



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon - City Administrator	February 18, 2025

AGENDA ITEM

Ordinance 2025 - 5, An Ordinance of the City Council of the City of Salida, Colorado, Approving Tenderfoot Communication Site Lease with Visionary Broadband, first reading and setting the public hearing.

BACKGROUND

In 2012 the City of Salida, through a grant from the Department of Local Affairs, constructed a communications site, including a tower and equipment shelter, on Tenderfoot Mountain. The site currently housing equipment for Visionary Broadband, Hilltop Broadband, Verizon, KHEN Radio and Emergency Services.

Visionary Broadband recently purchased Aristata Communications (who had previously purchased Colorado Central Telecom). A new lease was required to update the necessary terms including rent, ensure the proper business was identified and accurately reflect the existing conditions of the site.

Staff continue to work with Visionary Broadband to ensure the necessary Exhibits accurately reflect the current property conditions. Approval of this Ordinance should be based on staff approval of exhibits, prior to second reading.

STAFF RECOMMENDATION

Staff recommends Council approve the Ordinance on first reading and schedule a public hearing for March 4, 2025.

FISCAL IMPACT

Rent in the amount of \$1,500 shall be paid to the City monthly.

MOTION

A City Councilmember should state "I move to _____ Ordinance 2025 - 5, An Ordinance of the City Council of the City of Salida, Colorado, Approving Tenderfoot Communication Site Lease with Visionary Broadband, first reading and setting the public hearing for March 4, 2025", followed by a second and a roll call vote.

CITY OF SALIDA, COLORADO
ORDINANCE NO. 05
(Series of 2025)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO
APPROVING TENDERFOOT COMMUNICATION SITE LEASE WITH VISIONARY
BROADBAND

WHEREAS, the City of Salida, Colorado (the “City”) is a statutory city, duly organized and existing under the laws of the state of Colorado; and

WHEREAS, in 2012 the City of Salida constructed a communications site including a tower and equipment shelter (“Tenderfoot Communications Site”) in order to facilitate additional broadband service within Salida and the surrounding area; and

WHEREAS, Chaffee County Telecom d/b/a Colorado Central Telecom, LLC entered into a lease agreement with the City of Salida via Ordinance 2013-33 to lease space at the Tenderfoot Communication Site; and

WHEREAS, Chaffee County Telecom d/b/a Colorado Central Telecom, LLC was purchased by Aristata Communications and Aristata Communications was purchased by Visionary Broadband; and

WHEREAS, Visionary Broadband wishes to lease space on the Tenderfoot Communications Site and the City of Salida wishes the same.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO, THAT:

Section 1. The foregoing recitals are incorporated herein as conclusions, facts, determinations, and findings by Council.

Section 2. The City Council for the City of Salida hereby authorizes and approves the lease with Visionary Broadband on the terms and conditions contained as Exhibit A attached hereto and incorporated herein. The Mayor and other City officials are hereby authorized to execute the Lease by and on behalf of the City.

Section 3. Severability: The provisions of this Ordinance are severable and the invalidity of any section, phrase, clause, or portion of this Ordinance as determined by a Court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the Ordinance.

Section 4. City officials are hereby authorized to take such action as appropriate to implement the Lease Agreement.

Section 5. The City Council finds and declares that this Ordinance is

promulgated and adopted pursuant to the City's police power to preserve and protect the public health, safety, and welfare of the City and its residents, and bears a rational relation to the legislative objects sought to be obtained.

INTRODUCED ON FIRST READING on this 18th day of February, 2025, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council on this 21st day of February, 2025, and set for second reading and public hearing on the 4th day of March, 2025.

INTRODUCED ON SECOND READING, FINALLY ADOPTED and ORDERED PUBLISHED BY TITLE ONLY, by the City Council on the ____ day of _____, 20__.

CITY OF SALIDA, COLORADO

Mayor

[SEAL]

ATTEST:

City Clerk/Deputy Clerk

PUBLISHED IN FULL in the Mountain Mail after First Reading on the ____ day of _____, 20__, and BY TITLE ONLY, after final adoption on the ____ day of _____, 20__.

City Clerk/Deputy City Clerk

TOWER LEASE AGREEMENT

THIS TOWER LEASE AGREEMENT (“Agreement”), dated as of the latter of the signature dates below (the “Effective Date”), is entered into by the City of Salida, a Colorado statutory city (“Landlord”), and Visionary Communications LLC, a Wyoming limited liability company authorized to do business in the State of Colorado, with its principal office located at 1001 S. Douglas Highway, Suite 201, Gillette, Wyoming 82716 (“Tenant”).

