

RESOLUTION NO. 19-20

A RESOLUTION AUTHORIZING AND RATIFYING A NEW LEASE AGREEMENT
BETWEEN THE CITY OF GRAND JUNCTION AND
MBC GRAND BROADCASTING, INC.

Recitals.

The City of Grand Junction is the owner of certain real property in the County of Mesa, State of Colorado, located near Whitewater, Colorado. MBC Grand Broadcasting, Inc. ("Tenant") currently leases the property and desires to continue said lease agreement.

The City is also desirous of continuing the lease arrangement. The City has agreed to lease the Property to Tenant and Tenant has agreed to lease the Property from the City, pursuant to the terms, covenants and conditions of this Lease.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT:

The City Manager is hereby authorized, on behalf of the City and as the act of the City, to execute and enter into the attached Lease Agreement with MBC Grand Broadcasting, Inc.

PASSED and ADOPTED this 15th day of April, 2020.

Attest:



Wanda Winkelmann
City Clerk



J. Merrick Taggart
President of Council



LEASE AGREEMENT

THIS Lease Agreement ("**Lease**") is made and entered into as of this 15th day of May, 2020, by and between **the City of Grand Junction**, a Colorado home rule municipality, 250 N. 5th Street, Grand Junction, CO, 81501 ("Landlord" or "City") and **MBC Grand Broadcasting, Inc.**, a Pennsylvania business corporation, with an address of 300 East Rock Road, Allentown, Pennsylvania 18103 ("Tenant").

Recitals

- A. The City is the owner of certain real property in the County of Mesa, State of Colorado, as described on **Exhibit A**, attached hereto and incorporated herein by reference. Said real property, together with the access road for ingress, egress and utilities purposes described on said **Exhibit A**, are hereinafter collectively referred to as "the Property".
- B. The Property has been used, leased and occupied without cessation since 1968 by various entities as a 50 KW radio broadcast transmitting site. Tenant presently owns and operates the radio broadcast transmitting facilities (collectively, "Tenant's Property") located on, along, over and upon the Property and desires to lease the Property from the City for the sole purposes of operating, maintaining and repairing Tenant's Property and related appurtenances.
- C. The City has agreed to lease the Property to Tenant and Tenant has agreed to lease the Property from the City, pursuant to the terms, covenants and conditions of this Lease.

NOW, THEREFORE, in consideration of the recitals above and the terms, covenants, conditions and restrictions contained herein, the parties agree as follows:

1. **Grant of Lease.** The City hereby leases the Property to Tenant and Tenant hereby accepts and leases the Property from the City, for the term stated in Section 3 and subject to each and every other term, covenant, condition and restriction stated in this Lease.
2. **Reservations from Lease.** The City retains and reserves unto itself:
 - a. all oil, gas, coal and other minerals and mineral rights underlying and/or appurtenant to the Property;
 - b. all water and water rights, ditches and ditch rights, appurtenant to and/or connected with the Property, including, but not limited to, any water and/or water rights which may have been previously used on or in connection with the Property, for whatever purposes;
 - c. all rights to grant, sell, bargain and convey ownership interest(s) in and

to the Property, or any division thereof, to any other party, including the conveyance of easements; and

d. the proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for any conveyance in lieu of condemnation. Tenant hereby assigns and transfers to the City any claim it may have to compensation for damages as a result of any condemnation, except for compensation for damages of Tenant's Property actually so taken.

The City may exercise its rights with respect to the property interests so reserved so long as the exercise of those rights does not unreasonably interfere with Tenant's use and quiet enjoyment of the Property for the purposes set forth in this Lease.

3. **Term of Lease.** The term of this lease shall be for a period of ten (10) years (the "Basic Term"), commencing on the 15th day of April, 2020 (the "Commencement Date") and continuing through the 14th day of April, 2029, on which date this Lease shall expire unless this Lease is extended pursuant to the provisions of Section 4 or unless this Lease is otherwise terminated as herein provided. The term "Lease Year" shall mean a period of twelve (12) successive calendar months following each anniversary of the Commencement Date.

