**OPTIMUS COMMUNICATIONS, LLC**
**DBA OPTIMUS BROADBAND**
PO Box 742
Grand Junction, CO, 81502
970-609-1234
tylor@optimusnet.us

**Date:** 2/1/26

## NOTICE OF OWNERSHIP TRANSFER – LANDS END TOWER SITE

To Whom It May Concern:

This letter serves as formal notification that the telecommunications tower site commonly known as **Lands End**, located at:

**Latitude:** 39°02'57.05" N
**Longitude:** 108°15'06.20" W

has been sold by **Optimus Communications, LLC, doing business as Optimus Broadband**, to **Buford Enterprises**.

The transfer of ownership became effective on **February 1, 2026**. As of that date, Buford Enterprises has assumed ownership and responsibility for the Lands End tower site and any associated rights, interests, and obligations related to the property.

Accordingly, all future correspondence, site access requests, lease administration matters, maintenance coordination, operational inquiries, and other business relating to the Lands End tower site will stay the same.

Should you have any questions regarding this transfer, please contact Optimus Broadband.

Sincerely,

**Mark McGowan**
Owner
Optimus Communications, LLC
DBA Optimus Broadband

Signature: _____

Date: 2/1/26

**Tylor McGowan**
Managing Member
Optimus Communications, LLC
DBA Optimus Broadband

Signature: _____

Date: 2/1/26

---

## Ownership Transfer Summary

**Site Name:** Lands End Tower Site

**Coordinates:**
Latitude: 39°02'57.05" N
Longitude: 108°15'06.20" W

**Previous Owner:**
Optimus Communications, LLC
DBA Optimus Broadband

**New Owner:**
Buford Enterprises

**Effective Date of Transfer:**
February 1, 2026

## ASSIGNMENT OF LEASE

THIS ASSIGNMENT OF LEASE is made as of the 1st Day of March 2021, by and between **the City of Grand Junction**, a Colorado home rule municipality, 250 N. 5th Street, Grand Junction, CO, 81501("Assignor" or "City") and **Optimus Communications, LLC,** 288 28 Road, Grand Junction, CO 81503 ("Assignee" or "Optimus").

WHEREAS, the City, as lessor, entered into a certain non-exclusive lease of real estate located on The Grand Mesa in Mesa County, CO, by agreement with North Fork Valley Public Radio, Inc., as lessee, which lease is dated as of November 1, 2019, ("Tower Lease"), a copy of said lease being attached as Exhibit A and incorporated herein; and

WHEREAS, the City has this day entered into an agreement with Optimus to lease the same property as that covered in the Tower Lease ("Optimus Lease"), subject to the terms of the Tower Lease which Optimus agreed to assume and perform; and

WHEREAS, in consideration of and in order to effect Optimus' assumption and agreement to perform the terms of the Tower Lease, the parties make this Assignment of Lease.

NOW THEREFORE, the parties agree:

1. The City grants, conveys and assign to Optimus all its rights, title and interest in and to the Tower Lease.

2. Optimus accepts said assignment and agrees henceforth to perform all the City's obligations as required of the City by the terms of the Tower Lease.

3. Optimus shall provide written notice to North Fork Valley Public Radio, Inc. of the assignment/purchase with a copy of such notice provided to the City.

SIGNED as of the day and year first written above:

**City of Grand Junction, a home rule municipality,**

By: _____
Greg Caton, City Manager

Dated: 2/23/2021

**Optimus Communications, LLC, a limited liability company,**

By: _____
Mark McGowan, Managing Member

STATE OF COLORADO )

:ss

COUNTY OF MESA )

The foregoing ASSIGNMENT OF LEASE was acknowledged before me on ~~March~~ February 23, 2021, by GREG CATON, as City Manager of the City of Grand Junction, ~~and by MARK McGOWAN, as Manager of Optimus Communications, LLC.~~ SS

Witness my hand and official seal.
My commission expires: July 31, 2021.

