

**Elko City Council  
Agenda Action Sheet**

1. Title: **Review, consideration, and possible approval of a lease agreement between the City of Elko and the Elko Television District, for 2,500 square feet of property located at Elko Regional Airport, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **November 28, 2017**
3. Agenda Category: **NEW BUSINESS**
4. Time Required: **10 Minutes**
5. Background Information: **The Elko Television District is requesting to lease 2,500 square feet of property in the vicinity of the airport beacon, for the purposes of installing a utility building and related Elko Television District equipment. A copy of the proposed lease has been included in the agenda packet for review. CC**
6. Budget Information:  
    Appropriation Required: **N/A**  
    Budget amount available: **N/A**  
    Fund name: **N/A**
7. Business Impact Statement:
8. Supplemental Agenda Information: **Letter from TV District; Draft Lease Agreement**
9. Recommended Motion: **Approve Lease Agreement, subject to TV Board approval.**
10. Prepared By: **Curtis Calder, City Manager**
11. Committee/Other Agency Review: **City Attorney**
12. Council Action:
13. Council Agenda Distribution: **Paul Gardner, Elko TV District Board Chair  
paul@elkoradio.com**

**ELKO TELEVISION DISTRICT BOARD  
P.O. BOX 456  
ELKO, NV 89803**

October 6, 2017

Curtis Calder  
City of Elko Manager  
1751 College Ave  
Elko, NV 89801

Dear Curtis,

I wanted to take this opportunity to thank you for working with the TV Board to find a suitable location in the City to establish a fiber optic circuit location. This letter is to give the City a Notice of Intent to secure a lease on the Airport property for the following:

- A 50-foot by 50-foot footprint on Airport property within the general area noted by a site walk this date and established through a formal survey by a licensed firm to place a communications shelter, a microwave dish or dishes and eventually a chain link fence.
- Access to the property designated by the survey along with any improvements required.
- Utility access for a fiber conduit and commercial power.
- Space available to City and other local governmental entities for fiber equipment and connectivity.

We know that the details still need to be worked out through a formal lease agreement. The TV District will be responsible for all civil work required to complete this project and we will work with the appropriate City departments to see this done in an efficient and effective manner.

We wanted the City to know that we are serious about completing this project and have been working towards this resolution over the last 18 months. We look forward to working with you and other City staff members on this project. Please feel free to contact me with any additional questions or comments. Have a great weekend.

Best Regards,

Paul Gardner  
Board Chairman

## **LEASE AGREEMENT**

**THIS AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2017 by and between the **CITY OF ELKO**, a special charter municipal corporation of the State of Nevada, hereinafter referred to as the "**Lessor**," and **ELKO TELEVISION DISTRICT**, hereinafter referred to as "**Lessee**."

### **WITNESSETH**

That for and in consideration of the rents, covenants and agreements herein contained, **Lessor** hereby leases to **Lessee**, and **Lessee** hereby leases from **Lessor**, the following property upon the terms and conditions described hereinafter.

#### **I. PREMISES**

**Lessor** does hereby lease to **Lessee**, and **Lessee** does hereby lease from **Lessor**, a portion of that certain parcel of property (the entirety of Lessor's property is referred to hereinafter as the "Property"), located at Elko Regional Airport, Elko, Nevada, and being described as a 50' x 50' parcel containing 2,500 square feet ("Land Space"), as shown on the Tax Map of the County of Elko as a portion of Assessor's Parcel Number 001-660-004, together with the non-exclusive right for ingress and egress, seven (7) days a week twenty four (24) hours a day, on foot or motor vehicle, including trucks, over or along a fifteen (15) foot wide right-of-way extending from the nearest public right-of-way, Terminal Way, to the demised premises, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along one or more ten (10) foot wide rights-of-way from the Land Space. The demised premises and rights-of-way are hereinafter collectively referred to as the "Premises." The Premises are described in Exhibit A attached hereto and made a part hereof, and as shown on the plat of survey attached hereto and incorporated herein as Exhibit B. In the event any public utility is unable to use the aforementioned right-of-way, **Lessor** has agreed to grant an additional right-of-way either to the **Lessee** or to the public utility at no cost to the **Lessee**.

