

**ORDINANCE NO. 5109**

**AN ORDINANCE AUTHORIZING, APPROVING AND CONFIRMING A LEASE TO OPTIMUS COMMUNICATION FOR USE OF REAL PROPERTY LOCATED AT 244 26 1/4 ROAD, GRAND JUNCTION, COLORADO (COMMONLY KNOWN AS THE WATER TREATMENT PLANT) FOR AN ANTENNA AND COMMUNICATION EQUIPMENT AND RATIFYING ALL ACTIONS HERETOFORE TAKEN AND IN CONNECTION THEREWITH**

Recitals:

The City of Grand Junction (City) owns property located at 244 26 1/2 Road in Grand Junction ("Property"). The Property, which is home to the City's Water Treatment Plant is on Orchard Mesa and at an elevation that is conducive to the placement of communications equipment.

The City Utility Department has negotiated with Optimus Communication and for the reasons described in the lease, the City and Optimus have agreed to certain terms and conditions for the use of the Property. In accordance with the lease, which is attached to and incorporated in this Ordinance ("Lease") as if fully set forth the City and Optimus desire to enter into contract.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO AS FOLLOWS:

1. The foregoing Recitals are incorporated and adopted and in accordance with and pursuant to this Ordinance the City Council of the City of Grand Junction, Colorado hereby authorizes, confirms, and ratifies the Lease; and,
2. All actions heretofore taken by the officers, employees and agents of the City relating to the leasing of the Property as described or referred to herein and which actions are consistent with the provisions hereof are hereby ratified, approved, and confirmed; and,
3. The Lease in the form attached hereto is hereby approved. The City Manager and the officers, employees and agents of the City are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions hereof, including, without limitation, the execution and delivery of the signature(s) to affect the intent and purposes hereof.
4. If any part or provision of this Ordinance or the application thereof to any person or circumstance(s) is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or application, and to this end the provisions of this Ordinance are declared to be severable.
5. The City Council finds and declares that this Ordinance is promulgated and adopted for the public health, safety and welfare and this Ordinance bears a rational relation to the lawful objectives sought to be obtained.

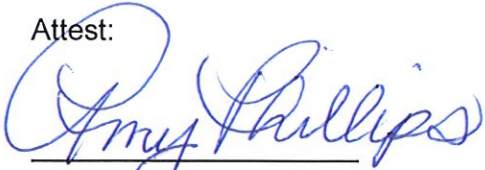
INTRODUCED ON FIRST READING, PASSED for publication this 2nd day of November 2022 in pamphlet form, and setting a hearing for November 16, 2022, by the City Council of the City of Grand Junction, Colorado.

HEARD, PASSED and ADOPTED ON SECOND READING and ordered published in pamphlet form this 16<sup>th</sup> day of November 2022 by the City Council of the City of Grand Junction, Colorado.



Anna M. Stout  
President of the City Council

Attest:



Amy Phillips  
City Clerk



**PROPERTY LEASE AGREEMENT FOR ANTENNA AND COMMUNICATION  
EQUIPMENT**

THIS Lease Agreement ("Lease") is made and entered into as of this \_\_\_ day of \_\_\_ 2022, by and between the **City of Grand Junction**, a Colorado home rule municipality, 250 N. 5<sup>th</sup> Street, Grand Junction, CO, 81501 ("Landlord" or "City") and **Optimus Communications**, 288 28 Road, Grand Junction, CO 81503 ("Lessee").

Recitals

- A.** The City is the owner of certain real property in the Grand Junction Colorado addressed as 244 26 $\frac{1}{4}$  Road, Grand Junction, Colorado and more specifically described in paragraph 3 ("Property"), and as seen in the photographs of the location on the Property where the antenna and communication equipment ("Equipment") will be located. The photographs are marked as Exhibit A, which is incorporated by this reference as if fully set forth.
- B.** 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.