SELESTINA SANDOVAL
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #19994023991
My Commission Expires July 31, 2021

Selestina Sandoval

Notary Public

# TOWER SPACE LEASE AGREEMENT

This lease agreement ("Lease") is entered into as of the 1st day of November, 2019, between The City of Grand Junction, a Colorado home rule municipality, 250 N. 5th Street, Grand Junction, CO 81501 ("City") and North Fork Valley Public Radio, Inc., a Colorado nonprofit corporation ("Lessee").

## RECITALS:

A. The City owns the real property, broadcast tower facility (the "Tower"), and equipment building (the "Building") in the County of Mesa, State of Colorado as described in **Exhibit A**, attached hereto and incorporated herein by reference. Said Tower, together with the access road for ingress, egress and utilities purposes described on **Exhibit A**, are hereinafter collectively referred to as the "Property".

B. The Property has been used, leased and occupied without cessation by various entities as a television and radio broadcast transmitting site. Most recently, Rocky Mountain Public Broadcasting Network, Inc. leased tower space from the City and then sublet the lease to Lessee. Rocky Mountain Public Broadcasting Network, Inc.'s lease terminated; however, Lessee presently operates from the radio transmitting tower, transmission building and associated equipment, cable and facilities located on, along, over and upon the Property and desires to lease the Property from the City directly.

C. The City desires to lease the Property to Lessee and Lessee 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 Lessee and Lessee hereby accepts and leases the Property from the City, for the terms stated herein 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 purpose;

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;

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. Lessee 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 Lessee's Property actually so taken.

The City may exercise its right with response to the property interests so reserved so long as the exercise of those rights does not unreasonably interfere with Lessee'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 years (the "Basic Term"), commencing on the 1st day of November, 2019 (the "Commencement Date") and continuing through to the 31st day of October, 2024 on which date this Lease shall expire unless this lease is extended pursuant to 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 Lessee performs as required pursuant to this Lease, the City hereby gives and grants to Lessee an option to extend this Lease for four additional ten year terms (each, an "Extension Term"). If this Lease is extended for an Extension Terms, 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 Lessee's option for an Extension Term, Lessee shall give written notice to the City of Lessee's desire and intention to exercise Lessee'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.** Lessee agrees to pay to the City, at the address of the City as set forth in Section 17.1 or at such other address as the City may from time to time designate in writing, a monthly lease payment for the use of the Property as set forth herein.

**5.1** The monthly lease payment for the first five (5) Lease Years during the Basic Term shall be in the amount of One Hundred Twenty-Five Dollars ($125.00) and for each of the next five (5) Lease Years of the Basic Term the monthly lease payment shall be in the amount of One Hundred Thirty-Seven Dollars and 50/100 ($137.50).

**5.2** The monthly lease payment for the first five (5) years during an Extension Term shall be in the amount of One Hundred Twenty-Five Dollars ($125.00) and

for each of the next five (5) Lease Years of the Extension Term the monthly Lease payment shall be in the amount of One Hundred Thirty-Seven Dollars and 50/100 ($137.50).

**5.3** The lease payments shall be paid in monthly installments in the amount described in 5.2 above and shall be paid on or before the 1st day of each month. In the event lease payments are not received on or before the tenth day of each month, Lessee agrees to pay a late charge of $100.00 for each and every day following the tenth day of each installment payment, which late charge shall be added to the amount of the lease payment due. This Lease, at the option of the City, shall automatically terminate, and the City may immediately take possession of the Property, if the specific lease payments are not received by the City on or before the tenth day of each monthly installment.

**6. Use and Conditions of Property.**

**6.1** Lessee represents that it is relying on its own inspection and investigation of the Property and accepts the Property "As Is" and waives any and all express or implied warranties of condition or habitability, suitability for occupancy, use or habitation, fitness for particular purpose, or merchantability.

**6.2** During the Basic Term and any Extension Term of this Lease, Lessee agrees to use the Property solely for the purpose of installation, operation, maintenance, and repair of radio broadcast, transmission and retrieval equipment and appurtenances related thereto. Lessee's use and occupancy of the Property shall be subject to the rules, rulings and regulations of any governmental authority having jurisdiction over Lessee 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. Lessee 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.

