

**City of Carson City
Agenda Report**

Date Submitted: May 20, 2014

Agenda Date Requested: June 5, 2014
Time Requested: 10 minutes

To: Mayor and Supervisors

From: Public Works

Subject Title: For possible action: To decide whether to allow a Lease entered into between the City and the Evans Broadcasting Company, Inc. (hereinafter "Lessee") to expire on its own terms or to offer to extend it with lower or no rent. (Darren Schulz)

Staff Summary: The Lease was entered into on July 15, 2004 and is set to expire on its own terms June 30, 2014. It pertains to Lessee's radio tower, which is situated on Carson City property occupied by the Public Works Department. Lessee employs 9 residents of Carson City. The annual rent is \$6,139. Upon the termination of the Lease the Lessee would have 120 days to restore the premises to its pre-lease condition. Public Works recommends that the Board make a formal offer by the City to the Lessee to extend the Lease for 2 years and reduce the annual lease payments to zero, which would facilitate the Lessee's restoration of the premises to its pre-lease condition on or before the new termination date; June 30, 2016.

The current location of the Lessee's tower and facilities ties up approximately 6 acres of the Public Works Department's Corporate Yard. This was not the case when the Lease was entered into. Moreover, a portion of the Corporate Yard that used to be available is now off limits due to flood zoning, which compounds the space issue. Public Works would like to, in the near future, set up a fleet fueling facility and will also face the need to expand the truck storage barn and other facilities. The Lessee's antenna tower array and buried radial ground system with guy wire supports and associated structures consume most of the leased area and hinder our ability to expand, additionally the Lessee's type of tower constructed present an obstacle which prevents both med-evac and other transport helicopters from landing in the Public Work's Corporate Yard. The Corporate Yard is used as an emergency operations center as well as a Corporate Yard and will benefit from the ability to land helicopters on site.

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 that the City offer to Lessee to extend the Lease term by 2 years, under the same terms and conditions, except that no annual rent shall be required. Lessee's savings on the annual rent during such 2 year period will facilitate Lessee's restoration of the Lease site its pre-lease condition and relocation.

Explanation for Recommended Board Action: If the suggested offer is made and not accepted by Lessee, the Lease will expire on June 30, 2014. A 2 year extension with no rent would help to ensure continued employment for City residents and facilitate the restoration of the Lease site to its pre-lease condition and relocation.

Applicable Statute, Code, Policy, Rule or Regulation: N/A

Fiscal Impact: N/A

Explanation of Impact: N/A

Funding Source: N/A

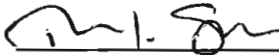
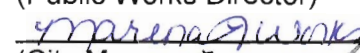


Alternatives:

1. Agree to offer the Lessee an extension of the Lease for any additional period of time and address or refuse to address rent.
2. Do nothing and allow the Lease to expire on June 31, 2014.

Supporting Material:

- Lease
- Aerial Photo of Property and vicinity

Prepared By: Darren Schulz PE, Public Works Director

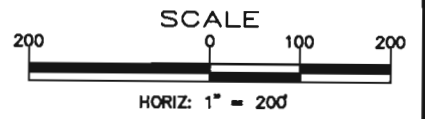
 _____ (Public Works Director)	Date: <u>5/24/14</u>
 _____ (City Manager)	Date: <u>5/27/14</u>
 _____ (District Attorney)	Date: <u>5/27/14</u>
 _____ (Finance Director)	Date: <u>5/27/14</u>

Board Action Taken:

Motion: _____ 1: _____ Aye/Nay

2: _____ _____

(Vote Recorded By)



APN none

APN _____

APN _____

RECORDED AT THE
REQUEST OF
CARSON CITY CLERK TO
THE BOARD

2004 OCT -1 PM 3:46

FILE NO. 325917
ALAN GLOVER
CARSON CITY RECORDER
FEE \$ 110 DEP 20

FOR RECORDER'S USE ONLY

TITLE OF DOCUMENT:

KPTL Tower Site Lease

WHEN RECORDED MAIL TO:

FILE NO. 325917

1 LEASE

2 THIS LEASE, by and between the CONSOLIDATED MUNICIPALITY OF CARSON
3 CITY, NEVADA, hereinafter called "LESSOR", and THE EVANS BROADCASTING COMPANY,
4 INC., a Nevada corporation, Carson City, Nevada, hereinafter called "LESSEE".