4. **Option to Extend Lease.** If Tenant performs as required pursuant to this Lease, the City hereby gives and grants to Tenant an option to extend this Lease for four (4) additional ten (10) year period(s) (each, an "Extension Term")(the Basic Term and any Extension Term are sometimes hereinafter referred to collectively as the "Term"). If this Lease is extended for an Extension Term, the Extension Term shall be upon the same terms and conditions of this Lease or upon other terms and conditions which may hereafter be negotiated between the parties. In order to exercise Tenant's option for an Extension Term, Tenant shall give written notice to the City of Tenant's desire and intention to exercise Tenant's option to extend not less than ninety (90) days prior to the expiration of the Basic Term or the then existing Extension Term, as appropriate.

5. **Lease Amount and Taxes.** Tenant agrees to pay to the City, at the address of the City as set forth in Section 16.2 or at such other address as the City may from time to time designate in writing, an annual Lease payment for the use of the Property as set forth herein.

5.1 The annual Lease payment for the Basic Term shall be in the amount of Two Thousand Dollars (\$2,000). The annual Lease payment for the first Extension Term, if applicable, shall be in the amount of Two Thousand Dollars (\$2,000). Lease payments for any subsequent Extension Terms shall be negotiated between the parties at that time.

5.2 All Lease payments shall be due and payable on or before the May 1 of each

Lease Year without demand by the City. In the event Lease payments are not received on or before May 10 of each Lease Year, Tenant agrees to pay a late charge of \$100.00 for each week (not to exceed a total amount of \$200.00) following May 1 of each Lease Year, which late charge shall be added to the amount of Lease payment due. This Lease, at the option of the City, shall automatically terminate, and the City may immediately retake possession of the Property, if the specified Lease payments are not received by the City on or before May 15 of each Lease Year.

5.3 The Lessee shall be obligated to pay any and all property taxes assessed because of the Lessee's possessory interest in the Property. Taxes shall be paid when due and shall not be unpaid/allowed to accrue as a lien against the Property. Taxes shall be paid to Mesa County.

6. Use and Condition of Property.

- 6.1 During the Basic Term and any Extension Term of this Lease, Tenant agrees to use the Property solely for the purpose of installing, constructing, operating and maintaining radio broadcast transmission facilities and appurtenances related thereto. Tenant's use and occupancy of the Property shall be subject to the rules, rulings and regulations of any governmental authority having jurisdiction over Tenant or the Property, either now in effect or hereinafter enacted, including, but not limited to, the Federal Communications Commission ("FCC"), the State of Colorado and the County of Mesa. Tenant shall not use or permit the Property to be used for any other purpose or in any manner contrary to the laws, ordinances or regulations of any such governmental authority.
- 6.2 Prior to the installation or construction of additional facilities and/or improvements upon the Property, Tenant shall obtain the City's written approval of all plans for additional facilities and/or improvements to be constructed upon the Property by Tenant, which approval shall not be unreasonably withheld, conditioned or delayed. Such additional facilities and/or improvements shall become part of Tenant's Property. It is the City's desire that the Property and the improvements to be installed thereon by Tenant will be reasonably compatible with the landscape of the City's adjacent property. To this end, Tenant agrees to comply with all reasonable requirements with the City may impose on Tenant, including, but not limited to, colorings and aesthetics for equipment and facilities (except as required by the FCC or the FAA), transmitters, landscape improvements, building materials and fencing materials. If, for whatever reason, the City does not approve of Tenant's plans, Tenant may terminate this Lease. In such event, Tenant shall restore the Property to a condition which is comparable with or better than that which existed prior to entry upon the Property by the Tenant.
- 6.3 Tenant shall not commit nor permit waste, damage or injury to the Property.

