

ORDINANCE NO. 15

SERIES 2021

AN ORDINANCE OF THE CRESTED BUTTE TOWN COUNCIL AUTHORIZING THE TOWN TO ENTER INTO A TELECOMMUNICATIONS FACILITIES SPACE LEASE AGREEMENT WITH VISIONARY COMMUNICATIONS, INC. FOR INTERNET SERVICE AT TOWN OWNED PROPERTIES LOCATED AT 801 BUTTE AVENUE, 508 MAROON AVENUE, AND 601 ELK AVENUE IN CRESTED BUTTE, COLORADO

WHEREAS, the Town of Crested Butte, Colorado (the "**Town**") is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and the laws of the State of Colorado; and

WHEREAS, the Town Council is authorized pursuant to § 14.4 of the Town Charter to sell and convey Town-owned property; and

WHEREAS, the Town is a party to a Telecommunications Facilities Space Lease with Internet Colorado, L.L.C. dated July 20, 2015, that was approved by the Town pursuant to Ordinance No. 3, Series 2015. The Town was negotiating with Internet Colorado in 2020 for the extension of this Lease for another five-year term; and,

WHEREAS, during these negotiations to extend the Lease, Internet Colorado sold its business and assets to Visionary Communications, Inc. and Visionary Communications desires to enter into this Agreement with the Town as the successor in interest to Internet Colorado on terms similar to the Town's prior Telecommunications Facilities Space Lease; and,

WHEREAS, the Town staff have recommended to the Town Council that the Town enter into the Telecommunications Facilities Space Lease Agreement with Visionary Communications in the form attached hereto as **Exhibit A**; and

WHEREAS, the Town Council hereby finds that it is necessary and suitable, and in the best interest of the Town and the health, safety and welfare of the residents and visitors of Crested Butte, that the Town enter into the Telecommunications Facilities Space Lease Agreement attached hereto as **Exhibit A** as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,

Section 1. Authorization to Lease parts of Town-Owned Property. The Town Council, pursuant to the Crested Butte Town Charter and the laws of the State of Colorado, hereby authorizes the Town to enter into the Telecommunications Facilities Space Lease Agreement with Visionary Communications in the form attached hereto as **Exhibit A** and authorizes and directs the Town Manager and Town Clerk to execute any and all documents necessary and appropriate to consummate said Agreement with Visionary Communications following approval thereof by the Town Attorney.

Section 2. Severability. If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 3. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

INTRODUCED, READ, AND SET FOR PUBLIC HEARING THIS 3rd DAY OF August, 2021.

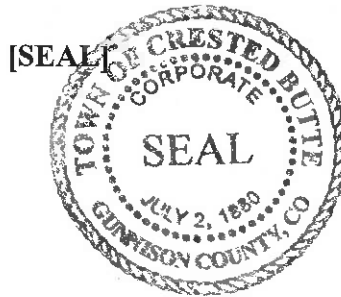
ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 16th DAY OF August, 2021.

TOWN OF CRESTED BUTTE, COLORADO

By: 
James A. Schmidt, Mayor

ATTEST:


Lynelle Stanford, Town Clerk



TELECOMMUNICATIONS FACILITIES SPACE LEASE AGREEMENT

THIS TELECOMMUNICATIONS FACILITIES SPACE LEASE AGREEMENT (this "Agreement"), dated effective the 4th day of October, 2021 (the "Effective Date"), is entered into by the Town of Crested Butte, a Colorado home rule municipality, having an address of 507 Maroon Avenue, P.O. Box 39, Crested Butte, CO 81224 ("Town") and Visionary Communications, Inc., a Wyoming corporation, having an address of 1001 S. Douglas Highway, #201, Gillette, WY 82716, and a local address of 108 E. Tomichi, Gunnison, CO 81230 ("Tenant").