5 WITNESSETH:

6 1. **TERM:** LESSOR herewith leases to LESSEE the real property described in
7 Paragraph 2 for a term of ten (10) years commencing on May 20, 2004, and terminating June 31, 2014.

8 2. **PREMISES:** The real property, herein called the "Premises", and all right, easements
9 and appurtenances thereto belonging in Carson City, Nevada described as:

10 Being a portion of the SE 1/2 ; NW 1/2 of Section 15, Township 15 N;
11 Range 20 E; M.D.B.&M., and described as follows to wit:

12 Commencing at the northeast corner of a parcel of land conveyed to
13 Carson City by the State of Nevada and identified as corner number 2
14 on a Record of Survey filed as Plat Number 143 in the Official Records
15 of Carson City, Nevada; thence SO°07'10"W 386.72 feet to the
16 beginning of a curve to the right; thence following said curve, having a
17 central angle of 24°32'30" and a radius of 1106.00 feet, for a distance of
18 473.74 feet to a point identified as corner number 4 on said Plat Number
19 143 and also the Point of Beginning for the parcel herein described;
20 thence continuing on the following nine courses in a clockwise
21 direction; 1) S24°25'20"W 41.77 feet; 2) N41°11'18"W 104.44 feet; 3)
22 S24°25'20"W 274.78 feet; 4) S89°59'40"W 420.17 feet; 5)
23 N45°03'45"W 169.87 feet; 6) N0°07'10"W 180 feet; 7) N44°56'15"E
24 326.00 feet; 8) N89°59'40"E 229.2 feet; 9) S41°11'18"E 426.69 feet to
25 the Point of Beginning. The parcel herein described has an area of 6.47
26 acres, plus or minus.

27 3. **RENT:** LESSEE shall pay LESSOR as rent the annual sum of Six Thousand One
28 Hundred Thirty Nine Dollars (\$6,139) shall be paid quarterly in the amount of One Thousand Five
Hundred Thirty Four Dollars and 75/100 (\$1,534.75) in advance on July 1, October 1, January 1, and
April 1.

LESSOR may increase the rent each July 1st up to four percent (4%) annually with a
written notice to LESSEE sixty days (60) prior to the increase.

LESSEE shall pay a five percent (5%) penalty on the unpaid balance for any rental
payment that is more than fifteen (15) days delinquent.

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1 4. **TAXES, UTILITIES:** LESSEE shall pay all real property taxes assessed by the
2 Carson City Assessor pursuant to NRS 361. 157 when the same shall be due. All charges for water
3 service provided by the Carson City Water Department shall be paid when due and payable by
4 LESSEE.

5 5. **MAINTENANCE:** LESSEE will keep the premises, including any access road,
6 parking area, lawn, plants, shrubs and grounds clean and neat in appearance and free of trash, refuse
7 and snow.

8 6. **USE, SUB-LETTING:** LESSEE will use the premises primarily to operate
9 thereon a radio broadcasting station and/or transmitter (tower) site and will not conduct thereon another
10 business except as correlated with and incidental thereto. LESSEE may not contract any obligation
11 for which LESSOR may become liable or commit or permit any waste or activity on the premises in
12 violation of any law, ordinance or covenant. LESSEE may not, without LESSOR's prior written
13 consent, sublet any portion of the premises. LESSOR's consent to sublet will not be unreasonably
14 withheld.

15 7. **ENTRY:** LESSOR, its employees and agents, may, without interfering with or
16 inconveniencing LESSEE's use or occupation thereof, enter upon the premises at any time for the
17 purpose of inspection and compliance with the terms of this Lease.

18 8. **BUILDINGS, FIXTURES:** LESSEE may construct and install buildings and
19 fixtures after securing all appropriate permits, access roads and parking areas, convenient to its
20 business, but shall remove same at or before 120 days after the termination hereof, and reasonably
21 restore the premises to the condition in which they were before the installation thereof.

