

LEASE AGREEMENT

THIS Lease Agreement (“**Lease**”) is made and entered into as of this 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 (“**Landlord**” or “**City**”) and **Optimus Communications, LLC**, 288 28 Road, Grand Junction, CO 81503 (“**Lessee**”).

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 is hereinafter collectively referred to as “the Property”.

B. Lessee has agreed to purchase from the City a broadcast tower facility, equipment building with associated equipment, cable and facilities that are located on the Property pursuant to a Purchase and Sale Agreement (“**PSA**”) dated as of March 1, 2021, the terms of which are incorporated herein and made a part hereof. Lessee desires to lease the Property upon which the purchased property is located from the City to operate the telecommunications transmitting tower, transmission building and associated equipment, cable and facilities located on, along, over and upon the Property described in Exhibit A and to erect thereon another small 30 (thirty) foot communications tower.

C. The City has agreed 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 and of the PSA.

NOW, THEREFORE, in consideration of the recitals above and the terms, covenants, conditions and restrictions contained herein and of the PSA, 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 term stated in Section 3 and subject to each and every other term, covenant, condition and restriction stated in this Lease and of the PSA.

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; and

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; and

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 that in no way interfere with or compromise Lessee’s intended use of the Property, subject to the terms of this Lease, and further provided that no such interest(s) shall be so granted to a telecommunications competitor of the Lessee, with the exception of the existing Tower Space Lease Agreement dated as of the 1st day of November, 2019, between the City and North Fork Valley Public Radio, Inc.; 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. Lessee hereby assigns and transfers to the City any claim it may have to compensation for damages as a result of any condemnation, except compensation for damages of Lessee's property and interests under this Lease 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 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 twenty-five (25) years (the "Basic Term"), commencing on the 1st day of March 2021 (the "Commencement Date") and continuing through the 28th day of February 2046 on which date this Lease shall expire unless sooner terminated as herein provided.

4. Option to Extend Lease. (Deleted)

5. Lease Amount. Lessee agrees to pay to the City, at the address of the City as set forth in Section 18.1 or at such other address as the City may from time to time designate in writing, an Lease payment for the use of the Property in monthly installments.

5.1 The monthly Lease payment during the Term of this lease shall be two hundred and fifty dollars (\$250.00) payable on the 1st day of each month commencing on March 1, 2021.

5.2 In the event lease payments are not received on or before the tenth day after payment is due, Lessee agrees to pay a late charge of \$20.00 for each and every day thereafter, which late charge shall be added to the amount of the lease payment due. If Lessee is more the thirty (30) days delinquent the City may, at its option, give Lessee sixty (60) days written notice of intent to terminate, and if the Lessee fails within any such sixty (60) day period to cure the delinquency, this Lease shall terminate and take possession of the Property.

6. Use and Condition of Property.

6.1 During the Term of this Lease, Lessee agrees to use the Property solely for the purpose of installing, constructing, operating and maintaining television, radio, cable, antenna systems, transmission lines, microwave, telephone and cellular 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.

- 6.2** Except as otherwise provided herein, Lessee shall have use and possession of the Property subject only to third party grazing rights and the terms and conditions of that certain existing Tower Space Lease Agreement dated as of the 1st day of November 2019, between the City and North Fork Valley Public Radio, Inc., which Lessee agrees to assume and perform as provided therein.
- 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 21 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 main access road to the Property. 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. Livestock shall have the right of way over the Lessee's vehicles at all times.
- 6.6** The City shall have no responsibility for improving, maintaining or repairing the access road beyond the junction leading to the Property. It is the City's intent that the access road leading to the Property remain in a rugged condition that will discourage access by the general public. In the event the access road deteriorates to the extent that it is impassible (to be determined solely by the City), the City may allow the Lessee to perform certain repairs to make the access road passible. The Lessee agrees that it shall not make any improvements to the access road nor perform any repairs to the access road without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.
- 6.7** The Lessee shall keep all closed gates now and hereafter to be located upon the City's property closed and locked; provided, however, that the Lessee shall be responsible for ensuring that the City has copies of keys to all locks installed by the Lessee on gates located across the road, and the City shall make available to the

Lessee copies of keys to all locks installed by the City on gates located across the road.