#### **II. TERM OF LEASE**

The initial term of this lease shall begin on January 1, 2018, and end at midnight on December 31, 2028, unless sooner terminated as in this lease provided. This Agreement shall automatically be extended for three (3) additional five (5) year terms, unless sooner terminated as in this lease provided.

#### **III. CANCELLATION BY THE LESSOR**

The **Lessee** understands that the **Lessor** is developing and adjusting a master plan at Elko Regional Airport that may include, but may not be limited to, future airport expansion.

This Agreement shall be subject to cancellation by **Lessor** in the event of any one or more of the following events:

- A. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the airport, or any substantial part or parts thereof, in such a manner as substantially to restrict **Lessee** for a period of at least sixty (60) days, from operating thereon.
- B. The leased land being needed for Airport and/or airline service purposes and/or City purposes. **Lessor** shall give **Lessee** one hundred twenty (120) days advance written notice of any cancellation under this subparagraph (B).

#### **IV. CANCELLATION BY LESSEE**

This agreement may be canceled by **Lessee** upon giving **Lessor** one hundred twenty (120) days notice prior to cancellation and paying **Lessor** the agreed upon rental value through the date of cancellation.

#### **V. RENT**

- A. The initial annual rent shall be the sum of **SEVEN HUNDRED DOLLARS (\$700.00)**, calculated in the following manner: 2,500 square feet x \$0.28/year. The first annual rental payment shall be payable on February 1, 2018.
- B. Subsequent annual rental payments shall increase 3% per year, payable on February 1<sup>st</sup> thereafter during the term, or subsequent extensions of this Lease. Rental payments shall be delivered to City Hall, 1751 College Ave., Elko, NV 89801, or whenever **Lessor** may demand the same to be paid in writing.

#### **VI. ABANDONMENT**

In the event the **Lessee** abandons the parcels of land herein leased at any time during the term of this lease, or fails to begin construction of the improvements within **twenty-four (24) months** from the date of this lease, the lease shall immediately terminate without further notice and **Lessee** shall owe **Lessor** rent as calculated in Article V.

#### **VII. ALTERATIONS AND IMPROVEMENTS**

- A. The **Lessee** shall not construct, erect or place any improvements to the leased premises without the prior consent of the City of Elko. All construction shall be in compliance with all applicable building and construction codes.
- B. **Lessor** shall have the right to inspect and approve the plans and specifications of any improvements of **Lessee** prior to construction or installation thereof and

to refuse to permit such construction or installation if the external appearance thereof does not meet **Lessor's** reasonable requirements of appearance of structures on the airport, or if the manner or type of construction or installation or the location thereof does not comply with the master plan or meet **Lessor's** requirements for the safe use of the airport or if it does not comply with the building or construction ordinances of the City of Elko. Any alteration, modification or remodeling of any building or structure on the demised premises shall be subject to the inspection and approval of the **Lessor** above provided.

#### **VIII. MAINTENANCE AND REPAIRS**

**Lessee** shall maintain all improvements on the leased premises in good order and repair and shall keep the demised premises in a clean and orderly condition. Upon termination of this lease, **Lessee** shall repair any damage caused to the premises.

#### **IX. APPLICABLE RULES AND LAWS**

**Lessee** agrees to observe and comply with, during the term of this lease, all laws of the State of Nevada, and of the United States, and all applicable ordinances of the County of Elko and the City of Elko.

#### **X. INTERFERENCE**

**Lessee** agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with the existing Federal Communications Commission (FCC) standards to any equipment of the **Lessor** or other **Lessees** on the Property which existed on the Property prior to the date of this Agreement. In the event any of **Lessee's** equipment causes such interference, **Lessee** will take all reasonable steps necessary to correct and eliminate the interference, including but not limited to, powering down.

