

**AN ORDINANCE TO APPROVE AND AUTHORIZE THE PUBLIC ACCESS AND LEASED ACCESS MANAGEMENT AGREEMENT BETWEEN THE CITY OF WILMINGTON AND DETV FOUNDATION, INC.**

#0495

Sponsor:

Council  
President  
Congo

**WHEREAS**, pursuant to Sections 2-308 and 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of property or rendering of services for more than a period of one year if authorized by an Ordinance passed by the Council; and

**WHEREAS**, the City and Comcast of New Castle County, LLC entered into a certain Cable Franchise Extension dated October 21, 2024, which granted an extension of the Cable Franchise Agreement the City and Comcast of New Castle County, LLC, entered into on November 19, 2012. The Franchise Agreement and the Extension give Comcast a non-exclusive franchise for the construction, reconstruction, operation and maintenance of a cable system within the City; and

**WHEREAS**, Section 8 of the Franchise Extension provides that the City and Comcast will select a third-party operator to (i) program and operate the Access Channel and (ii) operate and manage the Studio associated therewith; and

**WHEREAS**, the City initiated a request for proposal process to select the third-party operator. On October 28, 2024, the City selected DETV Foundation, Inc. to manage the Access Channel and Studio; and

**WHEREAS**, the City desires to enter into a certain Public Access and Leased Access Management Agreement with DETV, which provides DETV a three-year period, with two optional one-year renewals, to operate the Access Channel and manage the Studio. A copy of the Agreement is attached hereto as Exhibit A.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON  
HEREBY ORDAINS:**

**SECTION 1.** The Public Access and Leased Access Management Agreement between the City and DETV, a copy of which is attached hereto as Exhibit A, is hereby approved.

**SECTION 2.** The appropriate officers of the City are hereby authorized and directed to take all such action, execute, deliver, file, and record all such documents, publish all notices, and otherwise carry out the intent of the Public Access and Leased Access Management Agreement and this Ordinance in the name of and on behalf of the City.

**SECTION 3.** This Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading.....November 7, 2024  
Second Reading.....November 7, 2024  
Third Reading.....

Passed by City Council,

\_\_\_\_\_  
President of City Council

ATTEST: \_\_\_\_\_  
City Clerk

Approved this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Mayor

**SYNOPSIS:** This Ordinance authorizes the City to enter into a Public Access and Leased Access Management Agreement with DETV which provides DETV with a three-year contract, with two optional one-year renewals, to construct, maintain, produce, and operate the Studio and Access Channel made available by Comcast of New Castle County.

**FISCAL IMPACT:** TBD.

## PUBLIC ACCESS AND LEASED ACCESS MANAGEMENT AGREEMENT

THIS PUBLIC ACCESS AND LEASED ACCESS MANAGEMENT AGREEMENT (this "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2024 (the "Effective Date"), by and between the DETV Foundation, Inc. ("Manager"), and the CITY OF WILMINGTON, a Delaware municipal corporation ("City").

### WITNESSETH:

WHEREAS, the City and Comcast of New Castle County, LLC ("Comcast") entered into that certain Cable Franchise Extension dated October 21, 2024, which extended the parties' November 19, 2012 Franchise Agreement (the "Franchise Agreement"), which granted Comcast a non-exclusive franchise for the construction, reconstruction, operation and maintenance of a cable system within the City;

WHEREAS, Section 8 of the Franchise Agreement provides that the City and Comcast will select a third-party operator to (i) program and operate the Access Channel (as defined in Section 1 below) and (ii) operate and manage the Studio (as defined in Section 1 below);

WHEREAS, the City initiated a request for proposal ("RFP") process to select the third-party operator; and

WHEREAS, Manager has been selected by the RFP process to manage the Access Channel and Studio on the terms set forth herein; and

NOW, THEREFORE, in consideration of the covenants and promises set forth herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

### **SECTION 1. DEFINITIONS.**

For the purpose of this Agreement, the following words, terms, phrases and their derivations shall have the meanings given herein, unless the context clearly requires a different meaning. When not inconsistent with the context, the masculine pronoun includes the feminine pronoun, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

1. Access Channel: A video channel which Comcast makes available pursuant to the Franchise Agreement with the City for the purpose of transmitting Public Access and Leased Access programming.
2. Comcast Management Agreement: The Agreement between Manager and Comcast dated on or about the date hereof, a copy of which is attached hereto as Exhibit "A", which designates Manager as the operator and manager of Leased Access on the Access Channel.

