

Item # 4-2A

**City of Carson City
Agenda Report**

Date Submitted: July 8, 2008

Agenda Date Requested: July 17, 2008

Time Requested: Consent

To: Mayor and Supervisors

From: Purchasing & Contracts

Subject Title: Action to determine that the lease of Suites 9, 10, 23, & 24 at 2621 Northgate Lane to the State of Nevada, Emergency Response Commission, for \$1,000 per month effective August 1, 2008 through July 31, 2011 will be in the best interest of Carson City pursuant to NRS 244.281 and to adopt A Resolution Adopting and Approving Lease No. 0809-053 and other matters properly related hereto

Staff Summary: The previous lease will expire on July 31, 2008.

Type of Action Requested: (check one)
☒ Resolution ☐ Ordinance
☐ Formal Action/Motion ☐ Other (Specify)

Does This Action Require A Business Impact Statement: ☐ Yes ☒ No

Recommended Board Action: I move to determine that the lease of Suites 9, 10, 23, & 24 at 2621 Northgate Lane to the State of Nevada, Emergency Response Commission, for \$1,000 per month effective August 1, 2008 through July 31, 2011 will be in the best interest of Carson City pursuant to NRS 244.281 and to adopt A Resolution Adopting and Approving Lease No. 0809-053 and other matters properly related hereto

Explanation for Recommended Board Action: Nevada Revised Statutes (NRS) 244.281 (1) (e) (2) allows the Board of Supervisors to lease any real property owned by Carson City without complying with the provisions of NRS 244.283 to the State if the lease restricts the use of the real property to a public use and the Board of Supervisors adopts a resolution finding that the lease will be in the best interest of Carson City.

NRS 244.281 Sale or lease of certain real property: Determination that sale or lease is in best interest of county; notice; appraisal; exceptions; second offering; effect of sale or lease in violation of section.

1. Except as otherwise provided in this subsection and NRS 244.189, 244.276, 244.279, 244.2815, 244.2825, 244.2835, 244.284, 244.287, 244.290, 278.479 to 278.4965, inclusive, and subsection 3 of NRS 496.080, except as otherwise required by federal law, except as otherwise required pursuant to a cooperative agreement entered into pursuant to NRS 277.050 or 277.053 or an interlocal agreement in existence on or before October 1, 2004, except if the board of county commissioners is entering into a joint development agreement for real property owned by the county to which the board of county commissioners is a party, except for a lease of residential property with a term of 1 year or less, except for the sale or lease of real property to a public utility, as defined in NRS 704.020, to be used for a public purpose and except for the sale or lease of real property larger than 1 acre which is approved by the voters at a primary or general election or special election:

(e) A board of county commissioners may sell or lease any real property owned by the county without complying with the provisions of NRS 244.282 or 244.283 to:

(2) The State or another governmental entity if:

(I) The sale or lease restricts the use of the real property to a public use; and

(II) The board adopts a resolution finding that the sale or lease will be in the best interest of the county.

(Added to NRS by 1969, 56; A 1977, 627; 1981, 375; 1983, 524; 1987, 205; 1995, 2747; 2001, 593; 2003, 423; 2005, 1458, 2672, 2680; 2007, 2828)

Applicable Statue, Code, Policy, Rule or Regulation: NRS 244.281 (1) (e) (2)

Fiscal Impact: Revenue of \$1,000.00 per month

Explanation of Impact: Revenue of \$1,000.00 per month

Funding Source: Revenue of \$1,000.00 per month

Supporting Material: Resolution and Lease Agreement No. 0809-053

Prepared By: Sandy Scott, Purchasing & Contracts Management Assistant

Reviewed By:

(Parks & Recreation)

(City Manager)

(District Attorney)

(Finance Director)

Date:

Date:

Date:

Date:

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

RESOLUTION NO. _____

A RESOLUTION DETERMINING THAT THE LEASE OF SUITES 9, 10, 23, & 24 AT 2621 NORTHGATE LANE TO THE STATE OF NEVADA, EMERGENCY RESPONSE COMMISSION, FOR \$1,000 PER MONTH EFFECTIVE AUGUST 1, 2008 THROUGH JULY 31, 2011 WILL BE IN THE BEST INTEREST OF CARSON CITY PURSUANT TO NRS 244.281 AND ADOPTING AND APPROVING LEASE NO. 0809-53 AND OTHER MATTERS PROPERLY RELATED THERETO.

