

AN ORDINANCE TO AUTHORIZE AN AMENDMENT TO A SUBLEASE AGREEMENT BETWEEN THE CITY AND DETV FOUNDATION, INC.

#4781 **WHEREAS**, pursuant to Section 2-308 and Section 8-200 of the City Charter, City Council may, by ordinance, authorize contracts for the leasing of real estate, the supplying of personal property, or the rendering of services to the City for a period of more than one year; and

Sponsor: **WHEREAS**, City Council adopted Substitute No. 1 to Ordinance No. 19-006 which approved a multi-year lease agreement between the City and DETV Foundation, Inc. (“DETV”) for studio space located at 2801 Lancaster Avenue in Wilmington, Delaware (the “Lease”);

Council Member Oliver

Co-Sponsor: **WHEREAS**, the City desires to amend the Lease on the terms set forth in the Second Amended and Restated Sublease Agreement (“Amended Lease”), a copy of which is attached hereto and incorporated by reference herein as Exhibit “A”; and

Council President Shabazz

WHEREAS, the term of the Amended Lease alters the terms of the Lease to provide that the City shall cover the costs of utilities related to the leased premises; and

WHEREAS, it is the recommendation of the Cable Video & Telecommunications Commission that the City enter into the Amended Lease.

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

SECTION 1. The Amended Lease between the City of Wilmington and DETV, a copy of which is attached hereto as Exhibit “A,” is hereby approved, and the appropriate officers of the City are hereby authorized and directed to execute as many copies of the Amended Lease, as well as all additional undertakings related thereto, as may be necessary.

SECTION 2. This Ordinance shall become effective immediately upon its passage by City Council and approval by the Mayor.

First Reading.....March 19, 2020
Second Reading.....March 19, 2020
Third Reading.....

Passed by City Council,

President of City Council

ATTEST:_____
City Clerk

Approved this ____ day of _____, 2020.

Mayor

SYNOPSIS: This Ordinance authorizes the execution of an amended lease agreement between the City of Wilmington and DETV Foundation, Inc. for studio space located at 2801 Lancaster Avenue in Wilmington, Delaware to provide that the City shall cover the costs of utilities related to the leased premises.

SECOND AMENDED AND RESTATED SUBLEASE AGREEMENT

THIS SECOND AMENDED AND RESTATED SUBLEASE AGREEMENT (“Amended Sublease”) is made as of this _____ day of _____, 2020, by and between the **City of Wilmington**, a Delaware municipal corporation (the “Tenant”), and **DETV Foundation, Inc.** (the “Subtenant”), a non-profit corporation incorporated under the laws of the State of Delaware.

WITNESSETH

WHEREAS, Tenant and Lancaster Associates LLC (“Landlord”) entered into a Lease Agreement (“Lease”), attached hereto as “Attachment A”, executed on June 24, 2019 for the lease of the property located at 2801 Suite 1 Lancaster Avenue, Wilmington, Delaware 19805 (the “Premises”); and

WHEREAS, Tenant has lawful possession of the premises pursuant to the Lease; and

WHEREAS, Tenant desires to sublet the Premises to the Subtenant upon the terms and conditions set forth herein.

WHEREAS, Tenant and Subtenant previously entered into a Sublease Agreement dated April 3, 2019 (“Original Sublease”) which was thereafter amended by mutual agreement on April 17, 2019.

WHEREAS, Tenant and Subtenant desire to further amend the Original Sublease and restate the entirety of their agreement in this Amended Sublease.

NOW, THEREFORE, WITNESSETH in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows.