3. Equipment: All studio and production equipment purchased by the City for use with respect to the Studio or Access Channel, or studio and production equipment donated to the City for use with respect to the Studio or Access Channel which is listed on Exhibit "B" attached hereto. Exhibit B shall be updated from time to time to reflect a current and accurate inventory of that studio and production equipment purchased by the City for use with respect to the Studio or Access Channel, or of that studio and production equipment donated to the City with respect to the Studio or Access Channel.
4. Leased Access: The ability of a Wilmington area programmer to make content available on the Access Channel for a fee, typically based on the amount of airtime the programmer wishes to purchase. As used in this Agreement, Leased Access is limited to those programmers located in New Castle County and the City of Wilmington and shall not apply to programmers outside the City or New Castle County.
5. Origination Capacity: An activated connection to an upstream channel allowing the Manager to send programming to be displayed on the Access Channel to Comcast's headend facility.
6. Public Access: The ability of any Wilmington resident or any persons affiliated with a Wilmington institution to use the designated facilities, equipment and channel, subject to the conditions and procedures established for such use.
7. Studio: The production studio for the Access Channel, which shall be located at 1105 North Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware.
8. Studio Sublease Agreement: The Lease Agreement between the City as Tenant/Lessor, and DETV, as Subtenant/lessee, dated \_\_\_\_\_, 2024, a copy of which is attached hereto as Exhibit "C". Per the terms of the RFP, DETV, as Subtenant/lessee, is responsible for 25% of the cost of the per month market rent for the Studio.

## SECTION 2. TERM

Unless sooner terminated in accordance with this Agreement, this Agreement shall have an initial term of three (3) years beginning on \_\_\_\_\_, 2024, and ending on \_\_\_\_\_, 2027. The City, in its sole discretion, shall have the option to extend the term of this Agreement for two additional one-year periods, ending on \_\_\_\_\_, 2028, and \_\_\_\_\_, 2029, respectively; provided that, Manager an Comcast agreement to extend the term of the Comcast Management Agreement for the same additional period. This Agreement confers no permanent rights upon Manager nor guarantees any right to have this Agreement extended upon the end of any such term as set forth herein.

## SECTION 3. DESIGNATION

Subject to the terms of this Agreement, the City hereby designates Manager as the entity designated to operate and manage (a) Public Access on the Access Channel and (b) the Studio.

Pursuant to the terms of the Comcast Management Agreement, Comcast has designated Manager as the entity designated to operate and manage Leased Access on the Access Channel. Manager shall at all times be an independent contractor of the City and Comcast and shall not represent itself as representing, speaking for, or otherwise acting on behalf of the City and/or Comcast.

#### **SECTION 4. PERIODIC REPORTING**

(1) On an annual basis and no later than the last day of March or within ninety (90) days of the end of its fiscal year, Manager shall provide a written report to the City and Comcast (the "Annual Access Report"), which report shall include the following:

(a) A certificate of good standing for Manager issued by the State of Delaware no more than thirty (30) days prior to the date of the Annual Access Report;

(b) Year-end financial statements of Manager for the previous year, audited by an independent certified public accountant licensed in the State of Delaware;

(c) The previous year's budget and actual expenditures summaries;

(d) The upcoming year's budget;

(e) A three year capital budget plan for the Studio and Equipment;

(f) The hours of programming cablecast on the Access Channel in the prior year (excluding repeat programming);

(g) Notable events, actions and programs in the prior year with respect to Manager, Studio and the Access Channel;

(h) Training classes for the Studio and Equipment offered and attendance thereto;

(i) Manager policies and procedures for programmers, with any changes thereto from the previous year highlighted;

(j) An updated business plan if the business plan has been amended since the prior version submitted to the City and Comcast; and

(k) Any other documentation and/or items mutually agreed upon by the parties hereto and as may be reasonably requested by the City or Comcast.

(2) Following the submission of the Annual Access Report, Manager shall meet with the City and Comcast or their designee(s), for the purpose of reviewing Manager's operations, budget, programming and items contained in the report.

(3) In addition to the Annual Access Report, on or prior to the twentieth (20<sup>th</sup>) day of each calendar month Manager shall provide a written report (the "Monthly Report"), which report shall include the following:

(a) The programming schedule for the previous calendar month with the name of the program and programmer indicated for each programming block;

(b) Meeting minutes for all regular meetings of Manager's Board of Directors;

(c) Training classes for the Studio and Equipment offered and attendance thereto for the previous calendar month; and

(d) TPO Treasurer's Report (include cash flow statement, actual income/expense sheets versus budget).