#### **XI. WASTE**

**Lessee** shall keep the demised premises clean and shall dispose of all debris and other waste matter which may accumulate, and shall provide proper containers, with proper covers, for waste within the premises utilized by the **Lessee**.

#### **XII. UTILITIES**

**Lessee** shall promptly pay when due all charges for light, power, water, sewer and all other utilities and services used upon or in connection with the demised premises by the **Lessee**.

### **XIII. TAXES**

**Lessee** will pay any city, county and state taxes levied or assessed against property placed upon the premises by the **Lessee**, together with all necessary license fees.

### **XIV. INDEMNITY AND INSURANCE**

- A. The **Lessee** agrees to indemnify and defend the **Lessor**, its officers, supervisors, employees, and agents from all fines, suits, claims, demands, expenses, fees, liabilities, defenses and actions of any kind and nature by reason of any and all of its operations hereunder and any and all negligence, acts and omissions of the **Lessee** and its agents, employees, officers, and directors does hereby agree to assume all the risk and liability of the operation of its business hereunder.
  
- B. **Lessee** shall maintain with insurance underwriters satisfactory to the **Lessor** a standard form policy or policies of insurance in such amounts as may from time to time be approved by the **Lessor** protecting both the **Lessee** and the **Lessor** against public liability, and property damage. **Lessee** shall promptly, after the execution of this agreement, furnish such policy or policies for public liability and property damage growing out of accidents occurring in or around the premises in a minimum amount of **\$500,000 for each person injured; \$1,000,000 for any one accident; and \$100,000 for property damage**. It is understood that the specified amounts of insurance in no way limits the liability of **Lessee** and that **Lessee** shall carry insurance in such amounts so as to indemnify and save harmless the **Lessor** from all claims, suits, demands and actions.

### **XV. DEFAULT AND REMEDIES**

This lease is made on the condition that **Lessee** shall perform all of the covenants and agreements set forth in this lease to be performed by the **Lessee**. If at any time there be default on the part of the **Lessee** in the payment of rent (the term rent meaning all rentals and any other sums payable to the **Lessor** pursuant to this lease ), taxes, assessments, utility charges or any other charges and payments by **Lessee** to be made, or any part thereof, and if such default shall continue for a period of **thirty-five (35) days** after written notice from **Lessor** as provided for herein; or if the **Lessee** shall fail, refuse or neglect to forthwith cease the violation of any of the provisions of this lease, or if there shall be default on the part of the **Lessee** in the performance of any of the remaining covenants or agreements of this lease by the **Lessee** to be performed, and such default shall continue for a period of **thirty-five (35) days** after written notice of such default being given by the **Lessor** as provided for herein and **Lessee** has not diligently commenced action to cure such default, the **Lessor** shall have the right to pursue all rights and remedies it may have at law or in equity, including injunctive relief, or it shall have the right, without further demand or notice (which is hereby waived) at its election, to terminate this lease and to enter upon the demised premises with or without legal process and take immediate possession thereof. In addition, **Lessor** may bring suit for

and collect all rents and payments payable to the City, and all costs, expenses, attorney fees and damages incurred or suffered by the **Lessor**. From the time of such entry, this lease and all rights, privileges, easements and leasehold interests herein granted shall terminate to all intents and purposes whatsoever; provided also, that for rents due and nonperformance of other conditions, **Lessor** may sue at once and pursue all remedies that it may have at law or in equity without being required to enter into possession and forfeit the **Lessee's** term as herein provided. **Lessor** and **Lessee** further agree that in the event of any default, the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this lease, or in pursuit of any remedies provided hereunder, or by the statutes of the State of Nevada, whether such remedy is pursued by filing a suit or otherwise.