- 6.4 Tenant's use of the access road is non-exclusive. The City shall have the joint right to use said access road and the City may further authorize third parties to use said access road.
- 6.5 Subject to Section 6.6. below, Tenant shall maintain and repair all aspects of the Property at Tenant's sole cost and expenses, including but not limited to, fences, access roads, security devices, the appearance and structural integrity of any improvements and landscaping, in good order, good appearance, condition and repair and in a clean, sanitary, orderly and safe condition. Subject to Force Majeure Events (as defined in Section 18 below), if Tenant refuses or neglects to commence repairs or perform maintenance work on the Property required under the terms hereof to be performed or paid for by the Tenant within thirty (30) days after written demand by the City or any other governmental authority, or fails to complete such repairs or perform such maintenance within a reasonable time thereafter, the City may enter upon the Property and make such repairs or perform such maintenance without liability to the Tenant's operations by reasons thereof, and if the City makes such repairs or performs such maintenance, Tenant shall pay to the City, on demand, as additional rent, the cost thereof with interest at the rate of fifteen percent (15%) per annum from the date of payment by the City for such repairs or maintenance work until paid in full by the Tenant. Any repairs made or maintenance performed by Tenant or the City, subject to Force Majeure Events, shall be completed expeditiously.

The City shall not be obligated nor required to repair damages to any portion or aspect of the Property, nor to provide access, even if such damages are caused by or result from operations occurring on adjacent lands leased by the City to other tenants, unless such damages are caused by the City and not covered by insurance maintained by Tenant.

- 6.6 Tenant has inspected the Property and accepts the Property in its present condition. Tenant agrees that the condition of the Property is sufficient for the purposes of the Tenant. If the Property deteriorates or is damaged due to fire, flood, or other casualty not caused by the City, to the extent where it is no longer functional for the purposes of the Tenant, the City shall have no obligation to repair the Property nor to otherwise make the Property usable or occupiable; damages shall be at the Tenant's own risk, provided, however, that in the event the Property is damaged or deteriorates to the extent where it is no longer functional for the purposes of the Tenant, the Tenant may, at its option, terminate this Lease by giving notice to the City that this Lease is to be terminated. Termination shall be effective thirty (30) days following the date of the notice of termination and the parties shall have only those duties to each other under this Lease that expressly continue; provided, however, the City shall refund to the Tenant that portion of the Lease payment prorated as of the date of termination.

- 6.7 The City makes no representations or warranties regarding any hazardous, toxic or regulated substances on, under or about the Property, except to the extent that the City states that it has not deposited or cause to be deposited on, under or about the Property any hazardous, toxic or regulated substances.
7. **Additional Fees and Charges.** In addition to making Lease payments, Tenant shall arrange and pay for, when due:
- 7.1 all costs and expenses, including but not limited to, deposits, user fees, interest and penalties, for utilities furnished to the Property, including but not limited to, all electricity, natural gas, water, sewer, cable and telephone services, trash and recyclables disposal;
- 7.2 all general real property and personal property taxes and all special assessments of any kind levied against the Property during the Term.
8. **Insurance.** Tenant shall purchase and at all times maintain in effect commercial general liability which will protect the City, its officers, employees and agents from liability in the event of loss of life, personal injury or property damage, suffered by any person or persons on, about or using the Property, including Tenant and employees, agents, licensees and guests of Tenant. Such insurance policy shall have terms and amounts approved by the Risk Manager of the City. Such insurance shall not be cancellable without thirty (30) days prior written notice to the City and shall be written for at least a minimum of One Million Dollars (\$1,000,000.00), combined single limit. The certificate of insurance must be deposited with the City and must designate "the City of Grand Junction, its officers, employees and agents" as additional insureds. If a policy approved by the Risk Manager of the City is not at all times in full force and effect, this Lease shall automatically terminate.
9. **Limited Liability of the City for Damage.**
- 9.1 The City's liability for damage or injury claims to persons or property, including Tenant's Property, from any cause relating to the occupancy and use of the Property by Tenant, including those arising out of damages or losses occurring on areas adjacent to the Property or easements used for the benefit of the Property during the Term, or for any injury or damage to any property of Tenant from any cause, shall be limited to the monetary limitations, rights, immunities and protections provided by the Colorado Governmental Immunity Act, 24-1-101 et seq., as from time to time amended, or otherwise available.
- 9.2 The City shall not be liable to Tenant for any damages or any loss of profits or loss of opportunities claimed by Tenant or for interruption of Tenant's business or operations resulting from fire, the elements, casualty of any kind or the temporary closure of any public highway providing access to and from the Property.

