

COUNCIL MEMORANDUM

Council Meeting Date: November 12, 2015

LEGISLATIVE ACTION ITEM

SPONSOR:

City Council Member Brian Spencer

SUBJECT:

Longhollow Retention Facility Radio Tower (Divine Word Radio)

RECOMMENDATION:

That City Council direct staff to assemble and present pertinent information for the City Council to consider in making an informed determination whether the current tower lease may be amended or terminated and the recently constructed tower be substantially modified or completely removed.

AGENDA:

Regular Consent

Hearing Required: Public Quasi-Judicial No Hearing Required

SUMMARY:

This issue has been before Council on several prior occasions and it has never been resolved by the City Council.

Divine Word Radio had previously leased city-owned property in Longhollow for the purpose of siting a radio tower. In 2012, while the tower was approximately 185 feet in height, the City approved execution of a 20-year lease for a reconstructed tower. In 2014, the City experienced a severe flooding condition in this area and elsewhere in the City, and an extensive stormwater engineering study was commissioned. Since that time, other related stormwater projects are underway or under consideration. In March of this year, Council was informed that the reconstruction of the tower had been halted by the City for building code violations, and during this period, Council discussed (but did not resolve) whether the 2012 lease was improvidently approved, whether the proposed reconstruction (at nearly twice the height) was contemplated by the lease or otherwise allowed under the existing Conservation Area zoning restrictions, and whether the footprint occupied by the tower would be needed for future stormwater projects.

The recommendation is for the City and Council's staff to gather the necessary information and assist the City Council in deciding the appropriate steps to be taken in the event Council concludes that the existing lease and tower should be modified or terminated and removed. This will involve assembling information from several city offices, from the tower's owner, from the impacted neighborhoods, and from the City Attorney's office regarding a legal assessment of the matter.

PRIOR ACTION:

Council approved a long term tower reconstruction lease in 2012, and a new tower of approximately 385 feet is currently in place.

Council Memorandum

Subject: Longhollow Retention Facility Radio Tower (Divine Word Radio)

November 12, 2015

Page 2

FUNDING:

None

FINANCIAL IMPACT:

None

STAFF CONTACT:

Don Kraher, Council Executive

ATTACHMENTS:

(1) Ground lease-8/24/12

PRESENTATION:

None

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT ("Agreement") is made and entered into as of this 24th day of August 2012, by and between the CITY OF PENSACOLA, FLORIDA, a municipal corporation of the State of Florida ("City") and DIVINE WORD COMMUNICATIONS, an Alabama corporation doing business in Florida as DIVINE WORD RADIO, INC., with administrative offices located at 600 West Gregory Street, Pensacola, Florida 32502 ("Tenant") (collectively, "Parties").

WITNESSETH:

WHEREAS, City has land available for use within the property boundaries of the storm storage basin known as "Long Hollow" within the city limits of the City of Pensacola, Florida as more particularly described on Exhibit A attached hereto and incorporated by this reference ("Property"); and

WHEREAS, Tenant desires to lease the Property for the purpose of constructing and operating a single transmitting tower, antenna, communication structures, and ground system radio broadcast site ("Radio Broadcast Facility") as further specified herein;

NOW THEREFORE, in consideration of payments herein reserved to be paid by the Parties, and in consideration of the covenants herein to be kept and performed by the Parties, City does hereby lease and demise unto Tenant the Property under the following terms and conditions:

Section 1. Recitals. The recitals set forth in the preamble to this Agreement are true and correct and are incorporated in this Agreement as fully as if set forth herein.

Section 2. Term and Renewal. This Agreement shall commence upon execution of this Agreement by both Parties ("Commencement Date") and shall expire twenty (20) years ("Term") from the Commencement Date ("Expiration Date"), subject, however, to the terms and conditions herein. On or before the Expiration Date, and absent a subsequent agreement or extension, Tenant shall vacate the Property, removing the Radio Broadcast Facility and all related improvements made by Tenant, and Tenant's personal property from the Property. This Agreement may be renewed upon both Parties agreement for one (1) additional five (5) year period immediately following the Expiration Date ("Renewal Term"). To exercise such renewal, Tenant must provide to the City a written request for renewal no later than six (6) months prior to the Expiration Date, to be accepted or rejected in the City's sole discretion within 90 days of receipt.