BACKGROUND:

A. The Town owns certain real property located at 801 Butte Avenue (the "Town Shops") and 508 Maroon Avenue (the "Marshal's Offices") and 601 Elk Avenue (the Crested Butte Visitors Center), in Crested Butte, Colorado. These three properties are referred to collectively as the "Property". The Town Shops include various buildings and other facilities used by Town's Public Works and Parks and Recreation Departments. The Marshal's Offices include a building with offices and other facilities used by Town Marshal's Department. The Crested Butte Visitors Center contains the offices of the Crested Butte Chamber of Commerce and other offices.

B. The Town is a party to a Telecommunications Facilities Space Lease with Internet Colorado, L.L.C. dated July 20, 2015, that was approved by the Town pursuant to Ordinance No. 3, Series 2015. The Town has been negotiating with Internet Colorado for the extension of this Lease for another five-year term.

C. During these negotiations to extend the Lease, Internet Colorado, L.L.C. sold its business and assets to Visionary Communications, Inc. Visionary Communications, Inc. desires to enter into this Agreement with the Town as the successor in interest to Internet Colorado, L.L.C. on terms similar to the prior Telecommunications Facilities Space Lease, as set forth herein.

AGREEMENT:

Town and Tenant agree as follows:

1. LEASE.

(a) Town grants to Tenant a non-exclusive lease (the "Lease") to certain specified portions of the Property as described on attached Exhibit 1 (the "Premises") for the placement of Tenant's Communications Facility defined below.

(b) In consideration of Town granting Tenant the Lease during the Initial Lease Term defined below, Tenant agrees to deliver to Town 100MBs of broadband service, static IP services and DNS services (the "Service") to Town Hall, the Marshal's Offices, Transit Center, The Depot, the Town Shops, the Town Public Works Facility, the Town Wastewater Facility and two locations named "Landtrust". Such Service shall be subject to Town's acceptance in its sole and absolute discretion. The Lease will be for a term (the "Lease Term") of five (5) years commencing on the Effective Date

and may be renewed by written agreement of Town and Tenant for an additional five (5) years upon terms agreed to by the parties prior to the expiration date of the Initial Lease Term.

(c) In the event that Town does not accept the Service, or the Service is later terminated by Town as described below, Tenant shall pay Town a per month rental rate for use of the Premises equivalent to the value of the Service. The monthly rental rate shall be pro-rated for any partial month. Rental fees shall commence, if at all, as applicable, on the Effective Date where Town does not accept the Service, or thirty (30) days following Town's termination of the Service. The monthly rental rate shall be subject to an annual increase of three percent (3%) per annum commencing on the first anniversary Effective Date.

(d) Town shall make reasonable power available to Tenant without upgrade to any Town power facilities. Any upgrades required by Tenant shall be at Tenant's sole cost and expense and following written approval from Town. Where the consideration of the Lease of the Premises is the Service, the cost of reasonable power consumed by Tenant on the Property in operating the Communications Facility shall be included in the Lease; provided that where the cost of such power is more than reasonably anticipated by Town, as determined by Town in its sole discretion, Tenant shall be responsible for such additional cost. Where the Service is not accepted or is otherwise terminated by Town, Tenant shall pay Town's cost and expense of such power, with a ten percent (10%) premium to defray Town's processing and handling costs in connection with such power. All payments are due within ten (10) days of receipt of an invoice therefor from Town, failing which, such amounts shall accrue interest at a rate of eighteen percent (18%) per annum until paid.

(e) This Agreement and the rights granted hereunder may not be sold, assigned or transferred without the prior written consent of the Crested Butte Town Council; the granting of such consent shall be within the sole discretion of the Town Council. Any such sale, assignment or transfer in contravention of the foregoing requirement shall be void *ab initio*. From and after the date the Agreement and the rights hereunder have been sold, assigned or transferred by Tenant to a third party has assumed all of the obligations and terms of this Agreement in writing to Town, and only after such assumption, Tenant shall be released from any and all liability under this Agreement, including the payment of any future rental fees or other sums due, without any further action.

(f) If, during the Initial Lease Term or any extension thereof, Town decides to subdivide, sell or change the status of the zoning of the Property, Town shall notify Tenant in writing. This Agreement and the rights granted Tenant herein shall be subordinate to the Town's rights in the Property and may be terminated by Town in the event that the Town requires the Premises be used for any other public purpose or should such termination become necessary or convenient for Town in connection with any subdivision, sale or change the status of the zoning of the Property.