- 6.8** Lessee, Lessee's employees, agents, contractors, subcontractors and assigns shall have access to the Property at all times for the sole purpose of maintaining and operating its facilities and/or equipment. Such access shall be conducted in a manner as to not interfere with the City's use of its properties served by the access road.
- 6.9** Lessee shall maintain and repair all aspects of the Property at Lessee's sole cost and expenses, including but not limited to, the transmission line or radio equipment or other equipment furnished by the Lessee, 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 in accordance with any 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 FCC, the State of Colorado and the County of Mesa. The City shall not be obligated nor required to repair damages to any portion or aspect of the Property, 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 19 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.
- 6.10** Lessee is responsible for providing utilities to the Property and Lessee's facilities and shall be solely responsible for the costs of such utilities and all other costs relating to the operation of the Property.
- 6.11** Lessee has inspected the Property and accepts the Property in its present condition. Lessee represents that 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. 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 that it is no longer

functional for the purposes of the Lessee, or upon the occurrence of a Force Majeure Event, 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. As used herein the term "Force Majeure Event" means and act or event whether or not foreseen, that: (i) is beyond the reasonable control of, and is not due to the fault or negligence of a party, and (ii) could not have been avoided by such a party's exercise of due diligence, including, but not limited to, a labor controversy, strike, lockout, boycott, transportation stoppage, action of a court or public authority, fire, flood, earthquake, storm, war, civil strife, terrorist action, epidemic, or act of God; provided that a Force Majeure Event will not include economic hardship, changes in market conditions, or insufficiency of funds.

6.12 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.

6.13 The 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 user of the Property, or any other cause outside of the reasonable control of the City; or the failure of any services or utilities that are obtained by the Lessee.

6.14 Lessee acknowledges that some 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 employees, agents, invitees, guests, and contractors are not injured in conjunction with using or conducting activities on the Property or on adjacent property.

7. Additional Fees and Charges. In addition to making Lease payments, Lessee 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 of this Lease.

8. 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:

8.1 "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.

- 8.2 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.
- 8.3 Worker's compensation insurance in statutory limits, and state disability insurance as required by applicable law, covering the employees.
- 8.4 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.
- 8.5 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.

9. Nonliability of the City for Damage.

- 9.1 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 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.
- 9.2 The City shall not be liable to Lessee for any damages or any loss of profits or loss of opportunities claimed by Lessee or 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. Hazardous Substances.

14.1 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.

14.2 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.

15. Environmental Clean-Up.

15.1 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.

15.2 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 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.

16. Default, Sublet, Termination, Assignment.

16.1 Should Lessee:

- a. materially default in the performance of its agreements or obligations herein and any such default continue without cure after written notice thereof is given by the City to Lessee as provided herein; or
- b. abandon or permanently 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 may at its option, after compliance with Section 16.2, elect to cancel and annul this Lease and enter and take possession of the Property immediately without any additional 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.

- 16.2** Except as set forth in Section 5, if Lessee is in material 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 Lessee fails within any such ninety (90) day period to remedy each and every material default specified in the City's notice, this Lease shall terminate.

16.3 Lessee may rent to other telecommunication entities space in the building for telecommunication related equipment and the right to broadcast from the towers. Except for such rental and except as otherwise provided herein 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 and those of the aforementioned North Fork Valley Public Radio, Inc., 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 unauthorized 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.

16.4 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.

17. 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.

18. Notices.

18.1 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 Lessee: Optimus Communications, LLC
Attn: Mark McGowan, Managing Member
288 28 Road
Grand Junction, CO 81503

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.

- 18.2** 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 "Optimus Communications Lease."

19. 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.

20. Enforcement, Partial Invalidity, Governing Law.

- 20.1** 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.

- 20.2** 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.
- 20.3** 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.
- 20.4** Lessee represents and warrants that it has full right, power, an authority to execute this Lease Agreement, has obtained all necessary approvals and consents, and has taken all necessary action to enable Lessee to enter into this Lease Agreement.

21. 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. Thereafter, Lessee shall complete removal of any or all of Lessee's Property, including but not limited to decommissioning and/or demolishing the structures that encumber the Property, as Lessee elects in a notice to the City. Such removal, decommissioning and/or demolishing shall occur within two months of termination unless weather conditions do not permit in which case Lessee shall complete removal, decommissioning and/or demolishing within two months of permissible weather conditions the following year. 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, provided that foundations may be buried onsite and upon such burial, Lessee shall seed for grass (for grazing and aesthetic reasons). It is agreed that the period for the removal of Lessee's Property shall be further 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, but not to exceed \$2,400. 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 is an appropriate liquidated damages amount.

22. Total Agreement; Applicable to Successors. This Lease and the above-reference PSA contain 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.

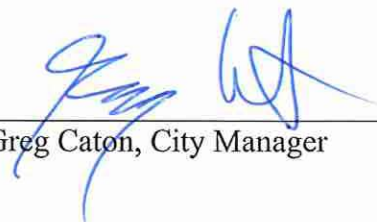
IN WITNESS WHEREOF, the parties have each executed this Lease Agreement dated the day and year first above written.