(4) In addition to the Annual Access Report and Monthly Report, on a quarterly basis no later than the tenth (10<sup>th</sup>) day immediately following the end of Manager's calendar quarter, Manager shall provide to the City a written report (the "Quarterly Report"), which report shall contain the following:

(a) Manager's financial statements;

(b) Current rate card for channel time, studio and equipment use, and staff time;

(c) Summary of tracking sheet showing hours of usage of all facility services organized by type of user (public or leased) and type of service used;

(d) Summary of channel time usage by each type of user (public, leased, live leased), rate paid;

(e) Equipment report detailing equipment condition changes, maintenance, and repair;

(f) Activity summary of training, outreach, sales, and marketing efforts that includes the target audience, method, duration of effort, and response; and

(g) Dispute Report detailing any problems with clients that were handled by staff and any disputes that need to be mediated or appealed to the Wilmington Cable, Video and Telecommunications Commission (hereinafter "Commission").

(5) Manager shall provide the City with such other reports and information as the City may request pertaining to the Access Channel, Equipment, Studio and the Studio Lease Agreement.

(6) Within ten (10) days of filing, Manager shall provide a copy to the City of all amendments or modification to the organizational documents of Manager and any filings submitted to the State and federal government, including, but not limited to, instruments of restatement of articles of incorporation, by-laws, dissolution, and any other corporate filings.

(7) Within ten (10) days of any amendment(s) or addendum(s) to or extension(s) of the Studio Lease Agreement, Manager shall provide the City a copy of the updated Studio Lease Agreement.

(8) Manager shall cooperate fully and in good faith in answering questions from the City or Comcast regarding reporting required under this section. In addition, Manager shall provide such information as is reasonably requested by the City prior to such meeting.

## **SECTION 5. MANAGER OBLIGATIONS**

Manager shall provide Public Access and Leased Access programming and services as follows:

(1) Schedule, operate and program the Access Channel provided by Comcast in accordance with Section 6 below;

(2) Solicit, manage and collect funding for the Studio and Access Channel;

(3) Purchase and/or lease equipment in accordance with the Equipment Budget (as defined in Section 9 below);

(4) Operate and maintain the Studio for Public Access and/or Leased Access users;

(5) Conduct monthly training programs for Wilmington residents and members of Wilmington-based organizations in the skills necessary to produce Access Channel programming;

(6) Provide non-discriminatory access to production and post-production equipment and facilities, and technical assistance, to Access Channel users, in accordance with Manager's policies and procedures;

(7) Prior to Manager airing programming on the Access Channel, establish rules, procedures and guidelines for the use of the Studio, Equipment and channel time;

(8) At least once every other calendar month, engage in publicity, fund-raising, outreach, referral and other activities to support operations; and

(9) Accomplish such other tasks relating to the operation, scheduling and/or management of the Access Channel, Studio and Equipment as Manager may consider appropriate and necessary.

## **SECTION 6. ACCESS CHANNEL**

(1) Manager shall have the responsibility for managing, scheduling, operating and programming the Access Channel in a non-discriminatory manner. The City and Comcast shall have no editorial control over the programming carried on the channel except that Comcast may refuse to transmit any program or portion of a program which contains obscenity, indecency, or nudity.



(2) Manager shall provide a programming schedule for the Access Channel to Comcast on a bi-weekly basis and to the City on a monthly basis.

(3) As the designated manager of the Access Channel, Manager shall set the policy and pricing for Public Access and Leased Access in compliance with all applicable laws and regulations.

(4) Manager shall comply with (a) the Comcast Management Agreement, (b) the Studio Lease Agreement and (c) the Leased Access Guidelines attached hereto as Exhibit "F", as such guidelines are supplemented, revised or updated by the Manager.

(5) In programming the Access Channel, the Manager shall comply with all federal and state laws and regulations at all times during the term of this Agreement. Comcast will notify Manager on an annual basis of the maximum permitted leased access rate and any other changes in applicable Leased Access regulations. Manager shall have a concurrent responsibility to learn and comply with applicable Leased Access regulations for all Leased Access programming.