Section 3. Existing Facilities to be Removed. Tenant shall remove the existing transmitting tower, facilities, furniture, fixtures, transmitting equipment, radio gear, parts and all other property located in or upon the property within thirty (30) days following the commencement of any new construction.

Section 4. Radio Broadcast Facility. Tenant shall design and construct a new Radio Broadcast Facility, including transmitting tower, antennas, communication structures, and ground system in accordance with Federal Communications Commission requirements as suitable and adequate for the transmission of broadcast radio station signal. Tenant shall pay all costs of construction and related costs incident to the installation of the Radio Broadcast Facility.

Tenant shall pay all costs of insurance, utilities, repairs, maintenance, and any taxes levied upon or due in connection with the Tenant's occupation and use of the Property. Tenant shall be the owner of the Radio Broadcast Facility. Prior to commencing construction, Tenant shall present to City for approval all plans associated with installation of the Radio Broadcast Facility. City shall be entitled to approve, reject, or suggest modification to such plans, but such approval shall not be unreasonably withheld. Tenant may not make or cause to be made any additions, improvements or installments of trade fixtures, exterior signs, shades, awnings, canopies, or advertising matter without first obtaining City's written approval and consent, but such approval shall not be unreasonably withheld.

Tenant hereby expressly acknowledges that the Property is located within a storm basin, and agrees the City shall not be liable for any damage, destruction or operational complications to the Radio Broadcasting Facility due to location of the Property within the storm basin.

Section 5. Rent.

First ten (10) years:

Commencing upon execution of this Agreement and continuing through the first ten (10) years of this Lease, Tenant shall pay to City, as rent, the initial sum of \$7,200.00 in twelve (12) monthly installments of \$600.00, payable in advance, as rent for the Property ("Rent"), together with a prorated installment for the month of execution. Tenant shall be assessed a late fee of fifteen percent (15%) of the monthly Rent payment received more than five (5) days following the date the Rent is due to defray the expenses incident to handling and administering the late Rent payment.

Second ten (10) years:

Commencing upon the ten year anniversary of the execution of this Agreement and continuing through the last ten (10) years of the twenty (20) year term of this Lease, Tenant shall pay to City, as rent, the initial sum of \$8,400.00 in twelve (12) monthly installments of \$700.00, payable in advance, as rent for the Property ("Rent"). Tenant shall be assessed a late fee of fifteen percent (15%) of the monthly Rent payment received more than five (5) days following the date the Rent is due to defray the expenses incident to handling and administering the late Rent payment.

Section 6. Use of the Property. Tenant shall use the Property exclusively for the construction and operation of the Radio Broadcast Facility. Tenant shall not use, nor allow or allow, the Property to be used for any other purpose, without prior written approval from the City. Tenant acknowledges that approval of any other use of the Property is within the City's sole discretion. Tenant shall obtain all licenses in order to conduct that business and shall comply with all laws, statutes, ordinances, orders, rules, regulations, and requirements.

Section 7. Repairs and Alterations at the Property. All repairs to the Property shall be at Tenant's sole cost and expense. Prior to commencing repairs, Tenant shall obtain written approval from the City for the specific repairs, which shall not be unreasonably withheld. In any event of failure to repair by Tenant, Tenant shall remain obligated to make all Tenant payments pursuant to Section 5 of this Agreement.

Section 8. Indemnification by Tenant. Tenant shall protect, indemnify, defend, and hold harmless City from and against all losses, costs, damages, expenses, and liabilities, including,

without limitation, reasonable attorney's fees, whether liquidated or unliquidated, and whether or not adjudicated by a court of competent jurisdiction, which Tenant may incur, pay out, or be demanded to pay out by reason of (a) any accidents, damages or injuries to persons or property occurring in, on, or about the Property caused by Tenant or Tenant's agents, employees, invitees, and contractors, (b) any breach or default hereunder by Tenant, (c) any work done in or to the Property by, for, or on behalf of Tenant, (d) any act or omission on the part of Tenant and Tenant employees, agents, contractors, and/or invitees, or any person claiming through or under Tenant, or (e) any action or claim against the City arising out of Tenant's occupation of the Property.