2. PERMITTED USE.

(a) Tenant's use of the Premises is in connection with its communications business without interference to Town's use of the Property and for no other purpose. Tenant may use the Communication Facility for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of its

communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, dishes, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises. Tenant further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional rent to Town (collectively, the "Permitted Use").

(b) The Permitted Use is limited to the space on the portion of the Premises identified on Exhibit 1. For purposes of this Agreement, the "Communication Facility" shall include those telecommunications systems, facilities and equipment described on Exhibit 1.

(c) The Permitted Use is subordinate to Town's use of the Property in serving the residents and properties of Town and surrounding areas. Nothing herein shall be construed as granting authority to Tenant to interfere, obstruct, delay or hinder Town's use of the Property. Tenant shall provide Town seventy-two (72) hours written notice prior to any construction, installation, maintenance of equipment or other activity permitted in this Agreement which occurs on the Premises, except in cases of emergency access and such activities shall be immediate upon prior verbal communication to Town.

(d) Town shall provide Tenant with access to the Communication Facility during regular business hours in order to enable Tenant to install, operate, maintain, repair, replace and remove the Communication System. When necessary, Town will provide Tenant with access outside of regular business hours upon reasonable notice from Tenant. All Tenant access shall be subject to Town's rules and regulations, including the provisions of keys therefor to Tenant.

3. INSTALLATION OF COMMUNICATION FACILITY.

(a) Tenant shall make no installations, alterations, repairs or improvements on or to the Property without the prior written permission of Town. Approval of all Communication Facility installations and associated Property modifications shall be performed only after Town written approval of the same.

(b) In addition to Town serving as landlord of the Premises, Town is the permitting entity for all construction on the Premises. Nothing herein shall be construed as a limitation on Town's authority, or a waiver of Town's requirements regarding construction of the Communication Facility or approval of the designs and plans therefore.

(c) After approval by Town of the Communication Facility installation and any associated Property modifications, Town grants Tenant the right to use such portions of the Property as may reasonably be required during construction and installation of the Communications Facility. Tenant has the right to install and operate transmission cables, antennas, electric lines and communication lines and make associated improvements without interfering with Town operations. Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations relating to its use of the Communication Facility. Tenant may replace or upgrade the equipment within the Communication

Facility. Tenant may not, however, increase the number of antennas, dishes or equipment or the location of the same described Exhibit 1 in this Agreement.

(d) Tenant shall be solely responsible for all costs, fees, expenses and taxes, including, without limitation, those taxes levied specifically upon the personal property of Tenant, and any sales and uses taxes in connection with its use of the Communications Facility, its services and the transactions contemplated in this Agreement.

4. **APPROVALS.** Town agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises for Tenant's Permitted Use and Tenant's ability at its sole cost and expense to obtain and maintain all approvals of federal, state and local authorities with jurisdiction over the Communication Facility and Tenant's services. Town authorizes Tenant to prepare, execute and file all required applications to obtain such governmental approvals for Tenant's Permitted Use under this Agreement.

5. **INTERFERENCE.**

(a) Tenant warrants that its use of the Premises will not interfere with any other radio or other frequencies

(b) Tenant will not allow any of Tenant's Communications Facility and equipment to disturb or create noise that interferes with Town's operation and use of the Property or the public. In the event that it is reasonably determined by Town that emissions from any of Tenant's equipment could cause harm to humans, or is interfering with Town's operation and use of the Property or the public, Tenant shall take such steps as reasonably required to mitigate such condition.

(c) Tenant will not use, nor will Tenant permit its employees, tenants, licensees, invitees, agents or independent contractors to use, any portion of the Property in any way which interferes with the operations of Town, the public or the rights of Town under this Agreement. Upon receipt of notice from Town of Tenant's violation of this provision, Tenant shall cause such interference to immediately cease. Failure to cease such interference after receipt of notice of interference from Town shall be a default of this Agreement. Tenant shall cease all operations that are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected.