**6.3** Prior to the installation or construction of additional facilities and/or improvements upon the Property, Lessee shall obtain the City's written approval of all plans for additional facilities and/or improvements to be constructed upon the Property by Lessee, which approval shall not be unreasonably withheld, conditioned or delayed. City's approval of any plans will not be deemed to be a warranty or representation that those plans are in conformity with any applicable laws, rules or ordinances of any kind. Lessee shall ensure all work relating to installation and operation is performed in a manner that will not unreasonably interfere with, delay, or impose any additional expense upon either the City in maintenance or operation of the Property or any user of the Property in the maintenance or operation of any other equipment located on the Property. Lessee shall ensure that such work is completed by licensed and experienced

contractors in a professional and workmanlike manner. Such additional facilities and/or improvements shall become part of Lessee's Property. It is the City's desire that the Property and the improvements to be installed thereon by Lessee will be reasonably compatible with the landscape of the City's adjacent property. To this end, Lessee agrees to comply with all reasonable requirements with the City may impose on Lessee, 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 Lessee's plans, Lessee may terminate this Lease. In such event, Lessee shall vacate the Property in accordance with the provisions of Section 20 of this Lease._

**6.4** Lessee shall not commit nor permit waste, damage or injury to the Property.

**6.5** Lessee'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. Should Lessee ever be denied access to the Property by any person or entity holding rights to the access roads and such denial of access continues for more than ten (10) consecutive days, Lessee shall have the right to terminate this Lease upon written notice to the City.

**6.6** Lessee shall maintain and repair all aspects of the Property at Lessee's sole cost and expenses, including but not limited to, fences, 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. 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 owned by the City, unless such damages are caused by the City and not covered by insurance maintained by Lessee. Subject to Force Majeure Events (as defined in Section 20 below), if Lessee refuses or neglects to commence repairs or perform maintenance work required under the terms hereof to be performed or paid for by the Lessee 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 Lessee's operations by reasons thereof, and if the City makes such repairs or performs such maintenance, Lessee 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 Lessee. Any repairs made or maintenance performed by Lessee or the City, subject to Force Majeure Events, shall be completed expeditiously.

**6.7** All electric current, cable, and communications services supplied to the Property are separate metered, and Lessee shall pay the cost of all electricity and other utility services provided to it directly to the supplying utility company. Lessee shall be solely responsible for all other costs relating to the operation of the Property.

**6.8** Lessee has inspected the Property and accepts the Property in its present condition. Lessee agrees that the condition of the Property is sufficient for the purposes of the Lessee. 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 Lessee, the City shall have no obligation to repair the Property nor to otherwise make the Property usable or occupiable; damages shall be at the Lessee'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 Lessee, the Lessee 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.

**6.9** 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.

**6.10** City shall have no obligation or liability for compliance with any laws, rules, regulations, codes and ordinances applicable to the installation, operation, repair, or maintenance of the Property; any damage to the Property, or any other installed equipment, caused by any other tenant or user of the Property, or any other cause outside of the reasonable control of City; or the failure of any services or utilities that are obtained by the Lessee. City shall have no obligation to license or maintain the Property.

**6.11** Lessee acknowledges that all activities conducted on the Property are inherently dangerous; Lessee, on behalf of itself and its employees, agents, invitees, guests, and contractors, assumes the risk of all injuries and damages resulting from Lessee's use and conduct on the Property and Lessee shall take all necessary safety measures to ensure that Lessee's employee's, agents, invitees, guests, and contractors are not injured in conjunction with using or conducting activities on the Property or on adjacent property.

**7. Insurance.** Lessee shall keep the following required insurance policies in full effect during the Lease Term, and shall pay the premiums of the costs of:

**7.**1 "All Risk", "Special Causes of Loss", or other casualty insurance for fire, wind, and extended coverage insurance with respect to the Property, on a cost

replacement basis, by endorsement, additional premium, or otherwise, for loss of rents with regard to the Property.