(6) As required by Section 8.C. of the Franchise Agreement, Manager shall allow the leased access programmers of the Access Channel who existed in July 2013 and have remained in existence to date to maintain their existing time slots, which are listed on Exhibit "D" attached hereto, so long as such programmers stay current on their required payments to Manager and otherwise comply with the rules and procedures adopted by Manager for the use of the Studio and Access Channel. In the event that any existing leased access programmer fails to make a required payment to the Manager on or prior to the due date for such payment or otherwise fails to comply with the rules and procedures adopted by Manager with respect to the use of the Studio and Access Channel (a "Defaulting Programmer"), then thereafter, Manager shall have no further obligation to reserve any time slot for such Defaulting Programmer, and Manager may offer any time slot designated for such Defaulting Programmer on Exhibit "D" hereto to another individual or group in accordance with Manager's standard terms and conditions for Leased Access airtime. Even if a Defaulting Programmer cures its default with respect to its obligations owed to Manager, the Manager shall have no obligation following such cure to restore the Defaulting Programmer's previously designated time slot(s).

(7) The Commission shall be the entity to hear and resolve all conflicts and disputes that may arise between the Manager and Leased Access clients or between the Manager and the community (or others) with respect to the Access Channel or Studio. The Commission shall have the authority to promulgate rules and regulations regarding hearing and resolving all such conflicts and disputes. A dispute shall be submitted to the Commission by the filing of a petition within thirty (30) calendar days of the occurrence constituting the conflict and/or dispute in question on a form provided by the Commission. The petition must be completed and submitted via e-mail, hand delivery or U.S. mail. If mailed, the petition must be received on or before the 30th calendar day of the occurrence constituting the conflict and/or dispute. Petitions shall be decided by the Commission after a hearing, unless the matter is settled, or the parties otherwise agree in writing that a hearing is not necessary. All decisions of the Commission are final and binding, and shall not be subject to any administrative appeal or further review of any kind. All such decisions shall be in writing and duly recorded in a permanent record. A request for reconsideration by the Commission may be made by any person or entity that was a party to the initial complaint, provided

that such request is duly submitted on the form provided by the Commission. Any submission for reconsideration shall be submitted by email, hand delivery or US mail within ten (10) calendar days of the written decision.

## **SECTION 7. ACCESS STUDIO**

During the term of this Agreement, Manager shall manage and operate the Studio in accordance with the requirements of this Agreement and the terms of the Studio Sublease Agreement.

## **SECTION 8. REVENUES AND FINANCIAL SUPPORT**

(1) To fund its annual operations and subject to the requirements of the Comcast Management Agreement, Manager shall have the right to retain all revenues earned from its Public Access and Leased Access activities and the use of the Studio and the Equipment. Comcast shall provide Manager with the “maximum permitted leased access rate” allowed under applicable law and Manager shall not exceed such maximum permitted rate for Leased Access programming.

(2) The City shall have no obligation to provide any form of financial support to Manager with respect to the operation of the Studio or the Access Channel. In the event of a shortfall in Manager’s revenues earned from its activities hereunder, Manager shall not make any request of the City for additional financial support and shall look solely to other third parties for grants or other sources of revenue to support its operations. If Manager shall make any request of the City for additional financial support, then such request shall constitute a default under this Agreement and the City shall have all remedies provided to the City by Section 14 of this Agreement.

## **SECTION 9. EQUIPMENT**

(1) The Equipment shall be leased to Manager by the City in accordance with the terms and conditions of that certain Equipment Lease Agreement attached hereto as Exhibit “E”.

(2) During the term of this Agreement, Manager shall maintain the Equipment in good repair, condition and working order. Manager, at its sole cost and expense, shall make all necessary repairs to the Equipment and shall replace any defective, worn or malfunctioning parts with components that are reasonable and compatible to the original components in the Equipment. In order to facilitate the care and maintenance of the Equipment during the term of this Agreement, Manager, at its sole cost and expense, shall either (a) enter into and maintain a maintenance and service contract (the “Maintenance Contract”) that provides for the inspection, care and maintenance of the Equipment by a qualified service provider approved by the City (the “Maintenance Contractor”) or (b) hire a qualified television studio engineer (“Studio Engineer”) as an employee of Manager that shall regularly inspect, care and maintain the Equipment. Prior to hiring a Studio Engineer, Manager shall provide the City with a copy of the Studio Engineer’s resume and credentials and shall consider in good faith any concerns expressed by the City with respect to the resume or credentials of the proposed candidate for the Studio Engineer position. The Manager shall not terminate any Maintenance Contract without first obtaining the prior written consent of the City. If Manager engages a Maintenance Contractor, Manager shall provide the City with copies of any and all notices, reports and service call summaries prepared by the

Maintenance Contractor within five (5) business days of Manager's receipt of such notices, reports and summaries. If Manager engages a Studio Engineer, Manager shall submit on a monthly basis a work log and staff report prepared by the Studio Engineer that details the inspections and maintenance performed by the Studio Engineer during the previous calendar month.