BACKGROUND

Landlord is the owner of land and facilities located at the crest of Tenderfoot Mountain in the City of Salida, Chaffee County, State of Colorado (the “Property”), as further described on Exhibit A. Landlord is also the owner of a communications tower which is situated on a portion of the Property (the “Tower”). Tenant is a broadband communications provider and is permitted, licensed, or otherwise authorized by the applicable federal or state governmental authority to operate in all or some areas of the City of Salida. Landlord desires to permit use by Tenant and the Tenant desires to use a portion of the Property and Tower as described below in order to enable Tenant to erect, operate and maintain certain communication equipment of Tenant in connection with its broadband communications business.

1. RIGHT TO LEASE. Landlord grants to Tenant the right to lease a portion of the Property consisting of 1) physical space on the Tower to install wireless antennas, 2) space within the existing communications shelter (the “Shelter”) to install the necessary network rack, equipment and power infrastructure, and 3) space within the communications conduit to install and maintain fiber optic cable, together with a non-exclusive easement for ingress and egress and as further described on Exhibit B (collectively, the “Leased Premises”). The Leased Premises, and the specific Tenant facilities and equipment located at and on the Leased Premises as of the Effective Date are depicted on Exhibit B.

2. PERMITTED USE.

(a) Tenant shall use the Leased Premises solely for the purposes of providing broadband communications services, for which it has received all necessary approvals from either the Colorado Public Utilities Commission, the Federal Communications Commission (“FCC”), or as otherwise allowed by law.

(b) The Leased Premises may be used for the transmission and reception of communications signals and the installation, construction, maintenance, repair and operation of communications fixtures and related equipment, cables, accessories and improvements, which may include associated antennas, equipment shelters or cabinets and any other items necessary to the successful and secure use of the Leased Premises (collectively, the “Communications Facilities”). Tenant has the right to install and operate transmission cables from the Shelter to the antennas, electric lines from the main feed to the Shelter or cabinet and communication lines from the main entry point to the Shelter or cabinet in the locations depicted on Exhibit B. Tenant may also install and maintain a fiber-optic cable within the conduit that runs from the Shelter to the power infrastructure as noted in Exhibit B. It is acknowledged that Landlord owns the existing

conduit. Tenant accepts the Leased Premises, including, without limitation, the existing conduit “As-Is, Where-Is” with all faults. It is understood and agreed that when another tenant of the Landlord locates cabling in trenches along the roadway to the Tower site and removes all of the existing exposed conduit, Tenant shall supply its own new conduit and relocate its Communications Facilities into these trenches at Tenant’s expense, whereupon Tenant shall own such conduit. Tenant may upgrade or exchange any equipment that is like kind, and of the same size, location and general appearance as that equipment being replaced. Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Communications Facilities on the Property and/or Tower. Tenant shall be responsible for the cost of any repairs for any damage caused to the Tower or any other part of the Property during installation, use, maintenance and removal of Tenant’s Communications Facilities.

(c) All existing Communications Facilities shall be specifically identified in the drawings attached as Exhibit C. Except as provided herein, prior to any alteration or modification to Tenant’s Communications Facilities Tenant shall submit copies of the site plan, floor plan, sections, elevations, structural plans, and specifications to Landlord for prior approval. Landlord shall give such written approval or provide Tenant with its requirements for changes upon completion of the development application review process. Notwithstanding the foregoing, prior approval of Landlord is not required for routine maintenance, repairs, the like-kind replacement of the Communications Facilities, or any modifications to the interior of the equipment shelter or items housed therein, so long as the resulting Communications Facilities are of comparable size and exterior appearance, do not extend beyond the space indicated for any of the Communications Facilities identified on Exhibit B, and are in full compliance with this Agreement and all applicable laws and regulations.

(d) Smoking; Solicitations; Dangerous Activities. The Leased Premises are a smoke-free environment. Tenant shall not permit any smoking, canvassing, soliciting or peddling on the Leased Premises. Tenant shall not permit dangerous activities on the Leased Premises.

3. TERM.

(a) The Initial Term of this Agreement shall be five (5) years commencing on April 3, 2025 (the “Commencement Date”), unless it is terminated earlier as expressly provided in this Agreement. The Initial Term will terminate on the fifth (5th) annual anniversary of the Commencement Date.