WHEREAS, NRS 244.281 allows the Board of Supervisors to lease any real property owned by Carson City without complying with the provisions of NRS 244.283 to the State if the lease restricts the use of the real property to a public use and the Board of Supervisors adopts a resolution finding that the lease will be in the best interest of Carson City.

NOW, THEREFORE, BE IT RESOLVED that the Carson City Board of Supervisors has determined that the lease will be in the best interest of Carson City and that Lease No. 0809-053 is hereby adopted and approved.

VOTE:	AYES:	
	NAYS:	
	ABSENT:	
	ABTAIN:	

ATTEST

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LEASE AGREEMENT NO. 0809-053

THIS AGREEMENT, made and entered into this _____ day of _____ 2008, by and between the City and County of Carson City, a political subdivision of the State of Nevada, hereinafter referred to as the "LESSOR", and the STATE OF NEVADA, EMERGENCY RESPONSE COMMISSION, hereinafter referred to as "LESSEE."

WITNESSETH:

For and in consideration of the rents herein reserved and the covenants, terms and conditions herein contained, the LESSOR does by these presents lease unto LESSEE the following described property hereinafter referred to as "THE PREMISES":

Suites #9, 10, 23, & 24 at 2621 Northgate Lane, Carson City, NV 89706

ONE. TERM OF LEASE. LESSOR hereby leases unto LESSEE and LESSEE agrees to lease from LESSOR, the office space heretofore described commencing on August 1, 2008, and terminating at midnight on July 31, 2011, unless this Lease has been renewed according to the provisions hereinafter set forth, or this Lease has been terminated by mutual agreement of the parties, or has been terminated pursuant to any other provision of this Lease. It is hereby specifically and expressly agreed by the parties hereto that this Lease or any renewal thereof shall be terminated immediately if for any reason action on the part of the Executive Branch, the Nevada State Legislature and/or the Federal Government limits, restricts or impairs LESSEE's funding or ability to satisfy its rental payment obligation. LESSEE shall pay the rent for the month in which such occurrence and termination takes place and shall have no other rental payment obligation to LESSOR thereafter under this Lease or for the leased property. LESSOR shall retain its other remedies, which are provided in this Lease, but LESSOR shall have no rights to collect any further rents from LESSEE. Proof by LESSEE of a diminution in Federal or State funding which was intended to be used as all or part of the funding for the payment of the rental under this Lease shall be sufficient if copies of supporting State or Federal documents are furnished to LESSOR or if the LESSEE provides by Affidavit that such funding or other limiting eventuality has occurred.

TWO. COMPLIANCE WITH THE LAW. LESSOR shall promptly execute and comply with all statutes, rules, orders, building codes, ordinances, requirements, and regulations of the City, County, State and Federal governments, including OSHA, the Americans with Disabilities Act of 1990 (42 USC Section 12101 through 12213 and 47 USC Sections 225.611) and their underlying regulations and rules, which are applicable to the premises. Nothing herein contained shall be construed to restrict LESSOR from contesting the validity of any such regulations; rule or ordinance, provided LESSOR indemnifies LESSEE to its reasonable satisfaction against the consequences of non-compliance during the period of dispute.

THREE. RENT. LESSEE agrees to pay rent, without offset or deduction, to LESSOR as follows:

August 1, 2008 through July 31, 2011 in the amount of ONE THOUSAND DOLLARS (\$1,000.00) per month (952 square feet at \$1.05 per square foot).

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Rent shall be paid quarterly in advance to LESSOR at its address specified below.

FOUR. UTILITIES AND SERVICES. LESSOR shall furnish all heat and air conditioning systems for the premises as may be reasonable and appropriate during the term of the Lease. The LESSOR shall pay for all utilities including; gas, water, electricity, and janitorial services. LESSOR shall not be liable for failure to furnish any of the above-mentioned utilities and services due to acts, omissions, or conditions beyond LESSOR's control, including but not limited to accidents, natural disasters, or strikes. LESSOR shall further not be liable for any loss or injury to LESSEE's property occasioned by acts, omissions, or conditions beyond LESSOR's control, including but not limited to accidents, natural disasters, or strikes. LESSOR shall take reasonable steps to promptly restore any utilities or service.