(3) The City shall have the right to inspect the Equipment at any time during normal business hours for the City.

## **SECTION 10. OWNERSHIP AND CONTROL**

(1) To secure all of its obligations under this Agreement, the Manager hereby grants to the City a security interest in all of the assets and interests owned or hereafter acquired by the Manager, and the proceeds thereof, including but not limited to, Equipment, deposit accounts and inventory, and all equipment and fixtures. The Manager agrees to take all steps reasonably requested by the City to perfect and enforce the City's security interest, including the execution and processing of financing statements and continuation statements under the Delaware Uniform Commercial Code. The Manager shall also notify any institution with which it now or hereafter maintains any deposit account of the existence of the City's security interest in the account.

(2) All such assets and interests shall at times remain under the control of the Manager. The Manager shall have the right to determine appropriate rules, procedures guidelines for the use of the Studio and Equipment and to amend such rules, procedures and guidelines from time to time; provided, however, that the Manager shall provide the City with a copy of such rules, procedures and guidelines and any amendments thereto. In the event of dissolution of the Manager, all of such assets and interests referenced in paragraph (a) above shall become the property of the City and/or its designee.

(3) Upon the written request of Manager, and if judged to be reasonable and appropriate by the City, the City may agree to subordinate the City's interest to finance the purchase of equipment or property. Such subordination shall only be with respect to the specific equipment or property that Manager might wish to finance.

## **SECTION 11. INDEMNIFICATION**

Manager shall itself, at its sole cost and expense, and in its rules for use of the Studio and/or Access Channel, require every user of the Studio, Access Channel or Equipment to, indemnify and hold harmless the City, Comcast, their affiliates, officials, boards and employees against any and all claims arising out of any use of the Studio, Access Channel or Equipment and/or due to any programming cablecast over the Access Channel including, but not limited to personal injury, libel, slander, invasion of privacy or publicity rights, non-compliance with applicable rules, regulations and/or laws and/or authorized use of copyrighted materials. This Section 11 shall survive the termination of this Agreement.

## **SECTION 12. INSURANCE**

(a) Manager, at Manger's sole expense, shall obtain and keep in force throughout the term of this Agreement, with a reputable insurance company having an AM Best

rating of A-, VII or better, and authorized to do business in the State of Delaware, insurances with coverages and limits as follows:

(1) A policy (or policies) of Workers' Compensation insurance covering Manager's employees in accordance with statutory requirements of the State of Delaware. Each such policy shall be on a form approved for use the State of Delaware and shall provide, at a minimum, statutory Workers' Compensation coverage, and Employer's Liability at limits of not less than \$100,000 each accident for Bodily Injury by Accident, \$300,000 policy limit for Bodily Injury by Disease, and \$100,000 each employee for Bodily Injury by Disease.

(2) Commercial General Liability Insurance on current standard forms with limits of liability for such insurance to be no less than \$1,000,000 per occurrence for bodily injury, property damage and contractual liability of Manager, and \$2,000,000 in the aggregate.

(3) Media Perils Liability Insurance (Broadcasters' Liability/Errors and Omissions) to cover Manager's and its lessee's or sublessee's media activities as described in this Agreement, including but not limited to, production of programming and all programming cablecast under the terms of this Agreement (including but not limited to original programming, marketing activities, sales promotions, and other activities). Such insurance shall cover, at a minimum, the "offenses" of defamation of character or reputation; invasion of privacy; infringement of trademark, title, slogan, trade name or service mark; and infringement of copyright or misappropriation of ideas. The limit of liability for such insurance shall be no less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

(4) An all-risk business property insurance policy for the Equipment with coverage for the full replacement cost of the Equipment and with a policy limit of at least the full replacement value for the Equipment.

(b) The policies of insurance described in Section 12(a) above shall name the City and Comcast as additional insured parties. It is also understood and agreed that upon issuance of such insurance policy, a complete certified copy shall be given to the City and Comcast for their review and records. No insurance certificates shall be cancelled without a minimum of thirty (30) days prior written notice to the City and Comcast.