6. **LIABILITY.**

(a) In consideration for Town's grant to Tenant of this Lease and the rights set forth in this Agreement, Tenant hereby acknowledge and agree to the following: (i) Tenant hereby assumes all risk of claims, liabilities, injuries, losses, demands or damages, whether related to bodily injury, personal injury, sickness, disease, death, property loss or damage (including reasonable attorneys' fees, costs and expenses) (collectively, "**Claims**") arising out of, directly or indirectly, this Agreement, whether or not caused by any act or omission, negligence or other fault of Town, its elected officials, officers, employees, agents, insurers, insurance pools, attorneys, representatives, contractors, invitees, guests, tenants, licensees and subcontractors (collectively, "**Town Parties**"); (ii) Tenant hereby waives any

Claims, and hereby releases, Town Parties against and from any and all Claims arising out of, directly or indirectly, this Agreement, whether or not caused by any act or omission, negligence or other fault of Tenant or/or Town Parties; and (iii) Tenant shall indemnify, defend and hold harmless Town Parties from and against any and all Claims of Tenant, Town Parties and/or third parties, including, without limitation, employees, agents, contractors, representatives, invitees and guests of Tenant and Town arising out of, directly or indirectly, this Agreement, whether or not caused by any act or omission, negligence or other fault of such persons.

(b) **IN NO EVENT SHALL TOWN BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION LOSS OF USE, INTERRUPTION OF BUSINESS, LOSS OF DATA, LOSS OF PERSPECTIVE BUSINESS OR LOSS OF PROFITS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT AND THE RIGHTS GIVEN HEREUNDER, EVEN IF THE TOWN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

(c) The parties understand and agree that Town is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as it may be amended from time to time.

7. **INSURANCE.** Tenant shall maintain during the Initial Lease Term and any extensions thereof the insurance coverage pursuant to the requirements and limits contained in Exhibit 2 attached hereto.

8. **REPRESENTATIONS.** Tenant and Town each acknowledge and represent that it is duly organized, validly existing and in good standing and each has the right, power and authority to enter into this Agreement and bind itself hereto through the party executing this Agreement below.

9. **COMPLIANCE.** Tenant agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment, occupational and worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to Tenant or any person under its controls activities conducted in or on the Property.

10. **REMOVAL/RESTORATION.** All equipment brought to the Communications Facility by Tenant that is not affixed to the Property will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the Initial Lease Term. Equipment that is affixed to the Town Property and may be non-removable without damaging the Town Property, such as wire racks, light fixtures, light switches, electrical outlets, antenna, dishes, wiring and grounding systems installed by Tenant, will not be removed from the Property without the prior written approval of the Town. Unless Town and Tenant agree to the removal of such affixed property, it shall become the sole property of Town upon the expiration or earlier termination of this Agreement. Within thirty (30) days of the expiration or earlier termination of this Agreement, Tenant will remove all of Tenant's removable personal property and Tenant will restore the Premises to its condition as it existed as of the Effective Date. Any personal property not removed by Tenant within thirty (30) days of the expiration or earlier termination of this Agreement shall be deemed abandoned by Tenant and become the sole property of

Town. All costs incurred by Town for the disposal of such personal property shall be paid by Tenant to the Town.

11. MAINTENANCE.

(a) Tenant shall keep and maintain the Premises and other utilized portions of the Property in a neat, orderly and clean condition at all times, and provide such other services as may be necessary to do so. Town will maintain and repair the Property and access thereto in good and tenable condition, subject to reasonable wear and tear, impact by and damage from the elements and other use by Town and its other users of the Property.

(b) Tenant shall cooperate with Town and other users of the Property to remove snow from the Property.