FIVE. SMOKING AREA. LESSOR shall furnish a separate outside area, which may be used for smoking. LESSOR shall also post signs prohibiting smoking in any place not designated as a smoking area.

SIX. REPAIR AND MAINTENANCE. LESSOR agrees to make any and all necessary structural, heating, air conditioning, flooring, electrical, plumbing, roofing, exterior wall, sidewalk repairs and other similar repairs required as a result of any defect or as a result of the same wearing out or becoming unserviceable or damages through no carelessness or negligence on the part of LESSEE. LESSEE agrees to maintain the demised premises in as good a state of repair as when first occupied, ordinary wear and tear, and damage by the elements, fire or other casualty excepted. LESSOR agrees to conduct any and all repairs and maintenance at reasonable times and without undue inconvenience to LESSEE and for which, reasonable access shall be provided thereby. Any substantial impairment of the use or enjoyment of the leased premises to LESSEE may cause the proportional abatement and reduction in rent by way of adjustment of succeeding quarterly rental payment.

SEVEN. INDEMNIFICATION. To the extent authorized by law, LESSEE agrees to indemnify and hold harmless LESSOR from any loss, damage, liability, cost or expense to the person or property of another which was caused by the negligence of LESSEE, its officers, employees, or invitees under this Lease.

LESSOR agrees to indemnify and hold harmless LESSEE from any loss, damage, liability, cost or expense to the person or property of another, which was caused by the negligence of LESSOR, its agents, employees, officers, or invitees under this Lease.

Further, LESSOR shall not be liable for injury to LESSEE's business or loss of income therefrom or for damage which may be sustained by the person, goods, property, equipment of LESSEE, its employees, invitees, customers, agents, or contractors or any other person in or about the premises used by or resulting from fire, steam, electricity, gas, water, or rain, except in connection with damage or injury resulting from the acts or omissions of LESSOR, its agents, employees, officers, or

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invitees.

EIGHT. MAINTENANCE, REPAIRS AND OPERATION. LESSEE, shall at its own expense, pay for services and other costs of installing, maintaining, operating its equipment and other personal property.

Any damage to the LESSOR'S property caused by the LESSEE shall either be repaired by the LESSEE within thirty (30) calendar days or LESSOR shall be reimbursed by LESSEE for the actual cost of the repair.

LESSEE shall not make any alterations to LESSOR'S property without prior written consent of LESSOR.

LESSEE shall not commit or suffer to be committed any waste upon LESSOR'S property.

At the termination of the lease and at such time when LESSEE removes its property, such work shall be done in a neat and professional manner.

NINE. INSURANCE. LESSOR agrees and accepts that LESSEE on behalf of the State of Nevada self-insures its general liability.

TEN. GOVERNING LAW; JURISDICTION. This Lease and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. LESSEE consents and agrees to the jurisdiction of the courts of the State of Nevada located in Carson City, Nevada for enforcement of this Lease.

ELEVEN. NOTICE OF CLAIM. LESSOR shall give LESSEE prompt notice of any claim made or suit instituted which in any way affects or might affect LESSEE and LESSEE shall have the right to compromise and defend same to the extent of its own interest.

TWELVE. BREACH OR DEFAULT.

A. DEFINITION OF DEFAULT: Each of the following events shall constitute a default:

(1) Insolvency, including an assignment for the benefit of creditors; filing or acquiescing to a petition in any court in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings.

(2) Assignment by operation of law.

(3) Vacating the premises.

(4) Refusing to take possession of the premises or permitting the premises to remain unoccupied and unattended.

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(5) Failure to pay any installment of rent or any other charge required to be paid by LESSEE under this Lease when due and payable and failure shall continue for ten (10) calendar days after written notice.

(6) Failure to perform any other condition required to be performed by LESSEE under this Lease and the failure shall continue for fifteen (15) calendar days after written notice.

