedy Seller shall be entitled, if Seller is not in default in its obligations hereunder, to a single, lump-sum cash payment from Buyer of Twenty Seven Thousand Dollars ($27,000) representing liquidated damages in lieu of any other remedies to which Seller might otherwise be entitled due to Buyer's wrongful failure to consummate the Agreement.

7.4 Buyer's Remedy. Seller agrees that the Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Therefore, Buyer shall have the right, if Buyer is not in default in its obligations hereunder, as its sole remedy to specifically to enforce Seller's performance under this Agreement, and Seller agrees to waive the defense in any suit for specific performance that Buyer has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy. Buyer's reasonable costs of enforcing Seller's performance hereunder shall be offset by a reduction to the Purchase Price in the amount of such costs.

ARTICLE 8: MISCELLANEOUS PROVISIONS

8.1. Expenses. Except as set forth in Section 8.13 and this Section 8.1, each party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement. The parties shall each pay one half of all fees and charges applicable to the FCC Assignment Application and FCC Modification Application and any requests for the FCC Consent. Seller shall be solely responsible for all other governmental taxes, fees and charges applicable to the transfer of the Assets under this Agreement. Each party shall be solely responsible for their costs associated with the negotiation and execution of this Agreement.

8.2. Further Assurances. After Closing, each party shall, from time to time, at the request of and without further cost or expense to the other, execute and deliver such other instruments of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

8.3. Assignment. Neither party may assign this Agreement without the prior written consent of the other party hereto, provided, however, that Buyer may assign its rights hereunder to an affiliate of Buyer upon written notice to, but without consent of, Seller, provided that (i) any such assignment does not delay processing of the FCC Assignment Application, grant of the FCC Consent or Closing, (ii) any such assignee delivers to Seller a written assumption of this Agreement and documentation to establish its financial wherewithal to consummate the purchases contemplated hereunder, and (iii) Buyer shall remain liable for all of its obligations hereunder. The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and any permitted assigns, and no assignment shall relieve any party of any obligation or liability under this Agreement.

8.4. Notices. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed facsimile transmission or confirmed delivery by a nationally recognized overnight courier service, and shall be addressed as follows (or to such other address as any party may request by written notice):

if to Buyer: City of San Antonio
PO Box 839966
San Antonio, TX 78283
Attn: Veronica Zertuche

if to Seller: Joseph W. Shaffer
P.O. Box 10310
Prescott, AZ 86304

8.5. Amendments. No amendment or waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of such amendment, waiver, or consent is sought.

8.6. Entire Agreement. All covenants and representations will be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns. This Agreement (including the Schedules hereto) constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect to the subject matter hereof, except any confidentiality agreement among the parties with respect to the Stations, which shall remain in full force and effect.

8.7. No Beneficiaries. Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their successors and permitted assigns.

8.8. Governing Law. The construction and performance of this Agreement shall be governed by the laws of the State of Texas without giving effect to the choice of law provisions thereof. SELLER AND BUYER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING IN ANY WAY TO THIS AGREEMENT, INCLUDING ANY COUNTERCLAIM MADE IN SUCH ACTION OR PROCEEDING, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE DECIDED SOLELY BY A JUDGE.

8.9. Counterparts. This Agreement may be executed in separate counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement.

8.10. Survival of Representations. The representations given herein shall survive the closing for a period of one year.

8.11 Waiver. Buyer and Seller, by written notice to the other, may, but shall not be obligated to (a) extend the time for performance of any of the obligations or other actions of the other under this Agreement, (b) waive any inaccuracies in the representations of the other contained in this Agreement or in any document delivered pursuant to this Agreement, (c) waive compliance with any of the conditions or covenants of the other contained in this Agreement, or (d) waive or modify performance of any of the obligations of the other under this Agreement; provided that neither party may without the written consent of the other make or grant any

extension of time, waiver of inaccuracies or compliance, or waiver or modification of performance, with respect to its own obligations, representations, conditions or covenants in this Agreement.

8.12 Exclusive Dealings. The Seller agrees that for as long as this Agreement is in effect, neither Seller, nor its officers, directors, employees, or agents will solicit, make or accept any offers from third parties to sell the Station or discuss the sale of the Station with any other person or party.

8.13 Brokers. Buyer and Seller each represents that neither has agreed to pay a commission, brokerage fee or similar payment in connection with this Agreement or any matter related hereto to any person or entity other than as disclosed herein, nor has it or any person or entity acting on its behalf taken any action on which a claim for any such payment could be based. Buyer and Seller each agree to pay its own broker's commission, if any, in connection with this Agreement pursuant to each respective agreement with its broker.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

SELLER: JOSEPH W. SHAFFER

BUYER: CITY OF SAN ANTONIO, TEXAS

By: _____
Name:
Title:

Schedule 1.1(a)

The Station's analog transmitter located at the current transmitter site.

All records, applications, engineering and similar reports for the Station that are in the possession of Seller.

All of Seller's rights and interests to the Station's call letters KTDF-LP.

Schedule 1.1(b)

FCC LICENSES

Call Sign/ FCC Facility Id. No.	Community of License	FCC File Number	Grant Date	Expiration Date
KTDF-LP 28794	San Antonio, TX	BRTT-20140516AAF	8/15/2014	8/1/2022
KTDF-LP 28794	San Antonio, TX	BLTTL-20110531ACJ	8//18/2011	8/1/2022
KTDF-LP 28794	San Antonio, TX	BDFCDTL-20121207AAB	1/15/2013	9/1/2015*

*On April 24, 2015, the FCC released a Public Notice (DA 15-486) suspending the September 1, 2015 digital transition date for LPTV and TV translator stations pending final action in the rulemaking proceeding in MB Docket No. 03-185.

4836-0609-7702, v. 1