LANDLORD:

LESSEE:

CITY OF GRAND JUNCTION, a Colorado home rule municipality,

OPTIMUS COMMUNICATIONS, LLC., a limited liability company,

By: 
Greg Caton, City Manager

By: 
Mark McGowan, Managing Member

ATTEST:

ATTEST:

By: 
City Clerk

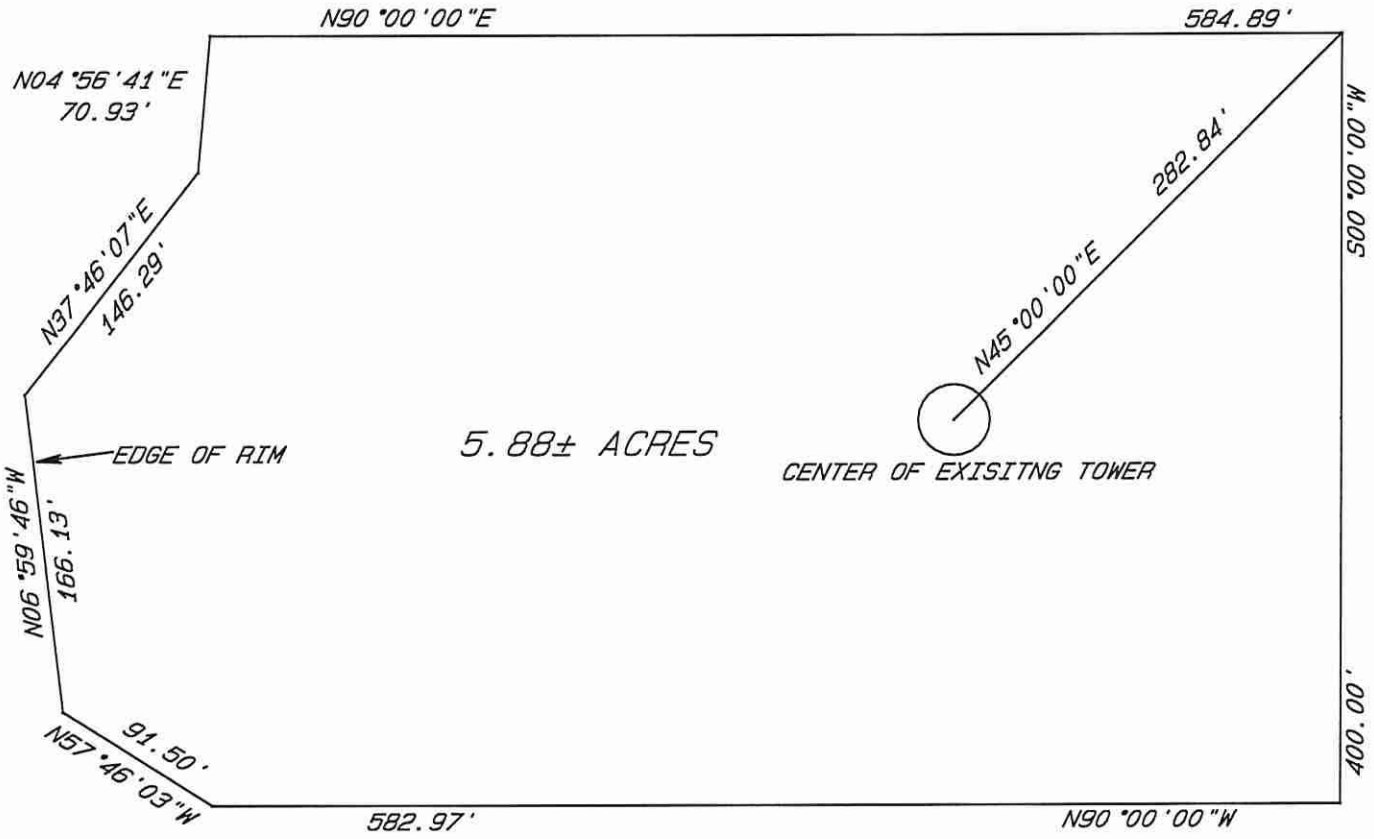
By: _____

Date: 02/23/2021

Date: _____



Exhibit A



SCALE 1" = 100'