(b) This Agreement will automatically renew for three (3) additional five (5) year terms (the “Extension Terms”), upon the same terms and conditions, unless either the Tenant or Landlord notifies the other in writing of their respective intention not to renew this Agreement no more than one-hundred and eighty (180) days and no less than ninety (90) days prior to the end of the Initial Term of this Agreement or any Extension Term, whichever is applicable.

(c) The Initial Term and any Extension Terms are collectively referred to as the “Term.”

4. RENT.

(a) Tenant shall pay to Landlord an annual rental in the amount of Eighteen Thousand Dollars (\$18,000.00) (the "Rent") in monthly installments of One Thousand Five Hundred Dollars (\$1,500.00) at the address set forth below. The annual rental and monthly installments shall be increased each year as set forth in Section 4(b) below. The first monthly installment of Rent shall be paid by Tenant to Landlord upon the Commencement Date and subsequent monthly installments of Rent shall be due and payable on or before the first day of each calendar month thereafter during the Term. Rent shall be payable to Landlord at City of Salida, 448 E. First Street, Suite 112, Salida, CO 81201; Attention: Payables/Finance Department.

(b) The Rent and monthly installments shall increase four percent (4%) annually during the Term on each anniversary of the Commencement Date.

(c) Tenant shall pay Landlord a late payment charge equal to ten percent (10%) of the late payment for any payment 30-days past due. Any amounts not paid when due shall bear interest until paid at the rate of one and one half percent (1.5%) per month.

5. APPROVALS.

(a) Landlord agrees that Tenant's ability to use the Leased Premises is contingent upon the suitability of the Leased Premises for Tenant's permitted use and Tenant's ability to obtain and maintain all government approvals. Landlord authorizes Tenant to prepare, execute and file any required applications to obtain government approvals for Tenant's permitted use under this Agreement and further agrees to cooperate with Tenant, at no cost to Landlord, in making such applications for and with obtaining and maintaining the government approvals required for the provision of communication services.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of Tenant's choice, and Tenant shall be responsible for any costs or fees incurred in connection therewith. In the event Tenant determines, in its reasonable discretion, due to the title report results or survey results, that the condition of the Leased Premises will not permit the use granted under this Agreement, Tenant will have the right to terminate this Agreement upon thirty (30) days' written notice to Landlord.

6. TERMINATION. This Agreement may be terminated as follows:

(a) by either party on ten (10) days' prior written notice, if the other party remains in default after the applicable cure period expires;

(b) by either party upon six (6) months prior written notice to the other party;

(c) by Landlord if any government body, other than Landlord, passes an ordinance, law, or regulation that would interfere or render impossible performance of this Agreement or if the structure to which Tenant's equipment is attached is scheduled for removal or deconstruction. If permissible, Landlord shall provide Tenant with ninety (90) days' notice to surrender the Leased

Premises and all interests to the Landlord. Tenant shall have no claim against the Landlord for any loss or damage; or

(d) by Landlord upon sixty (60) days' written notice if it determines, (i) based on a certified structural review that there exists structural damage or (ii) destruction of all or part of the Property from any source, provided that Landlord shall first undertake reasonable efforts, as determined by Landlord, to recover any applicable damages from the party causing such damage or destruction and thereafter if Landlord is unable to recover such damages after undertaking such efforts to collect such amounts, Tenant shall then be offered the opportunity to repair the damage. All structural repairs performed by Tenant shall become the property of the Landlord immediately upon completion of such repairs. The cost of such repairs shall be applied towards future monthly Rent charges.

(e) This Agreement shall terminate automatically if events occur and notice is provided as described in Sections 18 and 19 of this Agreement.

(f) Force Majeure. Neither party shall be liable for its inability to perform its obligations under this Agreement, excluding, however, any payment obligations, which payment obligations must always be performed, if caused by conditions beyond its reasonable control including but not limited to acts of terrorism, environmental conditions, pandemics, epidemics, labor strikes, protests, perils and hazards, and acts of God. In the event either party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control, that party shall have a reasonable time, under the circumstances, to perform the affected obligation under this Agreement or to procure a substitute for such obligation which is satisfactory to the other party. If either party believes that a reason beyond its reasonable control has prevented or delayed its compliance with the terms of this Agreement, that party shall provide documentation as reasonably required by the other party to substantiate the claim. If the party has not yet cured the deficiency, it shall also provide the other party with its proposed plan for remediation, including the timing for such cure. In order to be entitled to an excuse for any delay or failure to perform under this Agreement pursuant to this subsection (f), the party claiming such excuse shall promptly give written notice to the other party to this Agreement of any event or occurrence which it believes falls within the contemplation of this subsection, and shall not be in default so long as that party is diligently working toward complying with its obligations under this Agreement at the earliest possible time.