Section 9. Assignment and Subletting. The rights of the Parties under this Agreement are not assignable. Tenant may not sublet all or any part of the Property without the prior written consent of the City in the City's sole discretion. City's consent to any subletting will not constitute a waiver of the necessity for consent to any subsequent or additional subletting. No subletting agreement or occupancy will release Tenant from the complete performance of any provision or condition or payment required in this Lease.

Section 10. Insurance. Before starting and until termination of this Lease, the Tenant shall procure and maintain insurance of the types and to the limits specified.

The term "City" as used in this section of the Lease is defined to mean the City of Pensacola itself, any subsidiaries or affiliates, elected and appointed officials, employees, volunteers, representatives and agents.

The Tenant and the City understand and agree that the minimum limits and type of insurance herein required may become inadequate, and Tenant agrees that it will increase such coverage or Limits of Liability to commercially reasonable levels within ninety (90) days upon receipt of notice in writing from the City.

Insurance shall be issued by an insurer whose business reputation, financial stability and claims payment reputation is satisfactory to the City, for the City's protection only. Unless otherwise agreed, the amounts, form and type of insurance shall conform to the following minimum requirements:

WORKER'S COMPENSATION

The Tenant shall purchase and maintain Worker's Compensation Insurance Coverage for all Workers' Compensation obligations required by law. Additionally, the policy, or separately obtained policy, must include Employers Liability Coverage of at least \$100,000 each person -accident, \$100,000 each person - disease, \$500,000 aggregate - disease.

COMMERCIAL GENERAL AUTOMOBILE, AND UMBRELLA LIABILITY

The Tenant shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability and Business Auto policies filed by the Insurance Services Office or other similar organizations. The City shall be an Additional Insured and such coverage shall be at least as broad as that provided to the Named Insured under the policy for the terms and conditions of this Agreement. The City shall not be considered liable for premium payment, entitled to any premium return or dividend and shall not be considered a member of any mutual or reciprocal company. If the limits of liability afforded should become impaired by reason of

any claim, then the Tenant agrees to have such limits as set forth, reinstated under the policy.

Commercial General Liability must be provided, including bodily injury and property damage for premises, operations, products and completed operations, and independent contractors. Broad Form Commercial General Liability coverage or its equivalent shall provide at least, broad form contractual liability applicable to this specific Agreement, personal injury liability and broad form property damage liability. The coverage shall be written on occurrence-type basis with minimum limits of \$1,000,000 per occurrence and in the aggregate. The City must be listed as an additional insured.

Business Auto Policy coverage must be provided, including death, bodily injury and property damage arising out of operation, maintenance or use of owned, non-owned and hired automobiles. Minimum limits of \$300,000 combined single limit must be provided.

Umbrella Liability Insurance making up any difference between the policy limits of underlying policies coverage and the total amount of coverage required shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence-type basis.

BUILDER'S RISK COVERAGE

Coverage will be provided by the Tenant or its contractor with coverage afforded on an Inland Marine "All-Risk" type form which includes collapse coverage for any improvement while being constructed on the leased premises.

The Amount of Insurance is to be 100% of the completed value of the work. Such coverage will additionally include an amount equal to 10% of the Amount of Insurance of the completed value of the work described in this Contract for materials and equipment stored off the site, in transit or delivery, including loading and unloading.

The policy must be specifically endorsed to eliminate any "Occupancy" clause or similar warranty or representation that the premises in the course of construction shall not be occupied or used without specific endorsement of the policy.

The Tenant shall also be responsible for any and all claims which fall within the deductible amounts. The City shall be listed as Additional Insured by endorsement on the policy as well as the Certificate of Insurance and a certified copy of the policy shall be supplied to the City.

The policy shall contain a "Waiver of Subrogation" clause in favor of the City, any subsidiaries or affiliates, its elected and appointed officials, employees, volunteers, representatives, and agents which would waive any subrogation against any of them.

PROPERTY INSURANCE

Tenant shall maintain in force at all times, property insurance coverage which insures any structures once constructed on the Leased Premises against fire, extended coverage and Standard Insurance Office (ISO) defined "Special Perils" of physical damage. In addition to the other requirements of this Section, the company or companies providing property insurance coverage pursuant to this paragraph shall be qualified to do business in the State of

Florida. Such policy shall contain a Waiver of Subrogation endorsement in favor of the City. Tenant agrees to apply any payment made as a result of any insurable loss to the debris removal, repair or replacement of such Improvements subject to the rights of any Lender or Mortgagee. In the event that the insurance funds are greater than the amount required to repair or replace the Improvements, with like kind and quality, the excess funds shall be retained by Tenant subject to the rights of any Lender or Mortgagee. Such funds shall be expended on such debris removal, repair or replacement within a reasonable period of time. A period of more than twelve (12) months shall be deemed as an unreasonable period of time.