**7.2** Comprehensive commercial general liability insurance 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 Lessee and employees, agents, licensees and guests of Lessee. Such insurance policy shall have terms and amounts approved by the City Manager or his designee 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.

**7.3** Worker's compensation insurance in statutory limits, and state disability insurance as required by applicable law, covering the employees.

**7.4** Employer's liability insurance in the following amounts: not less than $500,00 for bodily injury by accident and $500,000 for bodily injury by disease.

**7.5** Other reasonable coverage as City, or any mortgagee of City, may require with respect to the Property, or City's use, occupancy, and operation, in, on, or around such Property.

**8. Nonliability of the City for Damage.**

**8.1** The City shall not be liable for liability or damage claims for injury to persons or property, including property of Lessee, from any cause relating to the occupancy and use of the Property by Lessee, 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 of this Lease or any extension thereof nor for any injury or damage to any property of Lessee, unless such liability or damage is caused by the willful misconduct of the City and is not covered by the insurance to be maintained by Lessee under this Lease or any insurance maintained by Lessee. Lessee shall indemnify the City, its officers, employees and agents, and hold the City, its officers, employees and agents, from all liability, loss or other damage claims or obligations resulting from any injuries, including death, or losses of any nature caused by Lessee or its employees and agents.

**8.2** The City shall not be liable to Lessee for any damages or any loss of profits or loss of opportunities claimed by Lessee for interruption of Lessee'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.

**9. Permits.** Lessee, at its sole expense, shall obtain and comply with all necessary governmental permits, certificates, and licenses required for the installation, operation, repair, maintenance, and authorization of the Property, or any additional equipment or property.

**10. Radio Frequency Radiation.** Lessee shall comply with all federal, state, and local regulations and requirements limiting emissions of radio frequency ("RF") radiation. If City or Lessee receives any written complaint or court order alleging or finding excessive RF radiation levels from equipment on the Property, Lessee shall take all steps required by such written complaint or court order within 24 hours after notification by City, or personal receipt of such written complaint or court order. Lessee may contest any such written complaint or court order at its own cost, provided that Lessee shall continue to maintain RF radiation levels below the amount specified in any such written complaint or court order pending the resolution of it, whether by dismissal, stipulation, adjudication, or other action.

**11. Modifications, Alterations or Additions.** No modifications, alterations or additions of improvements upon the Property, shall be performed by Lessee without the express written consent of the City first being obtained, which consent shall not be unreasonably withheld, conditioned or delayed.

**12. Pledges.** Lessee 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.

**13. Hazardous Substances.**

**13.1** The term "Hazardous Substances", as used in this Agreement, 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 Agreement, 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 Lessee or the Property and pertaining to the protection of human health and safety of the environment, either now in force or hereafter enacted.

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

**a.** any violation of any Environmental Law on, under or about the Property or arising from Lessee'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.

## 14. Environmental Clean-Up.

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

**a.** Lessee shall, at Lessee's sole cost and expense, comply with all Environmental Laws and laws regulating the use, generation, storage, transportation or disposal of Hazardous Substances;

**b.** Lessee shall, at Lessee'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 Lessee on, under or about the Property, Lessee shall, at Lessee's sole cost and expense, prepare and submit the required plan(s) and all related bonds and other financial assurances, and Lessee shall carry out all such clean-up plan(s) in compliance with the Authorities and all Environmental Laws and other applicable laws;

**d.** Lessee shall promptly provide all information regarding the use, generation, storage, transportation or disposal of Hazardous Substances requested by any Authority. If Lessee fails to fulfill any duty imposed hereunder within a reasonable time, the City may do so on Lessee's behalf and in such case, Lessee 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 Lessee's use thereof, and for compliance therewith, and Lessee 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 Lessee's obligations hereunder.