### **SECTION 13. ASSIGNMENT**

Manager shall have no right whatsoever to assign or sublet its rights under this Agreement without the prior written consent of the City and Comcast.

### **SECTION 14. TERMINATION; DISSOLUTION OF THE MANGER; SURVIVAL**

(a) In the event of a default by Manager under this Agreement, the City shall have the right to pursue all damages and/or remedies available to the City at law or in equity, including, but not limited to, terminating this Agreement; provided, the City shall have given Manager (i) written notice of the default and (ii) thirty (30) days from the date of such written notice to cure any such default. Notwithstanding the foregoing, the City may immediately terminate this Agreement without providing any cure period to Manager in the event that Manager

shall request any additional financial support from the City or if Manager engages in any criminal activity or malfeasance, misfeasance or misappropriation or misuse of funds.

(b) The result of any termination of this Agreement by the City shall be that:

(1) Manager shall no longer be the designated operator of the Access Channel and the Studio;

(2) if requested by the City, the City may remove the Equipment from the Studio or may require that Manager deliver, at Manager's sole cost and expense, the Equipment to a location designated by the City within the City limits.

(c) In the event that Manager is dissolved during the term of this Agreement, or the City or Comcast terminates this Agreement with Manager pursuant to the paragraphs above, the City and Comcast shall have the absolute right to designate another entity, including the City or Comcast itself, to provide Access Channel programming in the City. Any such successor organization shall then assume all of the benefits and obligations contained herein, and all then-existing Equipment and pre-paid rental amounts or service fees with respect to the Access Channel, or Equipment, shall become the property of the City or transferred to such successor organization as directed by the City in writing.

(d) This Section 14 shall survive the termination of this Agreement.

#### **SECTION 15. NONDISCRIMINATION**

Manager shall not discriminate against any Person in any of its activities on the basis of race, color, creed, religion, ancestry, national origin, geographical location within the City, sex, sexual orientation, disability, age, marital status or status with regard to public assistance. Manager shall be subject to all other requirements of federal and state laws or regulations relating to nondiscrimination throughout the term of this Agreement.

#### **SECTION 16. NOTICE**

(a) Every notice to be served upon the City shall be delivered by courier or overnight delivery service, or sent by certified mail, to Wilmington Cable, Video and Telecommunications Commission, c/o Wilmington City Council, Louis L. Redding City/County Building, 9<sup>th</sup> Floor, 800 N. French Street, Wilmington, DE 19801, or such other address as the City may specify in writing to Manager. Every notice to be served upon Comcast shall be delivered or sent by certified mail to: Comcast of New Castle County, LLC, ATTN: Government Affairs, 5 Bellecor Drive, New Castle, DE 19720, or such other address as Comcast may specify in writing to the Manager.

(b) Every notice to be served upon Manager shall be delivered by courier or overnight delivery service, or sent by certified mail, to \_\_\_\_\_, or at such other address as Manager may specify in writing to the City.

**SECTION 17. SEVERABILITY**

If any section, paragraph, term or provision of this Agreement is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by any State or federal regulatory agency having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which shall remain in full force and effect for the term of this Agreement.

**SECTION 18. CITY TAXES AND BUSINESS LICENSE**

Manager shall withhold, if applicable, City of Wilmington wage taxes from the compensation of its officers, agents and employees as required by the City of Wilmington wage tax law. Manager shall obtain and maintain throughout the term of this Agreement a valid City of Wilmington business license.

**SECTION 19. ENTIRE AND COMPLETE AGREEMENT**

This Agreement constitutes the entire and complete Agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements or understandings. This Agreement can be amended only by a written agreement between the parties.

**SECTION 20. NO THIRD PARTY BENEFICIARIES**

This Agreement is solely an agreement between the signatories hereto and conveys no rights on any third-parties except for Comcast. No third-party (other than Comcast) shall have any right to enforce the terms herein or seek remedies for rights arising out of this Agreement. This Agreement gives Manager no rights under the Franchise Agreement or any other agreement between the City and Comcast.

**SECTION 21. ASSISTANCE OF COUNSEL**

No provision shall be construed for or against any party to this Agreement on the ground that such party drafted this Agreement.