CERTIFICATES OF INSURANCE

Required insurance shall be documented in the Certificates of Insurance which provide that the City of Pensacola shall be notified at least thirty (30) days in advance of cancellation, non-renewal or adverse change or restriction in coverage. With the exception of workers' compensation, the City of Pensacola shall be named on each Certificate as an Additional Insured and this Lease shall be listed. If required by the City, the Tenant shall furnish copies of the Tenant's insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificate of Insurance" form equal to, as determined by the City an ACORD 25. The Tenant shall replace any cancelled, adversely changed, restricted or non-renewed policies with new policies acceptable to the City and shall file with the City Certificates of Insurance under the new policies prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner acceptable to the City, the Tenant shall, upon instructions of the City, cease all operations under the Lease until directed by the City, in writing, to resume operations. The "Certificate Holder" address should read: City of Pensacola, Department of Risk Management, Post Office Box 12910, Pensacola, FL 32521.

INSURANCE OF THE TENANT PRIMARY

The Tenant required coverage shall be considered primary, and all other insurance shall be considered as excess, over and above the Tenant's coverage. The Tenant's policies of coverage will be considered primary as relates to all provisions of the contract.

LOSS CONTROL AND SAFETY

The Tenant shall retain control over its employees, agents, servants and subcontractors, as well as control over its invitees, and its activities on and about the subject premises and the manner in which such activities shall be undertaken and to that end, the Tenant shall not be deemed to be an agent of the City. Precaution shall be exercised at all times by the Tenant for the protection of all persons, including employees, and property. The Tenant shall make special effort to detect hazards and shall take prompt action where loss control/safety measures should reasonably be expected.

PAY ON BEHALF OF THE CITY

The Tenant agrees to pay on behalf of the City, as well as provide a legal defense for the City, both of which will be done only if and when requested by the City, for all claims as described in the "Indemnification by Tenant" paragraph. Such payment on the behalf of the City shall be in addition to any and all other legal remedies available to the City and shall not be considered to be

the City's exclusive remedy.

Section 11. Hazardous Substances. Tenant shall not introduce or use any substance, chemical, or waste (collectively hereinafter referred to as "substance") on the Property that is identified as hazardous, toxic, or dangerous in any applicable federal, state, or local law or regulation.

Section 12. Further Acts. The Parties agree to do, execute, acknowledge and deliver all such further acts, instruments and assurances, and to take all such further actions for or after the consummation of the transaction described in this Agreement as shall be necessary or desirable to carry out this Agreement.

Section 13. Events of Default. The occurrence of any one or more of the following events is deemed an Event of Default:

(a) If Tenant defaults in the due and punctual payment of the Rent, or other sum payable by Tenant, as and when due and payable in accordance with the Agreement provisions, and such default continues for more than five (5) days after written notice of default from City.

(b) If Tenant defaults in the due performance or observance of any covenant or condition of this Agreement, and the default continues for more than fifteen (15) days after written notice of default from the City.

(c) If Tenant petitions for bankruptcy or reorganization or admits inability to pay debts, has receiver or trustee, is reorganized, dissolved, or involved in bankruptcy proceedings, or otherwise invokes protections under insolvency laws.

Section 14. Accord and Satisfaction. No payment received by City of a lesser amount than stipulated to in this Agreement shall be deemed to be other than on account of the earliest stipulated Rent payment. Nor shall any endorsement or statement on any check or letter accompanying any payment received by City be deemed an accord and satisfaction.

Section 15. Waiver. Any waiver by either Party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

Section 16. Amendment and Modification. Any amendments or modification to this Agreement must be in writing and executed by both Parties.

Section 17. Governing Law and Venue. This Agreement is governed by the laws of the State of Florida, and the Parties stipulate venue for any matter which is the subject of this Agreement shall be in Escambia County, Florida.