12. TENANT DEFAULT; TERMINATION.

(a) The following shall be deemed a default by Tenant under this Agreement: (i) non-payment of any amounts as and when due under this Agreement; (ii) Tenant's failure to cure an interference problem as provided herein within twenty-four (24) hours of written notice thereof; and (iii) Tenant's failure to perform any other term or condition under this Agreement within ten (10) days of receipt of written notice from Town specifying such failure, provided that no such default shall be deemed to exist if Tenant has commenced a cure of such failure within such period and provided that such efforts are ongoing and being prosecuted to completion with reasonable diligence. Delay in curing a failure under subsection (iii) shall be excused only to the extent beyond the reasonable control of Tenant. If Tenant's failure remains beyond the expiration of the cure period, Town shall have the right to exercise any and all rights and remedies available to it under law and equity, including immediate termination of this Agreement upon written notice to Tenant. All rights and remedies may be cumulatively applied and pursued.

(b) Notwithstanding the foregoing, Town may terminate this Agreement at any time for any reason or no reason at all upon delivery of written notice to Tenant no less than 90 days in advance of the date upon which the Town intends to terminate this Agreement.

13. NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to Town and Tenant as follows:

If to Town:

Town of Crested Butte
Attn: Town Manager
507 Maroon Avenue
P.O. Box 39
Crested Butte, CO 81224

With copies to:

Town of Crested Butte
Attn: Town Attorney
507 Maroon Avenue
P.O. Box 39
Crested Butte, CO 81224

If to Tenant:

Visionary Communications, Inc.
Attn: Brian Worthen, President/CEO
108 E. Tomichi
Gunnison, CO 81230

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

14. **NO LIENS.** Tenant shall keep the Property free and clear of all liens, claims and encumbrances of any kind, whether caused by the action or inaction of Tenant or anyone under Tenant's control. Tenant shall be responsible for the satisfaction or payment of any such liens, claims or encumbrances filed or placed of record against the Property that arise from the transactions contemplated in this Agreement. Should any such lien, claim or encumbrance or claim of the same be filed against the Property, Tenant shall cause the same to be canceled and discharged of record by bond or otherwise within ten (10) days after notice of the filing thereof. Should Tenant fail to discharge the same within such ten (10)-day period, then Town may discharge the same, in which event Tenant shall reimburse Town, on demand, for the amount of the lien, claim or encumbrance or the amount of the bond, if greater, plus all costs and expenses incurred by Town in connection therewith, inclusive of reasonable attorneys' fees and costs.

15. **CASUALTY.** Town will provide notice to Tenant of any casualty or other harm affecting the Premises within forty-eight (48) hours of the casualty or other harm. If any part of the Communication Facility or Property is damaged by casualty or other harm as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to Town, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid rental fees on a pro rata basis. Such termination and collection of insurance proceeds, if any, shall be Tenant's sole remedy in the event of such casualty.

16. **NO OWNERSHIP OR PROPERTY RIGHTS.** Nothing contained in this Agreement, including the use of the Premises or other action of the Tenant or any payments made under this Agreement, create or vest in the Tenant any ownership or property rights in the Premises. No record of this Agreement and the rights granted hereunder may be recorded against the Property.

17. **NOTICES FROM THIRD PARTIES.** In the event that Tenant receives any written notice, including without limitation, a warning or notice of violation, related to the Communication Facility or Tenant's use of the Communication Facility, Tenant shall provide a copy of such notice to Town within three (3) days of receipt thereof. Tenant shall immediately take all steps necessary to resolve any notice. In the event that resolution of the notice would require violating any provision of this Agreement, Tenant shall work with Town to resolve the notice or terminate this Agreement if the notice cannot be resolved.

18. **IMMIGRATION COMPLIANCE.** Tenant certifies that it has complied, and during the term of this Agreement will continue to comply, with the Immigration Reform and Control Act of 1986. The signature of Tenant on this Agreement: (1) certifies that Tenant is not a natural person unlawfully present in the United States; and (2) also certifies the statements below if this is a public contract for services as defined in Colo. Rev. Stat. § 8-17.5-101, et seq., and Tenant utilizes subcontractors or employees in Tenant's business. Tenant shall not:

(a) knowingly employ or contract with an illegal alien to perform work under this Agreement; or

(b) enter into a contract with a subcontractor that fails to certify to Tenant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

