

LEASE AGREEMENT

THIS AGREEMENT (hereinafter "Lease" or "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**, a general improvement district organized under Chapter 318 of Nevada Revised Statutes, 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 of~~ ingress and egress, seven (7) days a week, ~~twenty~~ 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, being 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 may, in its discretion,~~ 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.~~

A. Initial Term. Lessee shall have and hold the Premises for a term of ten (10) years (the "Initial Term"), commencing on January 1, 2018 (the "Commencement Date"). The term "Lease Year" shall refer to each consecutive twelve (12) month period during the Term, beginning with the first Lease Year, which commences on the Commencement Date and ends on the last day of the

twelfth (12th) calendar month thereafter. The second and each succeeding Lease Year commences on the first day of the year following the preceding Lease Year.

B. Extensions. Lessee at its option, shall be entitled to the privilege and option of three (3) successive extensions of this Lease for a period of five (5) years each (each an "Extension Term" and, collectively, the "Extension Terms"); provided, that Lessee's right to extend is subject to the following conditions precedent: (i) this Lease shall be in full force and effect at the time Lessee exercises its option to extend; (ii) no uncured Event of Default, beyond applicable notice and cure periods, shall exist at the time notice is given or during the period from exercise of the extension through and including the last day of the then current Term; (iii) prior to Lessee's exercise of any extension option, Lessee shall not have abandoned the Premises; and (iv) Lessee shall exercise its option to extend the Term by giving Lessor written notice thereof not less than six (6) months, and not more than nine (9) months, prior to the expiration of the then-current Term. Any exercise of an extension option as herein provided shall operate as an extension of the Term hereof, so that this Lease and each and every covenant and provision thereof shall be and remain in full force and effect during the Term as extended and with the same force and effect as if the Term of this Lease were originally for such extended period, except that: (i) Lessor shall have no obligation to make any improvement to the Premises or provide a tenant improvement allowance to Lessee for improvements, and (ii) there shall be no further right to extend the Term beyond the three (3) extension provided herein. "Term" shall mean and refer to the period of time during which this Lease is in effect, including any Extension Terms. Notwithstanding the foregoing, Lessor may, by resolution of the Elko City Council, at any time after the Initial Term, waive the requirement for Lessee to provide written notice pursuant to Subsection II.B(iv), above.

III. CANCELLATION-TERMINATION BY THE LESSOR

The Lessee understands that the Lessor is developing and adjusting a master plan ~~at-for the~~ Elko Regional Airport that may include, ~~but may not be limited to~~ without limitation, future ~~airport~~ Airport expansion.

This Agreement shall ~~be subject to cancellation~~ may be terminated by Lessor in the event of ~~any one or more of either 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 ~~a~~ 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. Termination pursuant to this subsection III.A. may, in the Lessor's sole discretion, be immediate and without prior notice.
- B. The ~~leased land being~~ Premises are 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~~ Subsection III.B.(B)-

IV. CANCELLATION-TERMINATION BY LESSEE

This ~~a~~Agreement may be ~~canceled-terminated~~ by Lessee upon giving Lessor one hundred twenty (120) days' written notice prior to ~~cancellation-the termination date~~ and by paying Lessor the agreed-upon rental value through the date of cancellation rental that would have been due through the date of termination.

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 at the rate of three percent (3%) per year, payable on February 1st thereafter during the ~~term~~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~~Premises at any time during the ~~term of this lease~~Term, or fails to begin construction of the improvements within **twenty-four (24) months** from the ~~date of this lease~~Commencement Date, the ~~lease~~Lease shall immediately terminate without further notice and Lessee shall ~~owe thereupon immediately pay to Lessor all rent then due plus all amounts that would have otherwise been due for the remainder of the Term then in effect,~~ 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-p~~Premises in good order and repair and shall keep the ~~demised-p~~Premises in a clean and orderly condition. Upon termination of this ~~l~~Lease, **Lessee** shall repair any damage caused to the ~~p~~Premises.

IX. APPLICABLE RULES AND LAWS

Lessee agrees to observe and comply with, during the ~~term of this lease~~Term, 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, together with any applicable rules, policies or procedures implemented by 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~~persons, to include other lessees, utilizing Airport property as of the Commencement Date. 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-p~~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-p~~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 hold harmless, release, indemnify and defend the Lessor, its officers, supervisors, employees, and agents from and against 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, and does hereby ~~agree to assume~~ all ~~the~~ risk and liability of ~~the operation of its business hereunder~~ relating to its use of the Premises.
- 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 ~~a~~ Agreement, furnish such policy or policies for public liability and property damage growing out of accidents occurring in or around the ~~premises~~ Premises in a minimum amount of **\$500,000 for each person injured; \$1,000,000 for any one accident or event of loss; and \$100,000 for property damage.** ~~It is understood that the~~ The specified amounts of insurance in no way limits the liability of Lessee and ~~that~~ Lessee shall carry insurance in such amounts ~~so as~~ as are reasonably necessary to indemnify and save harmless the Lessor from all claims, suits, demands and actions.

XV. DEFAULT AND REMEDIES

This Hlease is ~~made entered into by~~ Lessor on the condition that Lessee shall perform all of the covenants and agreements set forth in this Hlease which are to be performed by the Lessee. If at any time there ~~be is a~~ 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 Hlease-), 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 Hlease, 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 Hlease by the Lessee which are 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 Hlease and to enter upon the ~~demised p~~ 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 Lessor, and all costs, expenses, attorney fees and damages incurred or suffered by the Lessor. From the time of such entry, this Hlease 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~~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 HLease, shall have the sole right and option of occupying said pPremises under the terms of this HLease 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~~Term, or in any manner, either directly or indirectly, assign, hypothecate or transfer this HLease or any interest therein, or sublet the ~~demised p~~PPremises, or any portion thereof, without the prior written consent of **Lessor**, which ~~shall not be unreasonably withheld~~consent may be withheld for any reason or no reason.

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 pPremises by **Lessee**.

XIX. INSPECTION

Lessor reserves the right to enter upon the pPremises 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 HLease. 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 HLease 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 Hlease 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 is~~ 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~~In the event either party herein is required to file suit in order to enforce this Agreement, or to obtain a judicial interpretation of this Agreement, 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 Hlease shall be binding upon and inure to the benefit of the **Lessor, its parties, and their** 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~~ enforcement of this Agreement shall be governed in all respects by the laws of the State 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 or to 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.

DRAFT

**LESSOR:
CITY OF ELKO**

**By: _____
Chris J. Johnson, Mayor**

ATTEST:

Shanell Owen, City Clerk

**LESSEE:
ELKO TELEVISION DISTRICT**

By: _____

Title: _____

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