(g) If an event causing damage to the Tower and/or Shelter renders the Tenant unable to operate its Communications Facilities, all Tenant payment obligations outlined in the Agreement shall be maintained so long as the Landlord is making a good faith effort to restore the Tower and/or Shelter to a usable state. If the required repairs to render the Tower and/or Shelter usable take longer than sixty (60) days, and if other temporary options to allow for operation of the Communication Facilities at a level of performance that is comparable to the levels obtained from the Communication Facilities on the Tower are not available to Tenant, the monthly Rent owed by Tenant shall be suspended until its Communications Facilities can be utilized. Notwithstanding the foregoing, if the event causing damage to the Tower and/or Shelter was caused by Tenant or its contractors' acts or omissions, Tenant's payment obligations outlined in this Agreement shall continue uninterrupted and Tenant shall be solely responsible for any required

repairs to render the Tower and/or Shelter usable.

7. INSURANCE.

(a) During the Term of the Agreement, Tenant shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:

(i) Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with limits of One Hundred Thousand Dollars (\$100,000.00) for each accident/disease/policy limit.

(ii) Commercial general liability insurance with limits of Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury (including death) and property damage and Five Million Dollars (\$5,000,000.00) general aggregate, including for bodily injury, blanket contractual liability insurance for all written contracts, products and completed operations liability, and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.

(iii) Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Tenant, its employees, or agents, with limits of One Million Dollars (\$1,000,000.00) combined single limit each accident for bodily injury and property damage.

(b) All policies other than those for Worker's Compensation and Employer's Liability shall be written on an occurrence and not on a claims made basis.

(c) The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated above.

(d) All policies, except for the Worker's Compensation and Employer's Liability policies, shall name Landlord and its officers, boards, commissions and employees as additional insureds (collectively, the "Additional Insureds").

(e) Certificates of insurance for each insurance policy required to be obtained by Tenant in compliance with this Section 7 shall be provided to the Landlord annually during the Term of the Agreement. Tenant shall immediately advise Landlord of any claim or litigation that may result in liability to Landlord.

(f) Cancellation of Policies of Insurance. All insurance policies required pursuant to this Agreement shall contain the following endorsement:

"At least thirty (30) days prior written notice of cancellation or change of any required coverage shall be given to the City of Salida, 448 E. First Street, Suite 112, Salida, CO 81201; Attention: City Administrator."

(g) Insurance Companies. All insurance shall be effected under valid and enforceable policies, issued by insurers licensed, authorized or permitted to do business by the State of Colorado or surplus line carriers on the State of Colorado Insurance Commissioner's approved list of companies qualified to do business in the State of Colorado. All insurance carriers and surplus line carriers shall be rated A-:VII or better by A.M. Best Company.

(h) Deductibles. Tenant agrees to indemnify and hold harmless Landlord and the Additional Insureds from and against the payment of any deductible and from and against the payment of any premium on any insurance policy required to be obtained and maintained by Tenant under this Agreement.

(i) Contractors. Tenant shall require that every one of its contractors and their subcontractors who perform work on the Leased Premises and/or the Tower carry, in full force and effect, substantially the same coverage with substantially the same limits as required of Tenant.

(j) Review of Limits. Landlord may periodically review the insurance coverages to be carried by Tenant. If Landlord reasonably determines that higher limits of coverage are necessary to protect the interests of Landlord or the Additional Insureds then upon prior written notice to Tenant, Tenant shall obtain the additional limits of insurance, at its sole cost and expense.

8. INTERFERENCE.

(a) Upon the written request of the Tenant, where there are existing radio frequency user(s) on the Property and/or the Tower, the Landlord (to the best of its abilities) will provide Tenant with a list of all existing radio frequency user(s) on the Property and/or the Tower to allow Tenant to evaluate the potential for interference. Tenant warrants that its use of the Leased Premises will not interfere with existing radio frequency user(s) on the Property and/or the Tower so disclosed by Landlord, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations. Tenant further agrees that it will cooperate with Landlord and with any other radio frequency user(s) Landlord permits to be on the Property and/or the Tower, by sharing the requisite information to determine what potential interference issues may exist and to take all reasonable steps necessary to avoid such interference.