10. Pledges. Tenant shall not pledge or attempt to pledge or grant or attempt to grant as collateral or security its interest in any of the Property, without the express written consent of the City first being obtained, which consent shall not be unreasonably withheld, conditioned or delayed.

11. Hazardous Substances.

11.1 The term "Hazardous Substances", as used in this Lease, shall mean any substance which is:

- a. defined as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law enacted by any federal, state and local governmental agency or other governmental authority;
- b. a petroleum hydrocarbon, including but not limited to, crude oil or any fraction thereof, hazardous, toxic or reproductive toxicant;
- c. regulated pursuant to any law;
- d. any pesticide or herbicide regulated under state or federal law.

The term "Environmental Law", as used in this Lease, shall mean each and every federal, state and local law, statute, ordinance, regulation, rule, judicial or administrative order or decree, permit, license, approval, authorization or similar requirement of each and every federal, state and local governmental agency or other governmental authority, applicable to Tenant or the Property and pertaining to the protection of human health and safety of the environment, either now in force or hereafter enacted.

11.2 Tenant shall not cause or permit to occur by Tenant and/or Tenant's agents, guests, invitees, contractors, licensees or employees:

- a. any violation of any Environmental Law on, under or about the Property or arising from Tenant's use and occupancy of the Property, including but not limited to, air, soil and groundwater conditions; or
- b. the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance on, under or about the Property, or the transportation to or from the Property of any Hazardous Substance, in violation of any Environmental Law, either now in force or hereinafter enacted.

12. Environmental Clean-Up.

12.1 The following provisions shall be applicable to Tenant and to Tenant's agents, guests, invitees, contractors, licensees and employees with respect to the Property:

- a. Tenant shall, at Tenant's sole cost and expense, comply with all Environmental Laws and laws regulating the use, generation, storage, transportation or disposal of Hazardous Substances;
- b. Tenant shall, at Tenant's sole cost and expense, make all submissions to provide all information required by and/or comply with all requirements of all governmental authorities ("the Authorities") under Environmental Laws and other applicable laws.
- c. Should any Authority or the City demand that a clean-up be prepared and that a clean-up be undertaken because of any deposit, spill, discharge or other release of Hazardous Substances by Tenant on, under or about the Property, Tenant shall, at Tenant's sole cost and expense, prepare and submit the required plan(s) and all related bonds and other financial assurances, and Tenant shall carry out all such clean-up plan(s) in compliance with the Authorities and all Environmental Laws and other applicable laws.
- d. Tenant shall promptly provide all information regarding the use, generation, storage, transportation or disposal of Hazardous Substances requested by any Authority. If Tenant fails to fulfill any duty imposed hereunder within a reasonable time, the City may do so on Tenant's behalf and in such case, Tenant shall cooperate with the City in the preparation of all documents the City or any Authority deems necessary or appropriate to determine the applicability of Environmental Laws to the Property and Tenant's use thereof, and for compliance therewith, and Tenant shall execute all documents promptly upon the City's request. No such action by the City and no attempt made by the City to mitigate damages under any Environmental Law or other applicable law shall constitute a waiver of any of Tenant's obligations hereunder.
- e. Tenant's obligations and liabilities hereunder shall survive the expiration or termination of this Lease.

12.2 Tenant shall indemnify, defend and hold the City, its officers, employees and agents harmless from all fines, suits, procedures, claims and actions of every kind, and all costs associated therewith (including the costs and fees of attorneys, consultants and experts) arising out of or in any way connected with any deposit, spill, discharge or other release of Hazardous Substances on or from the Property and the violation of any Environmental Law and other applicable law by Tenant and/or Tenant's agents, guests, invitees, contractors, licensees and employees that occur with respect to the Property during the Term, or from Tenant's failure to provide all information, make all submissions, and take all actions required by all Authorities under the Environmental Laws and other applicable laws. Tenant's obligations and liabilities hereunder shall survive the expiration or termination of this Lease.

