

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Location and Access Agreement between the City of El Paso and BASE Productions, Inc., regarding the POLICE POV non-fiction television program.

ADOPTED this _____ day of November, 2010.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

John R. Batoon
Assistant City Attorney

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

LOCATION AND ACCESS AGREEMENT

This Location and Access Agreement (“Agreement”) is entered into by and between the City of El Paso, a home rule municipal corporation (“CITY”), and BASE Productions, Inc. (“PRODUCER”).

WHEREAS, POLICE POV (“the Program”) is a non-fiction television program which features footage from wearable and other mounted cameras (including without limitation, such devices made by TASER International, Inc.) (collectively, “POV Recording Devices”) to show law enforcement stories from the officers' point of view. It will include photographs, audio and video of the actual investigations, pursuits, apprehensions and other activities of City’s law enforcement services.

NOW, THEREFORE, THE CITY AND BASE PRODUCTIONS, INC. HEREBY ENTER INTO THIS AGREEMENT UNDER THE FOLLOWING TERMS AND CONDITIONS:

1.0 PURPOSE AND GRANT:

In order to work together on the production of the Program and subject to the restrictions set forth in Paragraph 2 below, City hereby grants to BASE Productions, Inc. (“Producer”), Network (as defined below) and their respective parents, subsidiaries and affiliates, licensees, successors and assigns, for good and valuable consideration, receipt of which is hereby acknowledged, permission to enter upon and use only the Property and the contents thereof and the appurtenances thereto located throughout City’s ownership, jurisdiction and/or control and including without limitation the property at Division of Police Stations”, as well as other specific locations and crimes scenes (all locations individually and collectively the “Property”) for the purposes of filming, photographing and/or recording certain scenes in connection with the Program during production thereof, and as necessary during any extension, reshooting or preparation of publicity or promotion therefor (collectively, the “Filming Rights”). During the Term of this Agreement (as defined below), this permission shall include the right to enter the Property, to film, photograph and otherwise record the Property and its contents, and to film, photograph and otherwise record City’s activities and personnel on and around the Property and during criminal investigations. All physical embodiments of filming, recording and photography on the Property in connection with this Agreement shall hereinafter be known as the “Materials”. Any entity distributing the Program shall hereinafter be known as a “Network.” Producer acknowledges that it has represented to City and that City expressly relies on this in entering into this Agreement, that Producer’s activities under this Agreement are not intended for the purpose of investigating the City, or to knowingly subject it to liability for claims by 3rd parties, or to subject the City to ridicule and scorn, or to undermine or impede its ability to conduct police business including the investigation of criminal cases.

2.0 ACCESS AND RESTRICTIONS:

Producer shall perform its activities subject to the reasonable restrictions and limitations imposed by City for reasons of safety, illegality, security, or liability; provided, however, that City shall at all times makes best efforts to allow and maintain Producer's access to the Property, activities and personnel contemplated herein for the purposes herein described. Producer shall comply with all applicable laws, including City of El Paso Codified Ordinances. For the preservation of crime scenes, compliance with State or federal laws, the safety of City Police personnel or any other persons, Producer, its employees and agents, shall comply with all City instructions or directives at all times during City's activities. All employees, agents, and/or contractors of Producer or Network on site during filming or other on-site activities shall be duly advised by Producer of the potential dangers, including physical injury and/or loss of life, and shall be deemed to have assumed the risk if they participate

3.0 PROTECTION OF INVESTIGATION AND PROSECUTION:

(a) City shall have the right to view a Rough Cut of each episode prior to release and to provide written comments thereon. In the event that City does not comment on each cut in writing within five (5) business days of receipt of the cut by City (or such shorter period as is required by the exigencies of production and consented to in writing by the Chief of Police or his designee), said cut shall be deemed to have been approved. Producer will consult with City in good faith and use best efforts to make revisions as the City reasonably requests so that no content will be included in the final Program that, to Producer's direct and contemporaneous knowledge, a) will directly and substantially jeopardize the legal outcome of a criminal investigation or the City's ability to legally conduct its business or participate in the Program; b) is demonstrably and substantially false in the context of the entire program; or c) poses a direct, identifiable, credible threat to endanger the life or physical safety of City personnel or any other person related to the case in question. Subject always to normal and customary and reasonable Network approval, Producer will make best efforts to address any significant concerns raised by the City as to any such issue, by using one or more of the following approaches: securing Appearance, Location or other Releases from Program participants; blurring or otherwise obscuring identities; withholding or changing names and/or case facts; omitting or altering sensitive information; or otherwise making accommodation to protect the integrity of any ongoing investigation or prosecution. If Producer is not able to do make the enumerated revisions listed above to the satisfaction of the Chief of the Division of Police and/or the Prosecutor, Producer shall not release such footage identified by the Chief or Prosecutor until it receives the written authorization of the Chief or Prosecutor or their designee(s). Subject to Producer's compliance with the above, City acknowledges and accepts that the Network has exclusive control over final editorial content, and that Producer shall have the right to broadcast and otherwise air, exploit, promote and/or distribute the Program irrespective of the legal status of the case(s) in question, including without limitation prior to the adjudication of the case(s) in question.