22 9. **INDEMNITY AND INSURANCE:** LESSOR shall not be liable to LESSEE,
23 its employees, or to any other person whatsoever for any injury (including death) or damage to property
24 by or from any cause whatsoever while in or upon the leased premises and the LESSEE agrees that it
25 will indemnify and hold the LESSOR harmless from and defend the LESSOR against any and all
26 actions or claims for any such injury or damage to any person or property whatsoever occurring in or
27 on the premises or occurring as a result of the use by the LESSEE of any of the facilities or equipment
28 and property situated thereon. LESSEE shall, at all times during the term of this Lease, keep in force

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1 and effect a policy of public liability insurance protecting and insuring both the LESSOR and LESSEE
2 for injuries to both persons and property occurring upon the demised premises providing for a
3 minimum coverage of One Million Dollars. LESSEE shall deliver a copy to LESSOR of a certificate
4 of insurance as evidence that said insurance is in full force and effect as provided herein prior to the
5 effective date of this Lease and annually thereafter on renewal of said public liability.

6 10. **DEFAULT:** Upon default in the payment of the rental as herein provided, LESSEE
7 shall have five (5) days after written notice has been sent to LESSEE to pay all sums due according to
8 the terms herein. Should LESSEE fail to pay said rental after notice has been given as provided herein
9 the LESSEE's right to possession shall cease and this Lease shall terminate as of the date set forth in
10 said notice. On the date of termination caused by a failure to pay rent, the LESSEE shall pay all rents
11 owed. A failure to pay all rents owed on the date of termination will result in interest accruing, as
12 liquidated damages, on the amount owed from the termination date until paid. The rate shall be an
13 annual percentage rate of twelve percent (12%). In the event of the failure of LESSEE to perform any
14 other provision agreed to be performed by LESSEE herein, the LESSOR shall have written notice of
15 such failure in writing. Upon the failure to correct the violation as set forth in the notice within fifteen
16 (15) days from the date of said notice this Lease shall be terminated and all prepaid rentals will be
17 retained by the LESSOR as liquidated damages, actual damages being difficult if not impossible to
18 ascertain.

19 11. **MODIFICATION:** This Lease embodies the full understanding of the parties.

20 12. **BENEFIT:** The provisions hereof bind and inure to the benefit of the heirs, legal
21 representatives, successors and assigns of each party.

22 13. **ATTORNEY'S FEES:** In the event a party must retain counsel to enforce their
23 rights hereunder, the prevailing party shall be entitled to reasonable attorney's fees and cost of suit.

24 14. **EXTENSION OF LEASE:** The parties may mutually agree to extend the terms of this
25 Lease for two ten (10) year terms subject to renegotiation of Paragraph 3 (rent).

26 15. **ASSIGNMENT OF LEASE:** LESSEE may assign this Lease only with the prior
27 written consent of LESSOR, such consent not to be unreasonably withheld.




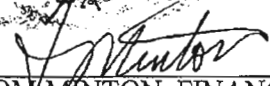
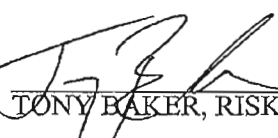
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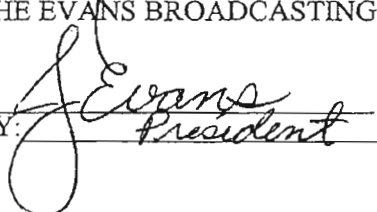
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1 16. **CHOICE OF LAW:** Interpretation of the Lease shall be governed by Nevada
2 Law.


3 17. **NOTICE:** Any and all notices or changes of address should be sent to:
4 CARSON CITY THE EVANS BROADCASTING COMPANY, INC.
5 201 N. Carson St. 1960 Idaho Street
6 Carson City, NV 89701 Carson City, NN 89701

7 IN WITNESS WHEREOF, LESSEE has caused its corporate name to be subscribed and
8 its seal to be affixed, by its duty authorized officers, and LESSOR has caused its name to be subscribed
9 pursuant to a proper motion of the Board of Supervisors at a regular meeting, on the 15th day of July,
10 2004.