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 term stated in paragraph 5 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; 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; 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 because of any condemnation, except compensation for damages of Lessee's property and interests under this Lease actually so taken.

e. 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. Lessor, for good and valuable consideration described herein, and the covenants and agreements to be kept and performed by the Lessee as hereinafter provided, does hereby lease, and let unto the Lessee, space for Lessee's Equipment (which is generally described as radios, antennas and associated equipment more specifically described hereafter) on the existing tower attached to the water treatment building located (See Exhibit A) on the Property. The existing tower may be referred to herein as "Site" or "the Site":

LOTS 1, 2 & 3 & S2SW4NE4SW4 SEC 26 1S 1W EXC RR ROW  
More commonly known as 244 26 ¼ Road, the location of which on the Property is set forth on Exhibit A attached hereto.

Lessee must install, furnish, and maintain the Equipment on the Property in accordance with the most recent, applicable Federal Communications Commission (FCC) regulations.

4. **Lease Amount.** Lessee agrees to pay to the City, at the address of the City as set forth in paragraph 19 or at such other address as the City may from time to time designate in writing, a Lease payment for the use of the Property in monthly installments.
- a. The annual Lease payment during the Term of this lease shall be six hundred dollars (\$600.00) payable on the first day of each year commencing on January 1, 2023.
  - b. The Landlord shall invoice the Lessee in January for the next years payment.
  - c. If Lessee is more than sixty (60) 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 without additional notice terminate and

Lessor shall take possession of the Property.

5. **Term:** The term of this Agreement shall commence upon the Effective Date and shall terminate on the third anniversary of the Effective Date ("Term"). The Term may be extended for three (3) three (3) year periods ("Renewal Terms") on the same terms and conditions as set forth herein except that that Lease Amount shall be adjusted for inflation as provide in 4a. hereof The Agreement will be extended for each successive Renewal Term unless Lessee notifies Lessor of its intention not to renew at least thirty (30) days prior to commencement of the succeeding Renewal Term. Lessor may terminate this Agreement with six (6) months prior notice to Lessee. All notices must be delivered in writing with proof of delivery.
6. **Access:** Lessor shall provide Lessee, Lessee's employees, agents, contractors, subcontractors and assigns with reasonable access to the Property for the sole purpose of maintaining its equipment from time to time during normal business hours. Lessee shall only have access between 6:00 a.m. to 4:00 p.m. Such access shall be conducted in such a manner as to not interfere with Lessor's use of the Property or conduct of its business. Lessee will not have unrestricted access to the property and will not be provided keys (mechanical or electronic) to the access gate or buildings. Lessor will be reasonably available to escort Lessee on the property provided the time does not interfere with the conduct of its business.
7. **Utilities:** Lessor agrees to provide uninterrupted electrical service to the Site, excepting interruptions caused by Force Majeure or by any occurrences or actions not constituting deliberate or negligent actions on the part of the Lessor. Lessee may make a connection to Lessor's pre-existing electrical system provided that any such connection shall (i) not interfere with Lessor's electrical needs, (ii) be performed by a duly licensed electrician, and (iii) be in a manner that is at all times in full compliance with any and all applicable laws, rules, codes, and regulations. Lessee shall furnish and maintain at its own cost and expense the Equipment, which may include antenna systems, transmission lines (cabling necessary to provide connection from the cabinet to the radio on the tower) and radio equipment necessary for the limited purpose of providing a microwave repeater location. The Equipment shall be used for, including without limitation, the transmission and the reception of radio communication signals and the installation, maintenance and operation of communications facilities directly related thereto attached to the Site. All Equipment installed by the Lessee shall be and remain the property of the Lessee. Upon the expiration or earlier termination of this Lease, Lessee shall remove the Lessee's Equipment from the Property and Lessee shall repair and restore the Property to the condition that existed prior to installation and removal of the Equipment.