Tenant has confirmed the employment eligibility of all employees and subcontractors who are newly hired for employment to perform work under this Agreement through participation in either the e-verify program or the department program (as defined in Colo. Rev. Stat. § 8-17.5-101, et seq.). Tenant may not use either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If Tenant obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Tenant shall:

(i) notify the subcontractor and Town within three (3) days that Tenant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(ii) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to sub-subparagraph (a) of this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that Tenant shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Tenant shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to state law. Tenant acknowledges that in the event that Tenant violates any of the provisions of the foregoing the Town may terminate this Agreement for breach of contract. No notice need be given of said termination. If this Agreement is so terminated, Tenant shall be liable for actual and consequential damages to the Town.

19. **MISCELLANEOUS.**

(a) **Amendment; Waiver.** This Agreement cannot be amended, modified or revised unless done so in writing, approved by the Crested Butte Town Council. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Binding.** This Agreement shall be binding upon the parties hereto, their respective permitted heirs, successors, transferees and assigns.

(c) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of Town and Tenant hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

(d) **Governing Law.** This Agreement will be governed by the laws of the State of Colorado with venue residing solely in the court of the County of Gunnison, State of Colorado.

(e) **No Third Party Beneficiary.** The parties intend no third party beneficiaries under this Agreement. Any person other than the Town or Tenant receiving services or benefits under this Agreement is an incidental beneficiary only.

(f) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (iv) use of the terms "termination" or "expiration" are interchangeable; (v) reference to a default will take into consideration any applicable notice, grace and cure periods; (vi) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; and (vii) the singular use of words includes the plural where appropriate.

(g) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(h) **W-9.** Town agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant.

(i) **Severability.** If any provision, covenant, clause or agreement contained in this Agreement or the application thereof shall be found to be invalid, such invalidity shall not affect the validity of the remaining provisions, covenants, clauses, agreements or the validity of the Agreement as a whole.

(j) **Attorneys' Fees.** It is agreed that if the enforcement, interpretation, or construction of this Agreement becomes necessary or advisable and a party must commence legal action in order to resolve the dispute, the prevailing party in such legal action shall be entitled to reasonable attorneys' fees, as well as all related costs and expenses.

(k) **Counterparts.** This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by Town and Tenant. All parties need not sign the same counterpart.


IN WITNESS WHEREOF, Town and Tenant have caused this Agreement to be executed effective as of the Effective Date.

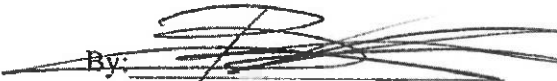
TOWN:

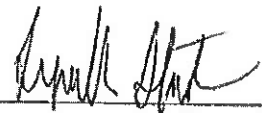
TENANT:

TOWN OF CRESTED BUTTE

VISIONARY COMMUNICATIONS, INC..

By: 
Dara MacDonald, Town Manager

By: 
Brian Worthen, President/CEO

Attest: 
Town Clerk

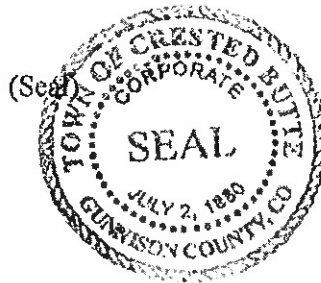


EXHIBIT 1

DESCRIPTION OF PREMISES

The Premises are described and depicted as follows:

Space at the top of the stairs in the Marshal's Office as seen in attached picture
The tower behind Public Works building and closet within Public Works building.

Tower will be replaced per agreement with Verizon Wireless, Internet Colorado will
move to new tower per agreement with Verizon.