#### **XVI. QUIET POSSESSION**

The **Lessee**, upon making the payments herein provided for and in the manner provided, and complying with each, every and all of the terms, clauses and covenants of this lease, shall have the sole right and option of occupying said premises under the terms of this lease during the full term herein provided, without any let or hindrance by said **Lessor**. The occupancy for the term herein stated is subject to the rental and renewal provisions as set forth herein.

#### **XVII. ASSIGNMENT AND SUBLETTING**

**Lessee** shall not, at any time during the term of this lease, or in any manner, either directly or indirectly, assign, hypothecate or transfer this lease or any interest therein, or sublet the demised premises, or any portion thereof, without the prior written consent of **Lessor**, which shall not be unreasonably withheld.

#### **XVIII. LIABILITY FOR LESSEE'S PROPERTY**

**Lessee** shall be solely responsible for loss or damage to **Lessee's** personal property or any improvements placed upon the premises by **Lessee**.

#### **XIX. INSPECTION**

**Lessor** reserves the right to enter upon the premises at any reasonable time for the purpose of making any inspection it may deem appropriate for the proper enforcement of any of the covenants or conditions of this lease. However, except in emergency situations, prior to **Lessor's** exercise of this right, **Lessor** must first contact **Lessee** and advise **Lessee** of **Lessor's** intent to inspect, thereby allowing **Lessee** the opportunity to be present at such inspection.

#### **XX. WAIVERS**

No waivers by the **Lessor** of default, violation of or non-performance of any of the terms, covenants or conditions hereof to be performed, kept and observed by the **Lessee** shall be

construed to or act as a waiver of any subsequent default, violation or non-performance. The acceptance of rental or the performance of all or any part of this lease by **Lessor** for or during any period or periods after a default, violation or non-performance of any of the terms, covenants and conditions herein contained shall not be deemed a waiver of any right on the part of the **Lessor** to cancel this lease for failure of **Lessee** to so perform, keep or observe any of the terms, covenants or conditions herein.

**XXI. NOTICES**

Any and all notices and demands by or from **Lessor** to **Lessee**, or by or from **Lessee** to **Lessor**, required or desired to be given hereunder shall be in writing and shall be validly given or made if served either personally or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice or demand be served by registered or certified mail in the manner provided herein, service shall be conclusively deemed given **three (3) days** after mailing or upon receipt, whichever is sooner.

A. Any notice or demand to **Lessor** shall be addressed to **Lessor** at:

City of Elko  
Attention: City Manager  
1751 College Avenue  
Elko, Nevada 89801

B. Any notice or demand to **Lessee** shall be addressed to **Lessee** at:

Elko Television District  
P.O. Box 456  
Elko, Nevada 89803

C. Either party hereto may change its address for the purpose of receiving notices or demands as herein provided by a written notice given in the manner aforesaid to the other party hereto.

**XXII. ATTORNEY FEES**

In any dispute between the parties hereto resulting in legal action, the prevailing party shall be entitled to reasonable attorney fees and court costs.

**XXIII. BINDING EFFECT**

Subject to any restrictions on assignments or subleasing, this lease shall be binding upon and inure to the benefit of the **Lessor**, its successors and assigns and upon their heirs, executors, successors, assigns and any sub lessees of any portion of the leased premises.



**XXIV. GOVERNING LAW**

The validity, construction and enforceability of this Agreement shall be governed in all respects by the laws of Nevada applicable to agreements negotiated, executed and performed in Nevada by Nevada residents.

**XXV. ENTIRE AGREEMENT; MODIFICATION; WAIVER**

This Agreement constitutes the entire agreement between **Lessee** and **Lessor** pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**XXVI. COUNTERPARTS**

This Agreement may be executed in one or more counterparts and each counterpart shall constitute an original instrument, but all such counterparts shall only constitute one and the same instrument.

**XXVII. CAPTIONS**

The captions of this Agreement do not in any way limit or amplify the terms and provisions of this Agreement.

**XXVIII. MERGER**

The obligations of **Lessor** and **Lessee** pursuant to this Agreement shall survive the close of escrow contemplated hereunder, and shall not be deemed to merge with the deed of conveyance.