**e.** Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

**14.2** Lessee 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 Lessee and/or Lessee's agents, guests, invitees, contractors, licensees and employees that occur with respect to the Property during the term of this Lease or any extension thereof, or from Lessee'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. Lessee's obligations and liabilities hereunder shall survive the expiration or termination of this Lease Agreement.

## 15. Default, Sublet, Termination, Assignment.

**15.1** Should Lessee:

**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 Lessee; 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 Lessee'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 Lessee of any covenant or agreement to be performed by Lessee. Upon reentry, the City may remove the property and personnel of Lessee and store Lessee's property in a warehouse or at a place selected by the City, at the expense of Lessee 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 Lessee 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 Lessee 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 or any other rights or remedies which the City may have against Lessee, including but not limited to, the right of the City to obtain injunctive relief based on the irreparable harm caused to the City's reversionary rights.

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

**15.3** Lessee 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 Lessee, 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, Lessee 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 Lessee shall be void and shall, at the option of the City, provide reasonable cause for the City to terminate this Lease. The interest of Lessee 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, Lessee 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 Lessee, is under common control with Lessee or which controls Lessee. Upon written consent from the City, which consent shall not be unreasonably withheld or delayed, Lessee 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.

**15.4** 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 Lessee's leasehold interest in the Property. In the event of the voluntary or involuntary transfer of the City's interest in the Property, Lessee 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.

**16. Fees or Commissions.** The parties to this Lease Agreement 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 Lessee 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.

**17. Notices.**

**17.1** 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

To Lessee: North Fork Valley Public Radio, Inc.
c/o General Manager
PO Box 1350
Paonia, CO 81428

All notices shall be deemed given:

**a.** if sent by mail, when deposited in the mail;

**b.** if delivered by hand or courier service, when delivered; or

**c.** if transmitted by facsimile, when transmitted.

The parties may, by notice as provided above, designate a different address to which notice shall be given.

**17.2** All Lease payments paid by Lessee to the City shall be delivered by mail or by personal delivery to:

City of Grand Junction Finance Department

Accounts Receivable Department

250 North 5th Street

Grand Junction, CO 81501-2668

All rental payments deposited by Lessee shall be clearly marked "North Fork Valley Public Radio, Inc. Broadcasting Lease."

**18. Not a Partnership.** It is expressly agreed between the parties that this Agreement is one of lease and not of partnership and that the City shall not be or become responsible for any debts contracted or incurred by Lessee. Lessee shall save, indemnify and hold the City, its officers, employees and agents harmless against all liability and loss, and against all claims or actions based upon or arising out of any claim, lien, damage or injury (including death), to persons or property caused by Lessee or sustained in connection with Lessee's performance of the terms and conditions of this Agreement or the conditions created thereby, or based upon any violation by Lessee, any statute, ordinance, code or regulation, either now in force or hereafter enacted, and the defense of any such claims or actions, including the costs and fees of attorneys, consultants and experts. Lessee shall also save, indemnify and hold the City, its officers, employees and agents harmless from and against all liability and loss in connection with, and shall assume full responsibility for the payment of, all federal, state and local taxes, fees or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to employees engaged by Lessee.

**19. Enforcement, Partial Invalidity, Governing Law.**

**19.1** In the event either party files any action to enforce any agreement contained in this Lease, or for breach of any covenant or condition herein contained, the party prevailing shall be entitled to receive, by judgment of the court from the other party, reasonable attorney's fees, plus the costs or fees of any experts, incurred in such action.

**19.2** The invalidity of any portion of this Lease Agreement shall not affect the validity of any other provision contained herein. In the event any provision of this Lease Agreement is held to be invalid, the remaining provisions shall be deemed in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provisions.

**19.3** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action to enforce any covenant or agreement contained in this Agreement shall be in Mesa County, Colorado.