12.3 To the extent authorized by law, the City shall indemnify, defend and hold the Tenant harmless from all fines, suits, procedures, claims and actions of every kind, and all costs associated therewith (including the costs and fees of attorneys, consultants and experts) arising out of or in any way connected with any deposit, spill, discharge or other release of Hazardous Substances on or from the Property and the violation of any Environmental Law and other applicable law by the City. The City's obligations and liabilities hereunder shall survive the expiration or termination of this Lease.

13. Default, Sublet, Termination, Assignment.

13.1 Should Tenant:

- a. default in the performance of its agreements or obligations herein and any such default continue for a period of ninety (90) days after written notice thereof is given by the City to Tenant; or
- b. abandon or vacate the Property; or
- c. be declared bankrupt, insolvent, make a general assignment for the benefit of creditors, or if a receiver is appointed, for all or substantially all of Tenant's assets;

the City, at the City's option, may cancel and annul this Lease at once and enter and take possession of the Property immediately without any previous notice of intention to reenter, and such reentry shall not operate as a waiver or satisfaction in whole or in part of any claim or demand arising out of or connected with any breach or violation by Tenant of any covenant or agreement to be performed by Tenant. Upon reentry, the City may remove the Tenant's Property and personnel of Tenant and store Tenant's Property in a warehouse or at a place selected by the City, at the expense of Tenant and without liability to the City. Any such reentry shall not work as forfeiture of nor shall it terminate the rent(s) to be paid or the covenants and agreements to be performed by Tenant for the full term of this Lease; and upon such reentry, the City may thereafter lease or sublease the Property for such rent as the City may reasonably obtain, crediting Tenant with the rent obtained after deducting the costs reasonably incurred in such reentry, leasing or subleasing, including the costs of necessary repairs, alterations and modifications to the Property. Nothing herein shall prejudice or be to the exclusion of any other rights or remedies which the City may have against Tenant, including but not limited to, the right of the City to obtain injunctive relief based on the irreparable harm caused to the City's reverlsonary rights.

13.2 Except as otherwise provided for (automatic and immediate termination), if Tenant is in default in the performance of any term or condition of this Lease, the City may, at its option, terminate this Lease upon giving ninety (90) days written notice. If the Tenant fails within any such ninety (90) day period to remedy each and every default specified in the City's notice, this Lease shall terminate. If Tenant remedies such default, Tenant shall not thereafter have the right of ninety (90) days (to remedy) with respect to a similar subsequent default, but rather, Tenant's rights shall, with respect to a subsequent similar

default, terminate upon the giving of notice by the City.

13.3 Tenant shall not assign or sublease the Property, or any right or privilege connected therewith, or allow any other person, except officers, employees and agents of Tenant, to occupy the Property or any part thereof without first obtaining the written consent of the City, which consent must be approved and ratified by the City Council of the City, which consent shall not be unreasonably withheld, conditioned or delayed. In the event of an assignment of this Lease or sublease, Tenant shall not be released from its obligations and duties under this Lease and this Lease shall remain in full force and effect. Any consent by the City shall not be a consent to a subsequent assignment, sublease or occupation by any other party. Any unauthorized assignment, sublease or permission to occupy by Tenant shall be void and shall, at the option of the City, provide reasonable cause for the City to terminate this Lease. The interest of Tenant in this Lease is not assignable by operation of law without the formal approval and ratification by the City Council of the City. Notwithstanding anything in this Section to the contrary, Tenant shall have the right, without the City's consent, to assign this Lease or sublet the Property or portions thereof to any entity that is controlled by Tenant, is under common control with Tenant or which controls Tenant. Upon written consent from the City, which consent shall not be unreasonably withheld or delayed, Tenant may lease space on the tower and in the transmitter building for the receiving and/or transmitting of radio, television, cable, microwave and cellular signals.