B. In the event of any failure by LESSOR or LESSEE to keep and comply with any of the terms, covenants or provisions of this Lease or any breach thereof, the defaulting party shall have thirty (30) calendar days from the receipt of written notice of such default or breach within which to remove or cure said default or breach, except for default in the obligation of LESSEE to pay rent in a timely fashion, which default must be cured or removed without notice within fifteen (15) calendar days from the date on which the rental payment is due and payable. In the event of breach or default by LESSEE which is not removed or cured within the time limits set forth above, LESSOR may in addition to any other right of re-entry or possession and at LESSOR's sole option, consider the Lease forfeited and terminated and may re-enter and take possession of the leased premises, removing all persons and property therefrom with prior notification to LESSEE so that arrangements concerning the removal of property can be made.

THIRTEEN. ASSIGNMENT AND SUBLEASING. LESSEE may only transfer, assign this Lease or sublet the leased premises in whole or in part, after first obtaining the written consent of LESSOR. LESSOR shall not unreasonably withhold consent. If LESSOR consents, no assignment or sublease shall be effective until LESSEE delivers a copy of the assignment and the assignee or sublessee executes a new lease assuming all of the obligations of LESSEE. The consent by LESSOR to any transfer, assignment or subletting shall not be deemed to be a waiver on the part of LESSOR of any prohibition against any future transfer, assignment, or subletting. It being further understood that a change in tenants from one state agency to another shall not constitute an assignment or subletting.

FOURTEEN. ATTORNEY'S FEES. In case suit shall be brought for an unlawful detainer of the premises, for the recovery of any rent due under the provision of this Lease, or for LESSEE's breach of any other condition contained herein, LESSEE shall pay to LESSOR a reasonable attorney's fee which shall be deemed to have accrued on the commencement of the action and shall be paid on the successful completion of this action by LESSOR. LESSEE shall be entitled to attorney's fees in the same manner if judgment is rendered in favor of LESSEE.

FIFTEEN. HOLDING OVER. Should LESSEE holdover the term hereby created with the consent of LESSOR, LESSEE shall become a tenant from month to month on the terms herein specified, but at a monthly rental of ONE THOUSAND ONE HUNDRED DOLLARS (\$1,100.00) per month, payable monthly in advance of the first day of each month, and LESSEE shall continue to be a month-to-month tenant until the tenancy is terminated by LESSOR by giving LESSEE at least thirty (30) calendar days

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written notice of the termination or until LESSEE has given LESSOR a written notice at least sixty (60) calendar days prior to the date of termination of the monthly tenancy of its intention to terminate the tenancy.

SIXTEEN. WAIVER. The failure of LESSOR or LESSEE to insist upon strict performance of any of the covenants, terms or provisions contained in this lease or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenant, term or provision or any to other covenants, terms or provisions, but the same shall remain in full force and effect.

SEVENTEEN. OPTION TO RENEW. LESSEE shall have the option to renew this Lease for one (1) identical lease term by giving written notice of intention to renew at least sixty (60) calendar days prior to expiration of the lease term or any renewal period hereunder, except that the price per square foot shall be renegotiated. The exercise of the option shall, however, not be effective nor binding on the LESSEE unless and until the same has been approved by the State Emergency Response Commission.

EIGHTEEN. REMEDIES. The remedies given to LESSOR and LESSEE shall be cumulative, and the exercise of any one remedy shall not exclude the exercise of any other remedy.

NINETEEN. NOTICES. All notices under this Lease shall be in writing and delivered in person or sent by certified mail, return receipt requested, to LESSOR or to LESSEE at their respective addresses set forth below or to such other address as may hereafter be designated by either party in writing:

LESSOR

Juan Guzman, Open Space Manager
3303 Butti Way, Building #9
Carson City, NV 89701

LESSEE

State Emergency Response Commission
555 Wright Way
Carson City, Nevada 89711

TWENTY. AMENDMENT OR MODIFICATION. This LEASE constitutes the entire agreement between the parties and may only be amended or modified with the mutual consent of the parties hereto, which amendment or modification must be in writing, executed and dated by the parties hereto.

TWENTY-ONE. EARLY TERMINATION. This LEASE may be terminated prior to the terms set forth hereinabove or prior to the natural expiration of any renewal period if the purpose of this agreement is substantially impaired or obstructed by any unforeseen event, occurrence or circumstance outside the control of LESSOR or

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LESSEE without prejudice or penalty to any party hereto and without such event, occurrence or circumstance being defined, and interpreted or construed as breach or default on the part of any party.