(b) Producer shall use all reasonable efforts to implement and maintain appropriate safe guards to prevent unauthorized access to or use of raw video footage from the Program.

(c) (1) Producer shall have the right to adopt and implement a destruction policy for raw footage of the Program. Producer acknowledges and agrees its current destruction policy for raw video footage related to the Program.

(2) Notwithstanding the foregoing, Producer agrees not to destroy any raw footage of the Program (not already destroyed pursuant to Producer's destruction policy then in effect) upon request of the City or upon Producer's receipt of a judicial order issued by a court of competent jurisdiction requesting that such raw video footage not be destroyed, provided, however, nothing contained herein shall be construed to preclude Producer from opposing any disclosure order by a court or a subpoena from a third party requesting Producer to produce copies of any such raw video footage of the applicable Program.

4.0 INSURANCE AND INDEMNIFICATION:

(a) Producer shall maintain reasonable and customary Production and Liability insurance policies that cover all reasonable and customary Producer activities under this agreement and names the City of El Paso as an additional insured. Producer shall provide City with written evidence of such coverage upon execution of this Agreement.

(b) Producer represents and warrants that it has the full right and authority to execute this Agreement; that the consent or permission of no other person, firm or entity is necessary for the grant of rights and assumption of obligations by Producer hereunder; and that the City may enjoy such rights without payment of any further consideration to or by the undersigned, or any other person, firm, or entity. Provided that City notifies Producer with prompt notice of the following liability, damages and claims, Producer will indemnify and hold harmless City against any liability, damages and third party claims (including reasonable outside attorneys' fees) that City may suffer or incur by reason of (i) a breach of the foregoing representations and warranties; (ii) any bodily injury, death or property damage on the Property directly caused by the intentional or negligent acts of Producer, provided, however, that such indemnification and agreement to hold harmless shall not extend to any portion of liability arising from any negligent, tortuous or criminal acts or behavior by City except to the extent the assumption of the risk is applicable to Producer's or Network's on-site employees, agents and/or contractors. Producer may assume the defense or settlement of any such claim or litigation, and if Producer does so, it must act at all times in good faith towards the City. Producer's obligations thereafter shall be limited to the amount of any judgment or to the amount of any settlement approved by Producer.

(c) City represents and warrants that City and its signatory below have the full right and authority to execute this Agreement; that the consent or permission of no other person, firm or entity is necessary for the grant of rights and assumption of obligations by the City hereunder; and that the Producer may enjoy such rights without payment of any further consideration to or by the undersigned, or any other person, firm, or entity. City agrees not to assert or maintain against Producer any claim based upon copyright or trademark infringement, passing-off, invasion of privacy, publicity or unfair business practices or the like in connection with this Agreement. City agrees to be responsible and to hold Producer harmless for any and all third-party claims arising out of or in connection with (i) a breach of City's foregoing representations and warranties, (ii) any bodily injury to or death of an individual except to the extent due to Producer's negligence or within the assumption of the risk by Producer's employees, agents, and/or contractors; and (iii) any allegation or claim of illegal action by the City.

5.0 COMPENSATION:

As consideration for the access and rights granted herein, Producer shall pay to City a total fee of Ten Thousand Dollars (\$10,000.00) per episode upon approval and broadcast of each full episode's worth of content generated within City's jurisdiction during the Term. For purposes of clarity, the parties acknowledge and agree that each episode shall contain approximately five (5) full-length cases per episode, of approximately 4-5 minutes per case, for a total edited and broadcast duration of 2025 minutes.