1. **SUBLEASE.** Subject to the terms and conditions of this Amended Sublease, Tenant hereby subleases to Subtenant, and Subtenant hereby subleases from Tenant, the Premises.
2. **TERM.** The term of this Amended Sublease shall commence on date first set forth above and shall terminate on March 31, 2022 unless sooner terminated by one of the following: (a) upon termination of the Lease agreement between Landlord and Tenant, (b) by agreement of the parties hereto, or (c) pursuant to the provisions of the Lease or new lease upon the same terms.
3. **RENT.** Tenant agrees that Subtenant shall not be charged rent in any amount for Subtenant’s use of Premises.
4. **UTILITIES.** Tenant shall be responsible for and pay all charges for heat, water, gas, electricity, or any other utility used or consumed on the Premises.
5. **INCORPORATION OF LEASE TERMS.** Subtenant has reviewed a complete copy of the Lease, and, unless modified hereby, agrees to comply with all of the obligations of the

Tenant under the Lease (whether requested by Landlord or Tenant), and specifically consents to the terms thereof or any new lease upon the same terms. Unless modified by the terms of this Amended Sublease, Subtenant hereby assumes and agrees to abide by and comply with, for the benefit of Tenant and Landlord, all covenants, obligations and undertakings of Tenant under the Lease or any new lease upon the same terms. Subtenant shall not do or permit to be done anything, which would constitute a default under the Lease or cause the Lease to be terminated or forfeited. In the event Subtenant causes or permits what Tenant reasonably deems to be a default under the Lease or any new lease upon the same terms, in addition to all other remedies available to Tenant, Tenant shall be entitled to enter the Premises, without Subtenant's consent, and cure said default, whereupon all expenses incurred by Tenant thereby shall be additional rent due and payable with the next monthly rent payment.

6. ACCEPTANCE OF PREMISES. Subtenant acknowledges and agrees that it has previously inspected the Premises and is accepting and subleasing the Premises hereunder in "as is" condition. Subtenant has and will rely solely on Subtenant's own independent investigations and inspections of the Premises and has not relied and will not rely on any representations of Tenant.
7. SUBORDINATION. This Amended Sublease is subject and subordinate to the Lease, to all matters contained therein, and to any encumbrance of Landlord's and/or Tenant's interest in the Premises. This provision is self-operative and no further action or documentation shall be necessary for such subordination to be effective.
8. INSURANCE. Subtenant shall provide insurance coverage for itself and all of its employees, if any, used in connection with this Sublease as follows: workers' compensation as required by law; comprehensive general liability coverage for personal injury, including death, and property damage in the minimum amount of One Million Dollars (\$1,000,000.00). Such policies shall be issued by a financially sound carrier. Subtenant shall provide Tenant with a certificate of insurance evidencing the above-stated coverage and naming the City of Wilmington as an additional insured.
9. INDEMNIFICATION. Subtenant shall indemnify and hold harmless the Tenant, its employees, agents, and officers, from and against any and all claims, damages, actions, liabilities and expenses, including reasonable attorneys' fees, resulting from the negligent acts or omissions of Subtenant, its employees, agents, subcontractors, consultants, or subconsultants in performing the services required under this Agreement.
10. NOTICE. Any notice which is required or may be given in connection with this Sublease Agreement shall be addressed to the parties as follows:

Tenant/The City:

Hanifa Shabazz
Louis L. Redding City/County Building

800 N. French St. 9th Floor
Wilmington, DE 19801

Subtenant/DETV:

Ivan Thomas
DETV Foundation
500 East Hanna Drive
Newark, DE 19702

11. **GOVERNING LAW.** The laws of the State of Delaware shall govern this Sublease. All disputes in connection with this Agreement shall be resolved by the courts of New Castle County, Delaware. Subtenant agrees to submit exclusively to the jurisdiction and venue of said courts.
12. **MODIFICATION TO AGREEMENT.** This Amended Sublease may not be changed orally, but only by an agreement in writing and signed by both parties.
13. **ENTIRE AGREEMENT.** This Amended Sublease contains the entire agreement of the parties and no other representations or agreements, oral or otherwise, among the parties not embodied herein shall be of any force or effect with respect to the subject matter hereof. No failure of any of the parties to exercise any power given hereunder, or to insist upon strict compliance of any obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of any party's right to demand exact compliance with the terms hereof.

IN WITNESS WHEREOF, the parties have entered into this Sublease the date and year first above mentioned.

TENANT: CITY OF WILMINGTON

SUBTENANT: DETV FOUNDATION, INC.

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____