**8. Use and Condition of Property.**

- a.** During the Term of this Lease, Lessee agrees to use the Property, including the Site, solely for the purpose of installing, constructing, operating and maintaining the Equipment for the Lessee's purposes, which occupancy and use 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, the City of Grand Junction or Mesa County. Lessee shall not use or permit the Property or the Site to be used for any other purpose or in any manner contrary to this Lease and/or the laws, ordinances, or regulations of any such governmental authority.
- b.** 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. Additional facilities would be limited to additional radios on the tower. Lessee shall ensure all work relating to installation and operation of all Equipment 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 Equipment to be installed by Lessee on the Property 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 paragraph 18.2 of this Lease.
- c.** Lessee shall not commit nor permit waste, damage, or injury to the Property.
- d.** Lessee shall maintain and repair all aspects of the Site at Lessee's sole cost and expenses, including but not limited to, the 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, the City of Grand Junction and/or Mesa County. . 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, 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.

- e. 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.
- f. 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.

- g. 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.
- h. 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.

9. **Additional Fees and Charges.** In addition to making Lease payments, Lessee shall arrange and pay for, when due:

- a. all costs and expenses, including but not limited to, deposits, user fees, interest, and penalties,
- b. 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.

10. **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:

- a. "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 regarding the Property.
- b. 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 City Manager is not at all times in full force and effect, this lease shall terminate effective thirty (30) days following the date of the notice of termination unless sooner corrected.
- c. Worker's compensation insurance in statutory limits, and state disability



insurance as required by applicable law, covering the employees, 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.

- d. 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.

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

- a. 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.
- b. 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.

**12. 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.

**13. 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.

**14. 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.

**15. 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.

**16. Hazardous Substances.**

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.

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

- e. 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

- f. 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.

**17. Environmental Clean-Up.**

The following provisions shall be applicable to Lessee and to Lessee's agents, ~~gas~~ 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 ("Authority" or "the Authorities") under Environmental Laws and other applicable laws.
- c. Should any Authority or the City demand 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.
- f. 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.

**18. Default, Sublet, Termination, Assignment.**

**18.1 Should Lessee:**

- a. 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 if a receiver is appointed, for all or substantially all of Lessee's assets;

the City may at its option, after compliance with paragraph 18.2, 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 therent 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 otherrights 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.

18.2 Except as otherwise provided in paragraphs 4b and 10b, if Lessee is in default in the performance of any term or condition of this Lease, the City may, at its option, terminate this Lease upon giving ninety (90) days written notice. If the 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.

- a. 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 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 paragraph 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.

18.3 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.

18.4 **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. To the extent allowed by law 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.

19. **Notices.**

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. 5<sup>th</sup> Street  
Grand Junction, CO  
81501-2668

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.

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 5<sup>th</sup> Street  
Grand Junction, CO 81501-2668

All rental payments deposited by Lessee shall be clearly marked "Optimus Communications Lease."

20. **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.

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

- a. 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.

- b. 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 after the expungement of the invalid provisions.
- c. 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.
- d. 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.

**18.1 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 paragraph, Lessee agrees that Lessee shall pay to the City the sum of \$10.00 per day for each 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 is an appropriate liquidated damages amount.



**18.2 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. The Lessor shall not be liable or responsible for the maintenance, preservation, or operational performance of the Equipment furnished by the Lessee. Furthermore, the Lessor shall not be liable to the Lessee for any damage to any of the Equipment of the Lessee caused by Force Majeure or by any occurrence(s) or action(s) not constituting deliberate or negligent action(s) on the part of the Lessor, provided that Lessee shall maintain its Equipment and the Site in a reasonably well-maintained condition.

DRAFT 10/18/2018

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

Lessor: City of Grand Junction  
250 N. 5th Street  
Grand Junction, CO

Lessee: Optimus Communications  
288 28 Road  
Grand Junction, CO, 81503

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Greg Caton  
City Manager

Mark McGowan  
Title: Managing Member

DRAFT 10/18/20

ACKNOWLEDGEMENT

STATE OF COLORADO )  
 ) §  
COUNTY OF MESA )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2022 by \_\_\_\_\_ as \_\_\_\_\_ of  
\_\_\_\_\_, personally known to me.