TWENTY-TWO. SUBORDINATION. LESSEE agrees that this Lease is subordinate to any mortgage, deed of trust or other instrument of security which have been or will be placed on the land and building or land or building of which the premises is part. LESSEE hereby makes such subordination effective without any further act. LESSEE agrees at any time, upon request by LESSOR, to execute and deliver any instrument, release or other document that may be required in connection with subjecting and subordinating this Lease to the lien of any mortgage, deed of trust or other instrument of security.

TWENTY-THREE. CONDEMNATION. If all of the demised premises is taken by eminent domain, condemnation, or purchase under threat thereof, except for a taking for temporary use, this Lease shall be cancelled automatically as of the taking date. If a part of the premises is taken, LESSOR may cancel this Lease. The option to cancel may be exercised within six (6) months of the taking date by giving LESSEE written notice that the option has been exercised.

If there is a taking of the premises for temporary use, this Lease shall continue in full force and effect and LESSEE will continue to comply with LESSEE's obligation under this Lease, except to the extent compliance is rendered impossible or impracticable by reason of the taking. All compensation awarded upon the condemnation or taking will belong to LESSOR. LESSEE hereby waives any interest in any condemnation proceeds or litigation.

TWENTY-FOUR. PAYMENT OF TAXES AND INSURANCE. LESSOR, at its sole cost and expense, agrees to keep the building complex and improvements on the demised premises insured at all times during the term of this Lease. LESSOR shall pay all sales, use, personal property and real property taxes or any other assessments on the demised premises when due.

TWENTY-FIVE. WRITTEN CONSENT OF LESSOR. In any case that requires the written consent of LESSOR, such consent shall not be unreasonably withheld.

TWENTY-SIX. CUMULATIVE REMEDIES. All rights and remedies of the parties shall be cumulative and nonexclusive of any other remedy at law or equity.

TWENTY-SEVEN. FORCE MAJEURE. Any delay or stoppage of business due to acts of God, enemy or hostile action, fire or other casualty, shall excuse the performance by such party for a period equal to any such delay.

TWENTY-EIGHT. SUCCESSOR AND ASSIGNS. Except as otherwise provided, this Lease shall bind and inure to the benefit of the parties and their respective successors, representatives, heirs, and assigns.

TWENTY-NINE. ENTIRE AGREEMENT. This instrument along with any

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exhibits and attachments hereto constitutes the entire agreement between the parties and this agreement may be altered, amended or revoked only by an instrument in writing signed by all the parties. It is understood that there are no oral agreements between the parties hereto and that all previous negotiations, discussions, between the parties hereto affecting this Lease are superseded by this Lease.

THIRTY. SIGNS: LESSEE will not place or permit to be placed any sign, marquee, awning, decoration or other attachment on or to the roof, front, windows, doors or exterior walls of the premises without first obtaining a City permit and the written consent of LESSOR.

It is the intention of LESSOR to insure aesthetically tasteful uniformity in the building in which the premises are a part. LESSOR may, without liability and with 36 hours notification to LESSEE, enter upon the premises and remove any such sign, marquee, awning, decoration or attachment affixed in violation of this paragraph. LESSEE agrees to pay the cost of removal thereof.

THIRTY-ONE NON-STORAGE: LESSEE will not conduct any business activity outside the premises, nor store vehicles or other property, nor perform any services on any sidewalk, parking lot or other public area provided by LESSOR without the written consent of LESSOR which consent shall not be unreasonably withheld for exhibits or activities which relates directly to the operation of the State office.

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IN WITNESS WHEREOF, the parties hereto have subscribed their names.

Dated this _____ day of _____, 2008.

LESSEE

STATE EMERGENCY
RESPONSE COMMISSION

LESSOR

CARSON CITY, a Consolidated
Municipality of the State of Nevada

By: _____

Karen J. Pabon Date
Executive Director

Marv Teixeira Date
Mayor

APPROVED AS TO FORM:

ATTEST:

By: _____

Deputy Attorney General Date

Alan Glover Date
Clerk/Recorder

APPROVED AS TO FORM:

By: _____

William J. Geddes Date
Deputy District Attorney