6.0 TERM:

The term of this Agreement and Producer's rights and access hereunder shall be one year beginning on November 1, 2010 and ending not earlier than December 1, 2011 (the "Term"). Provided that Producer is not in breach of this Agreement, parties may extend the Term of this Agreement on an annual basis (for additional one year periods), by entering into a written amendment to extend the Term. Although the Agreement may be extended at any time by written agreement of the parties, the parties also agree to enter into conversations about potential renewal not later than ninety (90) days prior to the expiration of the then-current Agreement. In addition to the granted Filming Rights, upon prior notice to and written agreement by the City, Producer shall also have the right to conduct multiple appropriate pickup shoots of short duration (normally several days each), which pickup shoots may extend or take place beyond the Term. During the Term, Producer's rights and access shall be exclusive for long-form television, documentary and/or reality television show production and development in the genre of true-crime and/or forensic science program. Producer's exclusive access shall not, however, limit City's right to allow filming for training or promotional purposes, or for news or short-form television news magazine coverage.

7.0 TECHNOLOGY AND EQUIPMENT:

Producer shall use best efforts to secure cutting-edge crime scene technology, equipment, software and training (hereinafter "Technology") for City's use throughout the Term at reduced or no cost to City. Any financial obligation to be incurred by City for use of Technology must be pursuant to separate written agreement signed by City. City agrees that it shall operate, care for and maintain any such Technology with the utmost care, and shall return all or any portion of said Technology within thirty (30) days of receipt of a written request after the completion of the Term or the completion of Producer's use of the Technology, whichever is sooner.

8.0 LOCATION AND APPEARANCE RELEASES:

Prior to and during filming on City property, City will execute the standard Location Release attached hereto and incorporated herein by reference, and shall require all of its filmed personnel choosing to appear on the Program to execute the standard Appearance Release attached hereto and incorporated herein by reference, as well as such additional Releases requested by Producer from time to time in the normal course of business, including without limitation additional Location and Appearance Releases, Photo and Video releases, and other standard production releases. Producer shall be solely responsible for determining when releases

are needed and for obtaining releases from any persons to be filmed, though City may assist the Producer. For all locations and individuals not under City authority or control, Producer shall be responsible for securing all necessary Releases. Neither party shall be deemed the agent of the other party under this Agreement.

9.0 FACILITIES:

Producer may place all necessary facilities and equipment on the Property and agrees to remove same after completion of work and to leave the property in as good of condition as when received. Producer agrees to seek permission before making any modifications or alterations to the Property.

10.0 USE AND CARE:

Producer agrees to use reasonable care to prevent damage or harm to the Property or persons thereon. Producer agrees to remove any equipment after completion of filming and to leave the Property in a condition as good as when entered, allowing for normal wear and tear and use and damage caused parties other than Producer. Producer shall not be liable for any damage to the Property caused by third parties or which City has not notified Producer of in writing and offered Producer a reasonable opportunity to cure.

11.0 COPYRIGHT:

Producer shall exclusively own the copyright and all rights in and to the Materials. Producer and its licensees and assigns shall enjoy the irrevocable perpetual right throughout the universe to use the Materials (including without limitation, all footage recorded by POV Recording Devices) in and in connection with the production, broadcasting, promotion, advertising distribution and exploitation of the Program and any elements thereof or ancillary thereto and the exhibitors and sponsors thereof (including without limitation, all merchandising, commercial tie-in rights, product integration and implied endorsements) and any programming services, websites, or television services which telecast the Program, and any 'behind-the-scenes' or similar footage, in any manner and in all media, whether now known or hereinafter developed, including without limitation, all forms of television, home video, and interactive electronic media (including internet and CD ROM) in perpetuity throughout the universe. Producer has the right visually and/or in dialogue to attribute events and/or characters to the Property, and to recreate or stage events at the Property, and recreate or use in connection with the Program or its promotion any products, names, logos, trademarks, designs, copyrighted materials and/or other materials that City owns or controls. Producer agrees to provide City with a copy of the final transmitted Program, if any, for noncommercial use of City, including but not limited to Police training applications. Without limiting the generality of the foregoing,

City agrees that the rights granted hereunder shall include the perpetual, irrevocable universal right of Producer and/or its licensees or assigns to edit, telecast, cablecast, rerun, record, publish, reproduce, use, license, print, distribute or otherwise exploit, in any manner and in any medium or forum, whether now known or hereafter devised, the Materials, in whole or in party, without any further obligation to City (financial or otherwise). Without limiting anything to the contrary contained herein, City hereby grants to Producer and its successors, licensees and assigns, the non-exclusive right to film, videotape, photograph, reproduce, record and otherwise

use the Property's and City's names, copyrights, trademarks, service marks, logos, and/or other materials (including, but not limited to, audio, video, and dashcam footage from any squad cars) to which Producer is afforded access, in whole or in part, in accordance with the terms of this Agreement and in connection with the production, distribution, exhibition, exploitation, promotion and advertising of the Program and any elements thereof or ancillary thereto and the exhibitors and sponsors thereof, including, without limitation, all merchandising, commercial tie-ins rights, product integration and implied endorsements in perpetuity throughout the universe, in any and all media now known or hereafter devised. However, Producer shall have no right to use the names, trademark, logos, or trade names of City for any purpose unrelated to the purpose of this Agreement without the prior written consent of City in each instance.