Section 18. Entirety of Agreement. This Agreement, including any Exhibits, constitutes the entire Agreement between the Parties and supersedes all prior written and verbal agreements, representations, promises, or understandings between the Parties.

Section 19. Severability. If any provision of this Agreement is found to be invalid or unenforceable with the respect to either Party, the remainder of this Agreement or the application of such provisions to persons other than those as to whom it is held invalid or unenforceable shall not be affected, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 20. **Attorney's Fees.** The prevailing Party in any action, claim or proceeding arising out of this Agreement shall be entitled to attorney's fees and costs from the losing Party.

Section 21. **Survival.** Any other provisions of this Agreement to the contrary notwithstanding, the provisions of Section 8 shall survive the expiration or termination of this Agreement.

Section 22. **Notices.** Any notice, demand, direction, request, or other instrument authorized or required by this Agreement to be given or filed with a Party hereto shall be deemed sufficiently given or filed for all purposes of this Agreement if and when sent by registered mail, return receipt requested, transmitted by a facsimile machine with confirmation of delivery, or by personal hand delivery:

To City: City Administrator
City of Pensacola
Post Office Box 12910
Pensacola, Florida 32521

To Tenant: Mr. Gene Church
Divine Word Communications
P.O. Box 866
Pensacola, Florida 32591

The addresses to which any notice, demand, direction, or other instrument authorized to be given or filed may be changed from time to time by a written notice to that effect delivered to all the Parties, which change shall be effective immediately or such other time as provided in the notice. Until notice of a change of address is received, a Party may rely upon the last address received.

Section 23. **No Partnership.** Nothing in this Agreement nor any act of the Parties shall be deemed or construed by the Parties hereto or by any third party to create a relationship of principal and agent, joint venture, business affiliation, or of any association or partnership whatsoever between City and Tenant.

Section 24. **Public Records.** The Parties acknowledge that this Agreement and any related financial records, audits, reports, plans, correspondence, and other documents may be subject to disclosure to members of the public pursuant to Chapter 119, Florida Statutes. In the event a Party fails to abide by Chapter 119, the other Party may, without prejudice to any other right or remedy and after giving the violating Party seven (7) days written notice, during which period that Party still fails to allow access to such documents, terminate this Agreement.

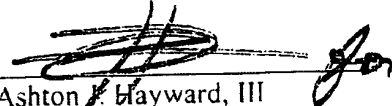
Section 25. **Recording.** This Agreement shall be recorded by Tenant in the official records of the Escambia County Clerk of the Court within ten (10) days of execution.

Section 26. **Good Faith.** All duties and obligations under this Agreement, and all attempts to enforce rights under this Agreement shall be governed by reasonable commercial standards of good faith.

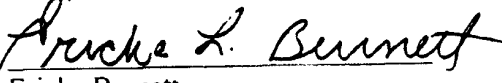
Section 27. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN TESTIMONY WHEREOF, the Parties hereto have caused this agreement to be duly signed and sealed, the day and year first above written.


CITY OF PENSACOLA

By 
Ashton J. Hayward, III
Mayor
William H. Reynolds
City Administrator
City of Pensacola

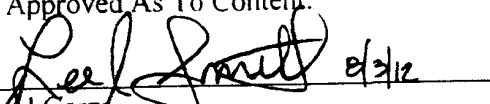
Attest:


Ericka Burnett
City Clerk

Legal in Form and Valid as Drawn:



City Attorney

Approved As To Content:


FOR Al Garza

* * * * *

Tenant

By 
Mr. Gene Church
Divine World Communication
NO SEAL

Attest:


Secretary

WITNESSES:

Print Name: Forrest Church
Forrest Church

Print Name: Alfred C. Garza, Jr.
Alfred C. Garza, Jr.