Notary Public \_\_\_\_\_  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

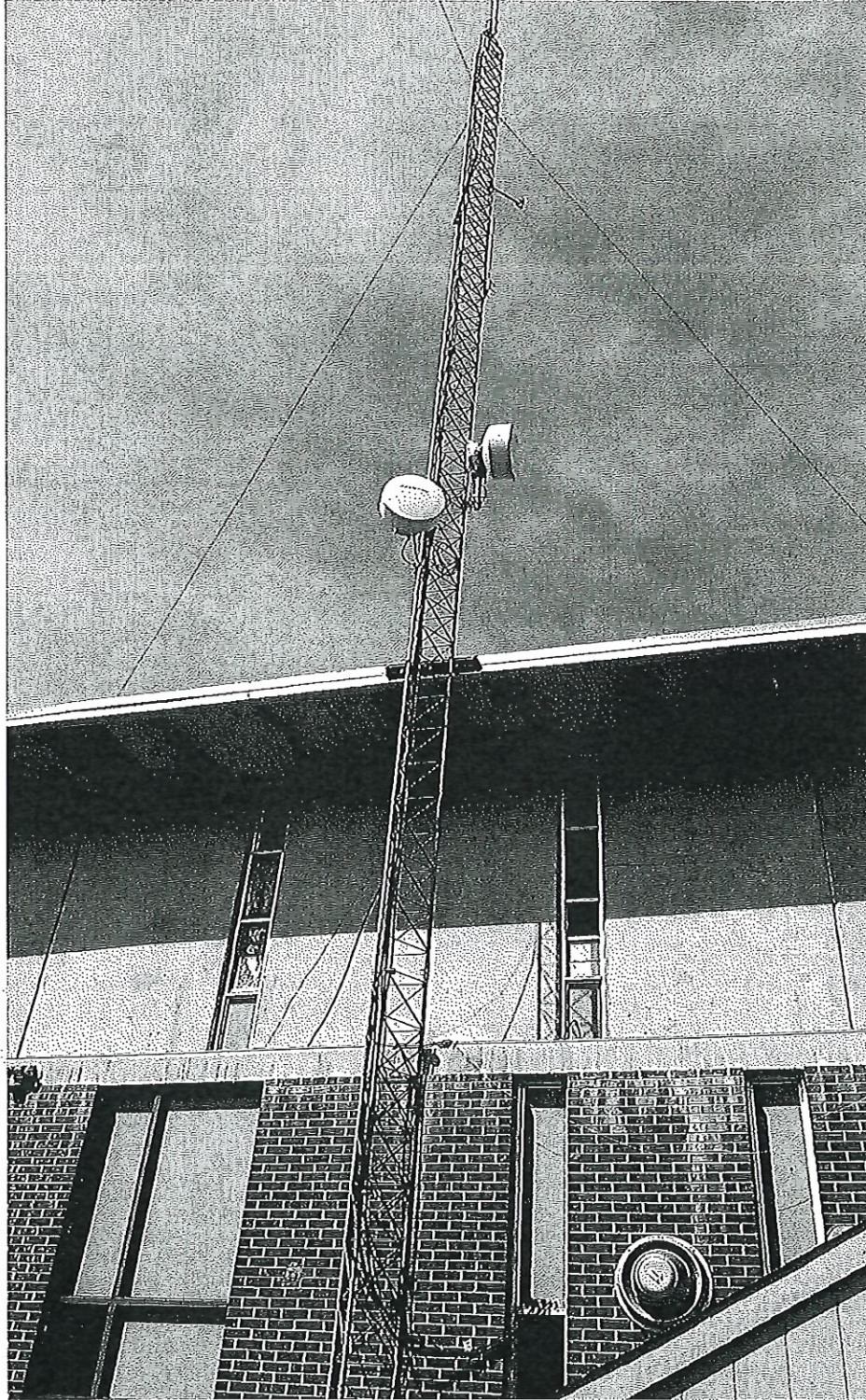