**SECTION 22. RIGHT TO AUDIT AND REVIEW RECORDS**

The City shall have the right from time to time during normal business hours and upon forty-eight (48) hours prior written notice to review, make copies of and audit the records of Manager as they relate to the Access Channel, Equipment and Studio. The City shall be permitted to conduct such review or audit of the Manager for any reasonable purpose deemed necessary by the city auditor of the City of Wilmington in connection with the exercise of the auditor's powers and duties as set forth in *Wilm. C. (Charter) § 6-300*.

**SECTION 23. BINDING ARBITRATION**

If the parties should have a dispute arising out of or relating to this Agreement or the parties' respective rights and duties hereunder and without limiting the City's right to terminate this Agreement as set forth in Section 14, then the parties will resolve such dispute in the following

manner: (i) any party may at any time deliver to the other a written dispute notice setting forth a brief description of the issue(s) for which such notice initiates the dispute resolution mechanism contemplated by this Section 23; (ii) during the 45 day period following the delivery of the notice described in Section 23(i) above, appropriate representatives of the parties will meet and seek to resolve the disputed issue(s) through negotiation, (iii) if representatives of the parties are unable to resolve the disputed issue(s) through negotiation, then within 15 days after the period described in Section 23(ii) above, the parties will refer the issue (to the exclusion of a court of law) to final and binding arbitration in Wilmington, Delaware in accordance with the then existing rules (the "Rules") of the American Arbitration Association ("AAA"), and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof; provided, however, that the law applicable to any controversy shall be the law of the state of Delaware, regardless of principles of conflicts of laws.

In any arbitration pursuant to this Agreement, (a) discovery shall be allowed and governed by the Rules, and (b) the award or decision shall be rendered by a majority of the members of a Board of Arbitration consisting of three members, one of whom shall be appointed by each of the respective parties and the third of whom shall be the chairman of the panel and be appointed by mutual agreement of said two party-appointed arbitrators. In the event of failure of said two arbitrators to agree within 30 days after the commencement of the arbitration proceeding upon the appointment of the third arbitrator, the third arbitrator shall be appointed by the AAA in accordance with the Rules. In the event that either party shall fail to appoint an arbitrator within 15 days after the commencement of the arbitration proceeding, such arbitrator and the third arbitrator shall be appointed by the AAA in accordance with the Rules. Nothing set forth above shall be interpreted to prevent the parties from agreeing in writing to submit any dispute to a single arbitrator in lieu of a three member Board of Arbitration. Upon the completion of the selection of the Board of Arbitration (or if the parties agree otherwise in writing, a single arbitrator), an award or decision shall be rendered within no more than 30 days or such other period agreed to by the parties. Nothing herein shall restrict the parties from limiting the discovery or having less than three arbitrators.

#### **SECTION 24. GOVERNING LAW**

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE DOMESTIC LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICTING PROVISION OR RULE (WHETHER OF THE STATE OF DELAWARE OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF DELAWARE TO BE APPLIED.

#### **SECTION 25. WAIVER OF TRIAL BY JURY**

WITHOUT LIMITING SECTION 23 ABOVE, EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING HEREUNDER.

#### **SECTION 26. COUNTERPARTS**

This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which together shall constitute but one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2024.

**CITY OF WILMINGTON**

By: \_\_\_\_\_

Name:

Title:

Date:

Attest: \_\_\_\_\_

Maribel Seijo, City Clerk

**DE TV FOUNDATION, INC.**

By: \_\_\_\_\_

Name:

Title:

Date:



**EXHIBIT "A"**

**LEASED ACCESS MANAGEMENT AGREEMENT BETWEEN COMCAST OF NEW  
CASTLE COUNTY, LLC AND DETV FOUNDATION, INC.**

[see attached]

**EXHIBIT "B"**

**LIST OF EXISTING STUDIO EQUIPMENT**

[see attached]

**EXHIBIT "C"**

**STUDIO SUBLEASE AGREEMENT BETWEEN THE CITY, AS LESSOR, AND DETV,  
AS LESSEE**

[see attached]

This exhibit will be provided when the TPO and City complete their discussions on a sublease agreement.

**EXHIBIT "D"**

**LIST OF EXISTING PROGRAMMERS (as of July 2013) AND THEIR TIME SLOTS**

[see attached]

**EXHIBIT "E"**

**FORM OF EQUIPMENT LEASE AGREEMENT BETWEEN THE CITY OF  
WILMINGTON AND DETV FOUNDATION, INC.**

[see attached]

**EXHIBIT "F"**  
**LEASED ACCESS GUIDELINES**

[see attached]