Exhibit A

Commence at the Northwest corner of Lot 11, Block 118 of the East King Tract for the point of beginning ("POB"), thence Southerly along the West line of Lot 11 for 150', thence Easterly at right angle along the South line of Lot 11 for 30', thence Southerly at right angle along the West line of Lot 29 for 150', thence Easterly at right angle for a distance of 30', thence Southerly at right angle (along an extension of the West line of Lot 28 for a distance of 50' to its intersection with the South right-of-way line of Hernandez Street Easterly to its intersection with the West line of the Louisville & Nashville Railroad right-of-way approximately 420' more or less, thence North along the West line of the Louisville & Nashville Railroad right-of-way to its intersection with the South right-of-way line of Jordan Street approximately 370' more or less, thence Westerly along the South right-of-way line of Jordan Street to the POB approximately 400', more or less, Less Lot 18 of Block 118, all in the East King Tract, according to the map of the City of Pensacola, Florida, copyrighted by Thomas C. Watson in 1906. [NOTE: I have not verified the legal description on this, and am assuming that it is the same as the description in the current lease.--GC]



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8-1-2012

PRODUCER Tim Wise Agency 913 Gulf Breeze Ste 10 Gulf Breeze Fl 32561	THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
INSURED Divine Word Communications Inc. dba Divine Word Radio 519 N Palofox Street Pensacola Fl 32501	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 80%;">INSURERS AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A: Landmark American Insurance Company</td> <td></td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: Landmark American Insurance Company		INSURER B:		INSURER C:		INSURER D:		INSURER E:	
INSURERS AFFORDING COVERAGE	NAIC #												
INSURER A: Landmark American Insurance Company													
INSURER B:													
INSURER C:													
INSURER D:													
INSURER E:													

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

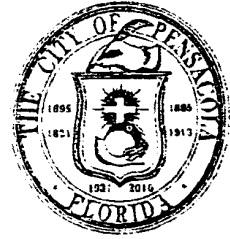
INSR ADD'L TR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS								
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	APP78653108	08/01/2012	08/01/2013	EACH OCCURRENCE \$ \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ \$100,000 MED EXP (Any one person) \$ \$5,000 PERSONAL & ADV INJURY \$ excluded GENERAL AGGREGATE \$ \$2,000,000 PRODUCTS - COMPROP AGG \$ Included _____ \$ _____								
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ _____ BODILY INJURY (Per person) \$ _____ BODILY INJURY (Per accident) \$ _____ PROPERTY DAMAGE (Per accident) \$ _____								
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ _____ OTHER THAN EA ACC \$ _____ AUTO ONLY: AGG \$ _____								
	EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$ _____				EACH OCCURRENCE \$ _____ AGGREGATE \$ _____ _____ \$ _____ _____ \$ _____								
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / N (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below OTHER				<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">WC STATUTORY LIMITS</td> <td style="width: 40%;">OTHER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$ _____</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$ _____</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$ _____</td> </tr> </table>	WC STATUTORY LIMITS	OTHER	E.L. EACH ACCIDENT	\$ _____	E.L. DISEASE - EA EMPLOYEE	\$ _____	E.L. DISEASE - POLICY LIMIT	\$ _____
WC STATUTORY LIMITS	OTHER												
E.L. EACH ACCIDENT	\$ _____												
E.L. DISEASE - EA EMPLOYEE	\$ _____												
E.L. DISEASE - POLICY LIMIT	\$ _____												

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER City of Pensacola PO Box 12910 Pensacola Fl 32521	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
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REPORT OF COUNCIL ACTION

OFFICE OF THE CITY CLERK



May 24, 2012

Agenda Item 11B

Subject: LEASE AGREEMENT - RADIO TOWER SITE LONG HOLLOW STORMWATER BASIN

Ordinance #: _____

Action Taken:

Approved by Council _____ Motion Failed _____ First Reading _____ Second Reading

Referred To:

_____ Staff _____ Other _____ Committee

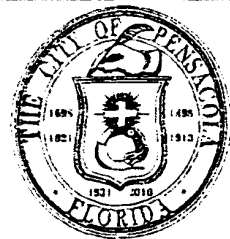
Council Member	Action				
	Absent	Motion	Second	Yes	No
Maren DeWeese			✓	✓	
Sam Hall - President				✓	
John Jerralds				✓	
Larry B. Johnson		✓		✓	
Sherri Myers				✓	
Megan B Pratt				✓	
Brian Spencer				✓	
Ronald P. Townsend - Vice President				✓	
P.C. Wu				✓	

Copies: Council File _____ Municipal Code

Report of Consent Agenda

May 24, 2012

Item 11



Members: Sam Hall, Ronald P. Townsend, Maren DeWeese, John Jerrals, Larry B. Johnson, Sherri Myers, Megan B. Pratt, Brian Spencer, and P.C. Wu

Members Absent: None

All Items Passed Unanimously in Committee of the Whole – May 21, 2012

CONSENT AGENDA

A. CHANGE ORDER #1 - DEMOLITION OF THE FORMER NATIONAL GUARD ARMORY (BID #12-009)

That City Council approve Change Order #1 to the contract with Craftsman Concrete Contractors in the amount of \$44,424 for the removal of additional hazardous materials (asbestos) discovered during the demolition of the former National Guard Armory. Further, that City Council approve the attached supplemental budget resolution to provide funding for Change Order #1.