ACKNOWLEDGEMENT

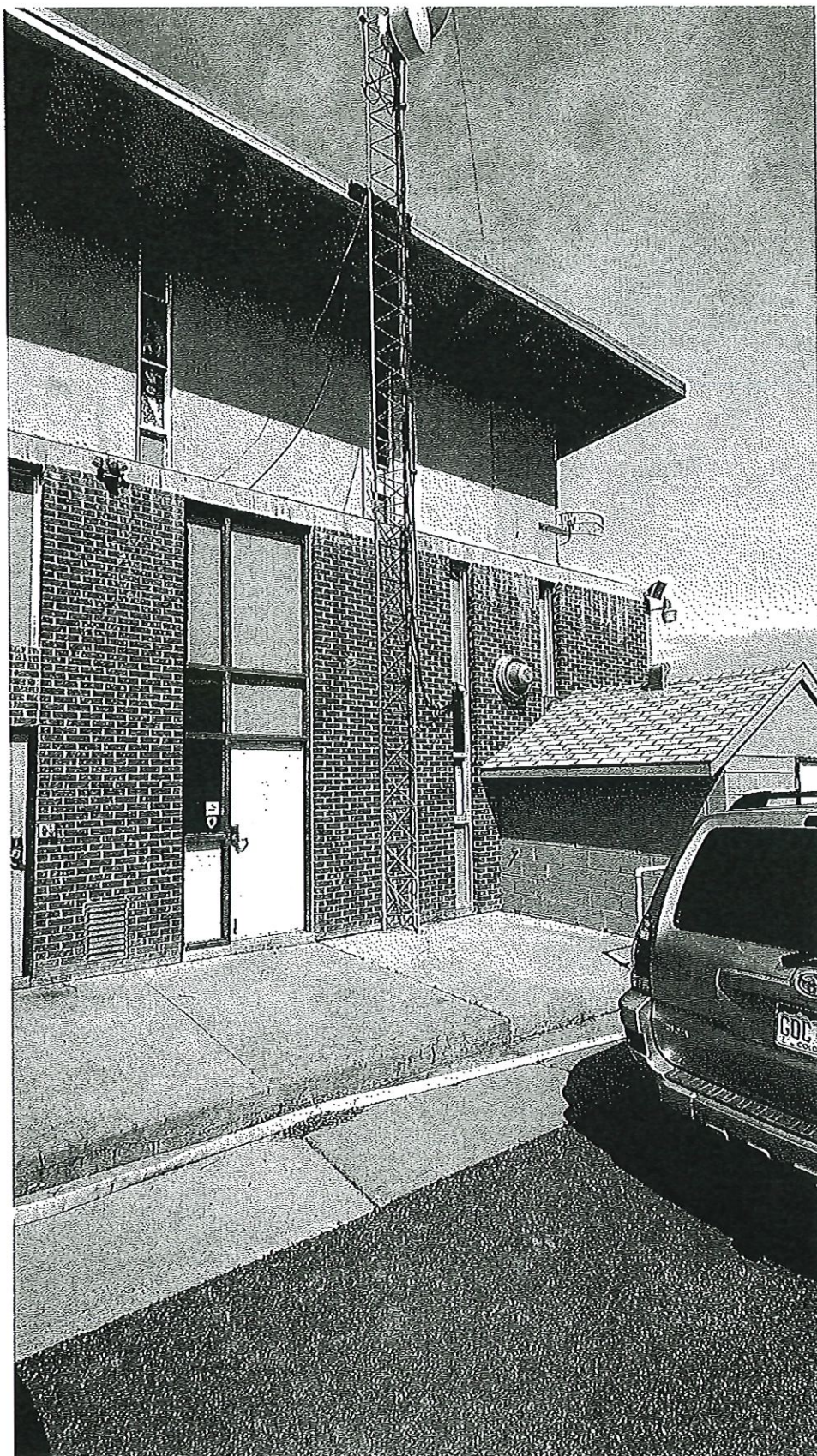
STATE OF COLORADO )  
 ) §  
COUNTY OF MESA )