Town owned building at 601 Elk Avenue used to provide Service to the Depot and the Transit
Center

DESCRIPTION OF COMMUNICATIONS FACILITY

The Communications Facility is described as follows:

Crested Butte Marshal's Office:

Fiber Optic feed from Gunnison NOC

Siklu licensed 80 GHZ 1 Gigabit to Public Works

Crested Butte NOC and Fiber distribution point for Town of Crested Butte

601 Elk Avenue Building:

24Ghz Mimosa Backhaul to Marshal's Office and 1 Mimosa AP

Crested Butte Public Works Tower:

Distribution NOC for Crested Butte to CB South and Mt Crested Butte to Prospect

Back Haul from Marshal's Office

Siklu Licensed 80 Ghz

Back Haul to Sunlight Ridge Tower Site (2 Redundant)

Exalt Licensed 18 Ghz

Mimosa 24 Ghz

Back Haul to Club at Crested Butte

Mimosa 24 Ghz

Back Haul to Bachelor House

Mimosa 24 Ghz

Access Points

3 Mimosa AP's

1 UBNT Prism

Future: Microwave redundant link to Gunnison via Comstock and W Mountain

DESCRIPTION OF APPROVED TELECOMMUNICATIONS INFRASTRUCTURE AND ASSOCIATED IMPROVEMENTS

The approved telecommunications infrastructure and associated improvements are described as follows:

Future Redundant Microwave link to Gunnison

Additional Fiber connections throughout the Town of Crested Butte

EXHIBIT 2

INSURANCE

A. Tenant agrees to procure and maintain in force, at its own cost, the following minimum coverages:

1. Workers' Compensation and Employers' Liability
 - a) State of Colorado: Statutory
 - b) Applicable Federal: Statutory
 - c) Employer's Liability: \$100,000 Each Accident
\$500,000 Disease-Policy Limit
\$100,000 Disease-Each Employee
 - d) Waiver of Subrogation
2. Commercial General Liability
 - a) Bodily Injury & Property Damage General Aggregate Limit \$3,000,000
 - b) Each Occurrence Limit \$3,000,000

The policy shall be on an Occurrence Form and include the following coverages: Premises Operations; Personal and Advertising Injury; Medical Payments; Liability assumed under an Insured Contract; Independent Contractors; and Broad Form Property Damage. Coverage provided should be at least as broad as found in Insurance Services Office (ISO) form CG0001.

Town may require that this coverage remain in place for one year after the expiration of the Initial Lease Term and any extensions thereof.

Coverage is to be provided on Business Auto, Garage, or Truckers form. Coverage provided should be at least as broad as found in ISO form CA0001 (BAP), CA0005 (Garage) or CA0012 (Trucker) including coverage for owned, non-owned, & hired autos.

B. Coverage.

Insurance required by this Agreement shall be primary coverage, unless otherwise specified, and shall specify that in the event of payment for any loss under the coverage provided, the insurance company shall have no right of recovery against Town or its insurers. All policies of insurance under this Agreement shall be provided by a reputable insurance company or companies qualified to conduct business in Colorado. Property and Liability Insurance Companies shall be licensed to do business in Colorado and shall have an AM Best rating of not less than A-VI. This insurance shall protect Town, its agents, contractors, employees and representatives, from claims for damages for personal injury and wrongful death and for damages to property arising in any manner from negligent or wrongful acts or omissions of Tenant, their agents, contractors, employees, contractors and representatives.

C. Additional Insureds.

All Insurance policies (except Workers Compensation and Professional Liability) shall include Town as additional insured. The additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for Commercial Auto and Umbrella Liability.

D. Automobile Coverage.

Automobile insurance shall, without limitation, cover all automobiles used in performing any of the transactions contemplated or authorized under this Agreement.

E. Claims-Made Policies.

In the case of any claims-made insurance policies, Tenant shall procure necessary retroactive dates, "tail" coverage and extended reporting periods to cover a period at least two years beyond the expiration date of this Agreement. This obligation shall survive the expiration of this Agreement.

F. Tenant shall not cancel, materially change or fail to renew required insurance coverages.

G. Certificates.

Certificates showing that Tenant is carrying the above-described insurance, and the status of the additional insureds, shall be furnished to Town prior to the execution of this Agreement by Town, Tenant, or Tenant's insurance broker, shall notify Town of any cancellation or reduction in coverage or limits of any insurance within seven (7) days of receipt of insurer's notification to that effect. Tenant shall forthwith obtain and submit proof of substitute insurance in the event of expiration or cancellation of coverage.