B. LEASE AGREEMENT - RADIO TOWER SITE LONG HOLLOW STORMWATER BASIN

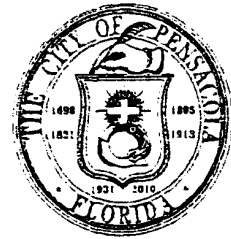
That City Council authorize the Mayor to lease the City-owned radio tower site within the Long Hollow stormwater basin, to Divine Word Communication, an Alabama corporation DBA Divine Word Radio, Inc. in Florida. Subject property would be used solely for the constructing and operating a single transmitting Radio Broadcast Facility.

C. COUNCIL EXECUTIVE ASSISTANT

That City Council request that Elaine Mager be retained for a period of six (6) months following her DROP date.

COMMITTEE MEMORANDUM

May 21, 2012



FROM: Ashton J. Hayward, III, Mayor *SA for AH*
SUBJECT: Lease Agreement - Radio Tower Site Long Hollow Stormwater Basin

RECOMMENDATION:

That City Council authorize the Mayor to lease the City-owned radio tower site within the Long Hollow stormwater basin, to Divine Word Communication, an Alabama corporation DBA Divine Word Radio, Inc. in Florida. Subject property would be used solely for the constructing and operating a single transmitting Radio Broadcast Facility.

SUMMARY:

On November 1, 1974, the City leased a parcel of land to Pensacola Broadcasting Corporation as a tower and antenna site for Radio Station WNVY. In December 2003, City staff recommended that the lease for the radio tower site be cancelled so as to allow the stormwater pond to be expanded. At the direction of City Council, an amendment to the lease agreement was drafted changing the lease termination date. The new termination date of April 30, 2005 was established to provide sufficient time for staff to determine if it would be necessary to incorporate the tower foot print into the expansion of the Long Hollow Pond for improved stormwater treatment capability.

Since the revision of the lease termination date, the Long Hollow Basin was expanded in 2006 at no cost to the City by the Florida Department of Transportation (FDOT) as environmental mitigation for increasing the replacement I-10 bridge over Escambia Bay from 4 lanes to 10 lanes. Therefore, since it had been determined that the radio tower site was not required for the stormwater pond expansion per the terms of the original lease, the agreement has automatically renewed in five year periods.

Per the term of the existing lease agreement, the radio tower became the property of the City after the station recovered its initial construction investment. The lessee was required to pay rent in the amount of \$200 per month thereafter. Currently, the station operator needs to replace the tower facility due to its age and condition. The City has no interest in the continued ownership of the radio tower facility from an operational or liability perspective; therefore, it is the best interest of both parties to renegotiate the term of the lease agreement so as to allow the radio station operation to continue.

PRIOR ACTION:

December 18, 2003 - Amendment to Tower Lease

December 15, 2006 - Cancellation of Tower Lease

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FUNDING:

Budgeted: -0-
Actual: \$7,200 per year first 10 years and \$8,400 per year thereafter

FINANCIAL IMPACT:

The first (10) years the tenant shall pay to the City, as rent, the initial sum of \$7,200.00 in twelve (12) monthly installments of \$600.00, payable in advance, as rent. The second ten (10) years the tenant shall pay to City, as rent, the initial sum of \$8,400.00 in twelve (12) monthly installments of \$700.00, payable in advance, as rent. The rental payments will be deposited in the General Fund.

STAFF CONTACT:

William H. Reynolds, City Administrator; Al Garza, Jr., P.E., Director of Public Works and Facilities

ATTACHMENTS:

- 1) Proposed Lease Agreement
- 2) Exhibit A Lease Area Survey
- 3) Committee Item Dated 12/18/2003

PRESENTATION:

No.