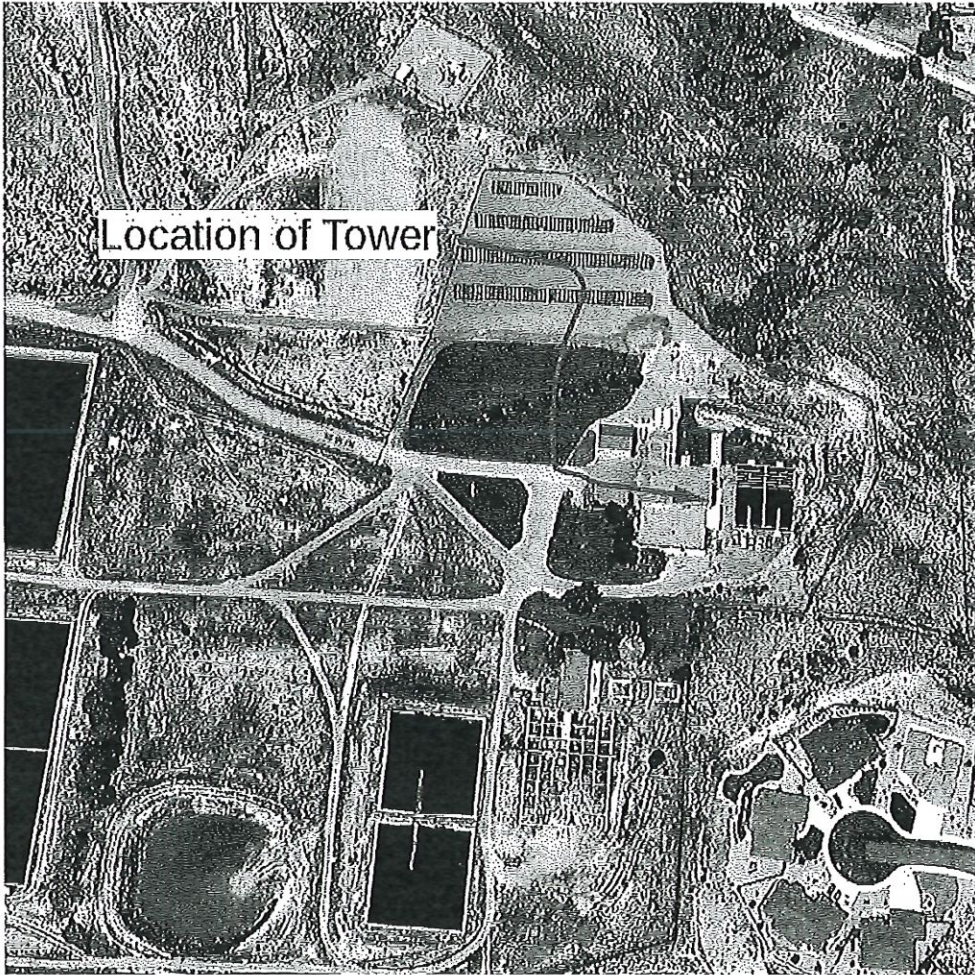
The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2022 by Mark McGowan as Managing Member of Optimus Communications, LLC., personally  
known to me.

Notary Public \_\_\_\_\_  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

**Exhibit A Tower – aka Site**  
**3 pages**







I HEREBY CERTIFY THAT the foregoing Ordinance, being Ordinance No. 5109 was introduced by the City Council of the City of Grand Junction, Colorado at a regular meeting of said body held on the 2<sup>nd</sup> day of November 2022 and the same was published in The Daily Sentinel, a newspaper published and in general circulation in said City, in pamphlet form, at least ten days before its final passage.

I FURTHER CERTIFY THAT a Public Hearing was held on the 16<sup>th</sup> day of November 2022, at which Ordinance No. 5109 was read, considered, adopted and ordered published in pamphlet form by the Grand Junction City Council.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 18<sup>th</sup> day of November 2022.

  
Deputy City Clerk

Published: November 4, 2022  
Published: November 18, 2022  
Effective: December 18, 2022