**20. Surrender, Holding Over.** Lessee 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, Lessee shall remove within thirty (30) days after the last day of the Lease Term, any or all of Lessee's Property, as Lessee elects in a notice to the City. Upon the removal of any of Lessee's Property, Lessee shall restore and re-seed that part of the Property disturbed by such removal as soon as possible. It is agreed that the 30-day period for the removal of Lessee'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 Lessee's reasonable control (each, a "Force Majeure Event"). In the event Lessee fails to vacate and surrender the Property as provided in this Section, Lessee agrees that Lessee shall pay to the City the sum of $100.00 per day for each and every day thereafter until Lessee 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 Lessee fails to vacate and surrender the Property upon the expiration or termination of this Lease and that said $100.00 daily fee is an appropriate liquidated damages amount.

**21. Non-Exclusive Use.** Lessee acknowledges and agrees that City, at its sole discretion, has the right to use the Property and the to grant other licenses, leases, or rights of use, of any kind or nature, to parties other than Lessee, provided that no such uses interfere with Lessee's operation of Lessee's rights under this lease.

**22. Estoppel Certificate.** Lessee will at any time and from time to time, upon not less than five days' written notice from City, execute, acknowledge, and deliver to City a statement in writing certifying (i) that this lease is unmodified in full effect (or, if modified, stating that nature of such modification and certifying this Lease, as modified, is in full effect), (ii) that there are not, to Lessee's knowledge, any uncured defaults on the part of the City or Lessee under this lease, or specifying such defaults, if any are claimed, and (iii) as to any other matters as City may reasonably request. Any such statement may be relied upon by any prospective purchaser, mortgagee, or creditor of all or any portion of the Tower and the Building.

**23. Binding Effect.** To the extent allowed by this lease, this lease shall extend to and be binding upon the heirs, executors, legal representatives, successors, and assigns of the respective parties to this lease.

**24. No implied Waiver.** City's failure to insist in any one or more instance upon strict performance by Lessee of any of the terms of this lease shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any terms of this lease.

**25. Limitation on Personal Liability of City.** Notwithstanding anything to the contrary contained in this lease, it is understood and agreed that there shall be no personal liability on the part of the City or any of its beneficiaries, successors, or assigns, with respect to any of the terms, covenants, and conditions of this lease. Lessee shall look solely to the equity of the City in the Tower and the Building in the event of any default or liability of City under this lease. Any exculpation of liability is to be absolute and without any exception.

**26. Authority of Lessee.** Each individual executing this lease on behalf of Lessee represents and warrants that he or she is duly authorized to deliver this lease on behalf of Lessee and that this lease is binding upon Lessee in accordance with its terms.

**27. Time of the Essence.** Time is of the essence under this lease, and all provisions in this lease relating to it shall be strictly construed.

**28. 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.

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

**CITY OF GRAND JUNCTION,**

By: _____

Greg Caton

City Manager

ATTEST:

By: _____

Deputy City Clerk

Date: 12-16-2019

**NORTH FORK VALLEY PUBLIC RADIO, INC.,**

By: _____

Pam Ellison

Interim General Manager

ATTEST:

By: _____

BUSINESS SUPPORT MANAGER
ASHLEY KREST

Date: _____

Exhibit A

A 5-acre parcel of land surrounding the following described latitude and longitude point situate in the Northeast quarter of Section 32, Township 11 South, in Range 97 West of the Sixth Principal Meridian, Mesa County, Colorado:

North Latitude 39 º 02' 55"
West Longitude -108º 15' 06"

Said 5 acre parcel of land is specifically described as follows:

Beginning at the Northeast corner of said parcel from when U.S.G.L.O. Monument set for East quarter corner of said Section 32 bears South 48 º 28' 02" East 720.01 feet, with all bearings herein being relative to a solar observation of true North; thence North 90º 00' 00" West 466.69 feet; thence South 00º 00' 00" East 466.69 feet; thence South 90º 00' 00" East 466.69 feet; thence North 00º 00' 00" East 466.69 feet, containing 5.00 acres, more or less.

Said 5 acre parcel above described is located in Section 32 as shown on U.S. Department of the Interior Geological Survey Map - Palisade, Colo. N3900 - W10815/7.5 - 1962 - AMS 4362 111SE Series V877.

The transmitting tower is located at the above referenced North latitude and West longitude point.