13.4 This Lease is not intended to and shall in no way preclude the City from actively marketing the Property for sale or exchange, whether through the efforts of the City, a real estate broker or any other person, nor shall this Lease prevent the City from selling, exchanging or conveying the Property to any other party; provided, however, that in the event any such sale, exchange or conveyance is made during the term of this Lease, such sale, exchange or conveyance shall be made subject to Tenant's leasehold interest in the Property. In the event of the voluntary or involuntary transfer of the City's interest in the Property, Tenant will attorn to the transferee of, or successor to, the City's interest in the Property, and recognize such transferee or successor as Landlord under this Lease if such transferee agrees to assume and perform the City's obligations under this Lease that accrue from and after the date of the transfer.

14. Fees or Commissions. The parties to this Lease warrant that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. The City and Tenant agree to defend, indemnify and hold the other harmless from any claim for real estate brokerage commissions or finder's fees asserted by any other party claiming to be entitled to brokerage commissions or finder's fees arising out of this Lease.

15. Notices.

15.1 All notices to be given with respect to this Lease shall be writing delivered either by United States mail or Express mail, postage prepaid, or by facsimile transmission, personally by hand or courier service, as follows:

To the City: City of Grand Junction
 Attn: John Shaver, City Attorney
 250 N. 5th Street
 Grand Junction, CO 81501-2668
 Fax: 970-244-1456

To Tenant: KNZZ Radio
 c/o David Beck, Station Manager
 1360 E. Sherwood Drive
 Grand Junction, CO 81501-7575

- 16. Surrender, Holding Over.** Tenant shall, upon the expiration or termination of this Lease, surrender the Property to the City in good order, condition and state of repair, reasonable wear and use excepted. Upon the expiration or termination of this Lease, Tenant shall remove within thirty (30) days after the last day of the Lease Term, any or all of Tenant's Property, as Tenant elects in a notice to the City. Upon the removal of any of Tenant's Property, Tenant shall restore and re seed that part of the Property disturbed by such removal as soon as possible. It is agreed that the thirty (30) day period for the removal of Tenant's Property shall be extended by any period that the Property is inaccessible for such purpose due to snow, adverse weather conditions, fire and other matters beyond Tenant's reasonable control (each, a "Force Majeure Event"). In the event Tenant fails to vacate and surrender the Property as provided in this Section, Tenant agrees that Tenant shall pay to the City the sum of \$50.00 per day for each and every day thereafter until Tenant has effectively vacated and surrendered the Property. The parties agree that it would be difficult to establish the actual damages to the City in the event Tenant fails to vacate and surrender the Property upon the expiration or termination of this Lease and that said \$50.00 daily fee is an appropriate liquidated damages amount.
- 17. Total Agreement; Applicable to Successors.** This Lease contains the entire agreement between the parties and, except for automatic expiration or termination, cannot be changed or modified except by a written instrument subsequently executed by the parties hereto. This Lease and the terms and conditions hereof apply to and are binding upon the successors and authorized assigns of both parties.
- 18. Counterparts.** This Lease may be signed in one or more counterparts, each of which will be deemed a duplicate original.

IN WITNESS WHEREOF, the parties have each executed this Lease dated the day and year first above written.

LANDLORD:

CITY OF GRAND JUNCTION, a Colorado
Home rule municipality,

By: 
Greg Caton, City Manager


ATTEST:

By: 

Date: 05/14/2020

TENANT:

MBC Grand Broadcasting, Inc., a
Pennsylvania business Corporation

By: 
DAVID HANSON, PRESIDENT

ATTEST:

By: 

Date: 5/11/2020



EXHIBIT A

Description of the Property:

Lot 3 in Section 30, Township 2 South, Range 2 East of the Ute Meridian, County of Mesa, State of Colorado.

Description of the access road for ingress, egress and utility purposes:

A twenty-five (25) foot wide tract or parcel of land, being 12.5 feet on each side of the following described center line:

Beginning at a point on the South boundary line of Lot 2 in Section 30, Township 2 South, Range 2 East of the Ute Meridian, County of Mesa, State of Colorado, from whence the Southeast Corner of said Lot 2 bears East a distance of 180.0 feet; Thence running Northeasterly to a point on the East boundary line of said Lot 2 from whence the Southeast Corner of said Lot 2 bears South a distance of 1260.0 feet, said point being the Point of Terminus of said center line.