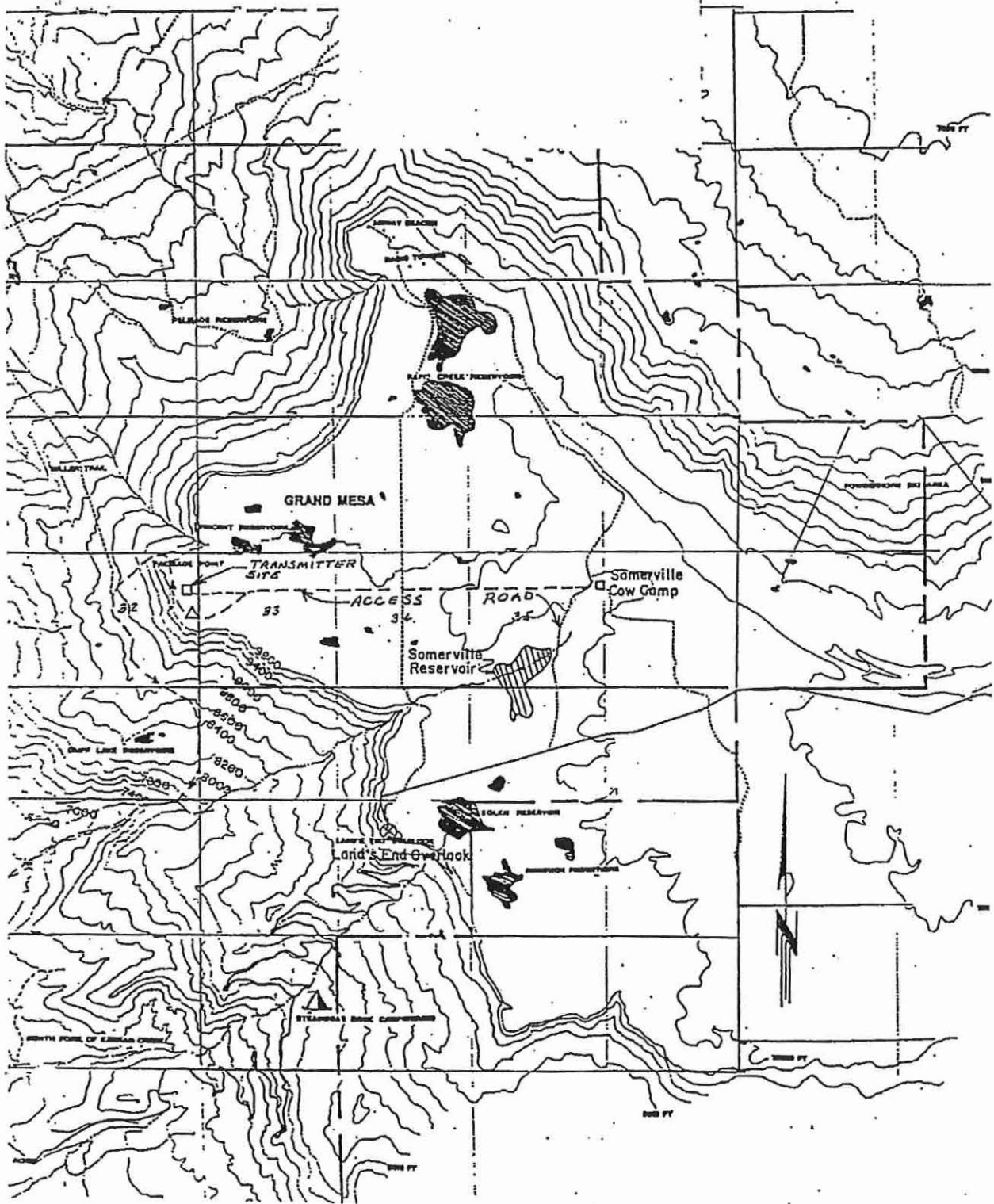
A parcel of land situate in the NE 1/4 Section 32, Township 11 South, Range 97 West of the 6th Principal Meridian, Mesa County, Colorado being described as follows;
Commencing at the center of the concrete base of an existing tower;
thence N45°00'00"E a distance of 282.84 feet to the Point of Beginning;
thence S00°00'00"W a distance of 40.00 feet;
thence N90°00'00"W a distance of 582.97 feet more or less to the rim of Grand Mesa;
thence N57°46'03"W a distance of 91.50 feet along said rim;
thence N06°59'46"W a distance of 166.13 feet along said rim;
thence N37°46'07"E a distance of 146.29 feet along said rim;
thence N04°56'41"E a distance of 70.93 feet along said rim;
thence N90°00'00"E a distance of 548.89 feet to the Point of Beginning;
Said parcel contains 5.88 acres more or less.

CENTER OF BASE

LATITUDE = 39°02'57.05"N

LONGITUDE = 180°15'06.20"W




Access Road: Beginning at a point from whence the U.S.G.L.O. Brass Cap Monument set for the East 1/4 corner of said Section 32 bears S 48°28'02" E a distance of 720.01 feet; thence running generally Easterly through Sections 32, 33, 34 and 35 in said Township and Range to a point in the Northeast Quarter of said Section 35; thence Southerly through said Section 35 to the U.S. Forest boundary, all as presently established on the ground and as shown on the attached Exhibit "A"



Lease area

Write a description for your map.

Legend

-  KJCT-TV (Grand Junction)
-  Lands End 2
-  Lease Area