12.0 RIGHTS AND AUTHORITY:

The City acknowledges that Producer is photographing and recording such scenes in express reliance upon the foregoing.

13.0 NO OBLIGATION:

Producer is not obligated to actually use the Property or produce the Program or include the Materials in the Program for which it was shot or otherwise. Producer may at any time elect not to use the Property by giving the City written notice of such election, in which case, neither party shall have any obligation hereunder except as explicitly provided herein. In such an event, Producer shall not make any future use of the Property without the express written permission of the City.

14.0 NO INJUNCTIVE RELIEF:

In the event of any claim by either party against the other and the parties shall be limited to remedies at law for damages, if any, and Producer may not enjoin, restrain or interfere with the City's rights to its property or the City enjoin, restrain or interfere with the Producer's distribution, exhibition or exploitation of the Program or the exploitation of any of Producer's rights hereunder.

15.0 GOVERNING LAW:

This Agreement is governed by Texas law, without regard to or the use, or resort to, conflicts of laws principles. Venue shall be a court of competent jurisdiction in El Paso County, Texas.

16.0 CONFIDENTIALITY:

City will not at any time issue, authorize or participate in any news story, magazine article or other publicity or information of any kind relating to the Program, Producer, Network or any of their respective parents, subsidiaries and affiliates, licensees, successors and assigns or disclose any confidential information, including without limitation the terms of this Agreement, without Producer's and/or Network's written consent in each case. Additionally, City shall have no right to use the names, trademark, logos, or trade names of Producer or Network, and each of their parent, subsidiaries, affiliate entities, or the names or logos related to the Program for any

purpose whatsoever, including, but not limited to, publicity, public relations, merchandising or self promotion purposes without the prior written consent of Producer and/or Network in each instance. Producer shall not disclose confidential information of the City without the prior written consent of City in each case. City shall promptly notify Producer of any information it deems confidential.

17.0 PAYOLA/PLUGOLA:

City affirms that no one acting for City gave or agreed to give anything of value to Producer, to any member of the production staff, to anyone associated with the Program or Network or to anyone else for mentioning any product, service or venture in the Program. City further acknowledges that it is a Federal offense, unless disclosed prior to broadcast, to give or agree to give anything of value to promote any product, service, or venture on the air and the parties agree to notify each other immediately in writing if any person attempts to induce City to violate the foregoing.

18.0 SEVERABILITY:

In the event that any term or provision of this Agreement is held invalid by a competent court, the remainder of this Agreement shall not be affected thereby, and the parties hereto shall continue to be bound by the remaining terms hereof.

19.0 ENTIRE AGREEMENT:

The signatories below have all rights and authority to enter into this Agreement on behalf of each respective entity. This Agreement constitutes the entire understanding of the parties concerning the subject matter hereof and supersedes all prior understandings or agreements. This Agreement may not be modified except by a written instrument executed by both parties. No other authorization is necessary to enable Producer to use the Property for the purpose herein contemplated.

20.0 NO THIRD PARTY BENEFICIARIES:

Except as to the rights granted to Network, this Agreement is not intended to nor shall it be construed to confer any rights to a any third parties not a party to this Agreement.

21.0 SURVIVAL:

The following paragraphs shall survive termination or expiration of this Agreement: 3(b), 3(c), 4, 9, 10, 11, 12, 13, 14, 15, 16 and 17.

22.0 NOTICE:

Service of any notices or other documents required by this Agreement shall be sent by United States Mail, postage prepaid and addressed as follows:

CITY: City of El Paso
Attn: Chief Greg Allen
El Paso Police Department
911 Raynor
El Paso, Texas 79903
(915) 564-7000

PRODUCER: Michael Stern
Base Productions, Inc.
16961 Thunder Road
Haymarket, Virginia 20169
(703) 281-3700

EXECUTED at El Paso, Texas, on this _____ day of _____, 2010.

CITY OF EL PASO

Joyce A. Wilson
City Manager

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

John R. Batoon
Assistant City Attorney

APPROVED AS TO CONTENT:

Gregory Allen
Chief of Police