11 CARSON CITY
12 
13 RAY MASAKKO, MAYOR
14 
15 ATTEST
16 
17 ALAN GEOVER, CLERK/RECORDER
18 
19 TOM MINTON, FINANCE DIRECTOR
20 
21 TONY BAKER, RISK MANAGEMENT
22

THE EVANS BROADCASTING COMPANY, INC.
BY: 
President

Approved as to legal form:
NOEL S. WATERS
District Attorney

By: 
MELANIE BRUKETTA
Deputy District Attorney

325917

Juan F. Guzman

Open Space Manager

Carson City Parks and Recreation Department, Open Space Division

3303 Butti Way, Bldg #9

Carson City, Nevada 89701

Dear Mr. Guzman,

I'm attaching a signed letter delivered via email April 28th, 2014. Additionally, I'm including information on a possible new antenna design that could replace the existing antennas at the site, reducing the footprint substantially. There are some negatives to going this route because of some loss of signal at night but those can be studied if given time.

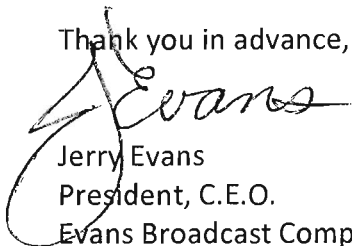
My biggest concern is that we have gone from our conversation that started at the beginning of the year to renew the lease and a request for some consideration for a rate increase freeze with possible reduction delivered per your request on April 28th to having to vacate the premises within two years – delivered to me just 3 weeks later on 5/20/14.

We're coming into Memorial Day weekend and as I have told you I am leaving for a live broadcast from Normandy, France on the 70th Anniversary of D-Day on June 2nd. I am trying to reach engineers and tower companies to get some idea of the cost of all of this but so far have not been able to.

Couldn't we extend the lease for 90 days under the same terms? That would give me time after I return on June 13th to meet with everybody concerned at the City, follow up with engineers and tower companies, and try to come up with a solution that would not put the radio station off the air in the future.

I will be back in the office Tuesday May 27 and here all next week.

Thank you in advance,

A handwritten signature in black ink that reads "Jerry Evans". The signature is written in a cursive style with a large, looping initial "J".

Jerry Evans

President, C.E.O.

Evans Broadcast Company, Inc.

PROPRIETARY INFORMATION/Parks & Recreation Department

c/o Juan Guzman (jguzman@carson.org)

303 Butti Way #9

Carson City, NV 89701

Re: Lease renewal for KCMY radio towers

Dear Mr. Guzman,

This letter should serve as the intent and a desire to renew the Lease between Evans Broadcast Company, Inc. (KCMY) and Carson City. However, without pleading poverty I would like to ask the city to reconsider the lease amount and the annual increases that have accumulated to be approximately 40% higher than when I first took over the lease (4% annual increases) in 2004.

The simple fact of the local economy over these years has decreased our business by about the same amount (40%) or more. The monthly amount is equal to about 10% of the monthly billing for KCMY.

With our other station(s) on the top of McClellan, even with increases over the last ten years we are paying \$554 (total) per month for two stations.

KCMY is the only (commercial) local radio station in Carson City and has served the area for 59 years. Last year, we were recognized by the Sheriff's Department for Outstanding Service to The Sheriff's Department and Carson City. We donate air time for local charitable organizations and causes as well. We do as much as we can to serve our community and employ 9 people locally.

My question is could the City re-adjust the amount lower or freeze the increases for 5 years? I would be happy to provide financial information in detail to you if necessary.

Thank you in advance,


Jerry Evans

President,

Evans Broadcast Company, Inc.

World's Leading Manufacturer Of Fibreglass Whip Antennas



SPECIALISTS FOR AM BROADCASTING

85 ft Fibreglass Free-standing Antenna V33085AM-CL2

The Valcom Model V33085AM-CL2 is a heavy-duty, field-proven, high-reliability, coil-loaded, 85 foot, free standing whip antenna for AM broadcasting use.

The V33085AM-CL2 is designed to meet the FCC requirements for AM broadcasting antennas for all class C stations and any class B or class D stations operating at or above 1200 kHz.

As well, the V33085AM-CL2 is ideally suited for use as an STA or a backup antenna for all AM stations.

FEATURES:

- FCC APPROVABLE ABOVE 1200 KHZ
- HIGH EFFICIENCY
- LOW COST INSTALLATION
- LOW COST MAINTENANCE
- HIGH STRENGTH FILAMENT WOUND
- SELF-SUPPORTING ANTENNA
- NO OBSTRUCTION LIGHTING REQUIRED