**XXIX. SEVERABILITY**

Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

**XXXI. AUTHORSHIP**

This Agreement has been reviewed by attorneys representing the respective parties and therefore shall not be construed in favor of or against any party hereto based on the sole or primary authorship of this Agreement being the work of one party hereto.

**LESSOR:  
CITY OF ELKO**

**By:** \_\_\_\_\_  
**Chris J. Johnson, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Shanell Owen, City Clerk**

**LESSEE:  
ELKO TELEVISION DISTRICT**

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

**Title:** \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF ELKO TV DISTRICT LEASE AREA**

A portion of Parcel No. 3, as shown on the Parcel Map for The City of Elko, Nevada, recorded as file no. 528401, in the office of the Elko county Recorder, on December 10, 2004, further described as follows;

Beginning at a point that bears South 3°11'18" East, a distance of 1052.47 feet, from the west quarter corner of said Section 16;

Thence, North 81°25'25" East, a distance of 50.00 feet;

Thence, South 8°34'35" East, a distance of 50.00 feet;

Thence, South 81°25'25" West, a distance of 50.00 feet;

Thence, North 8°34'35" West, a distance of 50.00 feet, more or less, to the point of beginning.

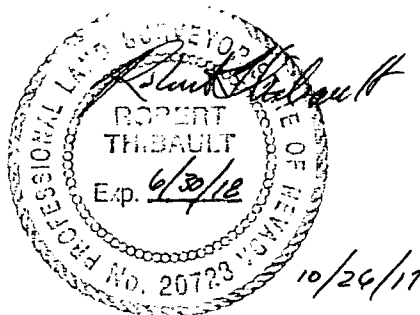
This lease area contains an area of ±2,500 square feet.

The basis of bearings for this description is the Parcel Map for The City of Elko, Nevada, recorded as file no. 528401, in the office of the Elko county Recorder, on December 10, 2004.

Description prepared by:

City of Elko

Robert Thibault, P.E., P.L.S.

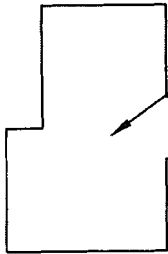
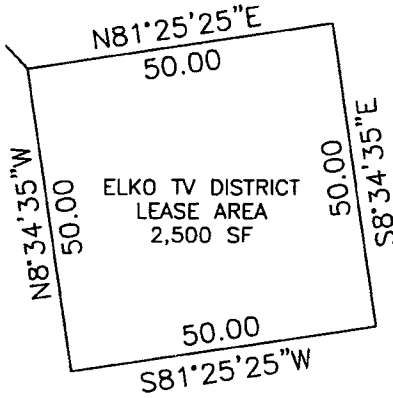


FOUND  $\frac{1}{2}$  STEEL FENCE POST  
WEST  $\frac{1}{4}$  CORNER SECTION 16,  
T 34 N, R 55 E



1052.47  
S57°11'18"E

2651.69  
S0°47'53"E

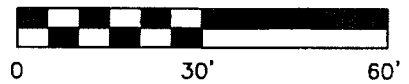


EXISTING VERIZON LEASE AREA



EXISTING TOWER

FOUND BRASS CAP, LS 20908  
SOUTHWEST CORNER SECTION 16,  
T 34 N, R 55 E



CITY OF ELKO  
1781 COLLEGE AVE  
ELKO, NEVADA 89601  
775-777-7210

SCALE  
HORIZ 1"=30'  
VERT \_\_\_\_\_  
JOB No \_\_\_\_\_

**EXHIBIT B**  
**MAP OF ELKO TV DISTRICT**  
**LEASE AREA**

DESIGNED BY \_\_\_\_\_  
DRAWN BY ACAD CSD 2015  
CHECKED BY ET  
DATE 10/26/2017

IN SECTION 16, T 34 N,  
R 55 E, M.D.B.&M.

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