(b) Landlord will not grant, after the date of this Agreement, a lease, license or any other right to any third party for use of the Property, if such use may in any way adversely affect or interfere with the Communications Facilities, the operations of Tenant or the rights of Tenant under this Agreement.

(c) The Tenant's Communications Facilities shall be of the type and frequency which will not cause measurable interference, as defined by the FCC, to any currently leased and legally operating communications equipment of the Landlord, other existing entities on the Property, or adjacent landowners. In the event Tenant's Communications Facilities cause such interference, Tenant shall take all reasonable steps necessary to correct and eliminate the interference.

(d) Prior to commencing operations of its Communications Facilities, Tenant shall provide written assurance, in a format reasonable and customarily accepted by the federal government, ensuring that Tenant's Communications Facilities comply with all federal requirements for radio frequency ("RF") emissions, and that Tenant's Communications Facilities will not cause measurable interference with the equipment located on the Property and/or adjacent property. The Landlord may, at the commencement of any Extension Term, in response to a formal interference claim, or at any other time in its reasonable discretion not to exceed one (1) time in any calendar year, require Tenant to engage in testing through a qualified radio frequency engineer, to determine Tenant's RF emissions levels at the Property, as they relate to the total RF environment related to operations on the Tower. All costs of testing and compliance shall be borne equally by Tenant and such other tenants that are similarly situated. Notwithstanding the foregoing, tenants operating equipment, all of which is below the 500Mhz threshold, and tenants operating exclusively equipment on the Tower that is used for public safety and/or emergency communications shall be exempt from paying any of the foregoing testing and compliance costs.

(e) Tenant understands that no use of the Leased Premises and/or Property will be permitted which exceeds federal RF emissions standards within and at the boundaries of the Leased Premises and/or Property. If the cumulative RF emissions levels ever exceed federal standards, all users of the Leased Premises and/or Property that are not public sector entities, including Tenant, will be required to modify operations on a reasonably comparable level, in order to bring the overall RF emissions into compliance.

(f) Notwithstanding any other provision to the contrary, Tenant's activities shall not interfere with the peaceful enjoyment of the Property by Landlord and/or any other tenants, lessees, or licensees, or endanger the health or safety of Landlord's employees and/or such other tenants, lessees, or licensees.

9. INDEMNIFICATION.

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage, or liability (or any claims in respect of the foregoing), costs or expenses arising from the installation, use, maintenance, repair, or removal of the Communications Facilities or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, or agents.

(b) Notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental, or special damages.

(c) The provisions of this Section 9 shall survive the expiration or earlier termination of this Agreement.

10. WARRANTIES. Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

11. HAZARDOUS SUBSTANCES.

(a) Tenant represents and warrants that its use of the Leased Premises and/or Tower will not generate any Hazardous Substance, and it will not store or dispose of on the Leased Premises and/or Tower nor transport to or over the Leased Premises and/or Property any Hazardous Substance. Tenant further represents and warrants that its installation and maintenance of its Communications Facilities will not involve the bringing of any asbestos containing material onto the Property. Tenant further agrees to hold Landlord harmless from and indemnify Landlord against any release of any such Hazardous Substance and any damage, loss, expense, or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the negligence of Landlord, its employees, or agents. Landlord shall be responsible for any release of a Hazardous Substance caused by Landlord, including any damage, loss, expense, or liability resulting from such release. "Hazardous Substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous, or other similar term, by any federal, state, or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations, or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death, or disease.

(b) Tenant's indemnification obligations set forth in this Section 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal, or restoration work required by any governmental authority.

(c) In the event Tenant becomes aware of any Hazardous Substance on the Property that was not caused by Tenant, its employees, agents, or contractors, or any environmental or industrial hygiene condition or matter relating to the Property that, in Tenant's reasonable determination, renders the condition of the Leased Premises unsuitable for Tenant's use that was not caused by Tenant, its employees, agents, or contractors, or if the leasing or continued leasing of the Leased Premises would expose Tenant to undue risks of government action, intervention, or third-party liability, which action, intervention, or third-party liability was not caused by Tenant, its employees, agents, or contractors, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate the Agreement upon written notice to Landlord.

(d) Notwithstanding anything to the contrary herein, Tenant shall have the right to store and use standard quantities of batteries, diesel fuel for backup generators, and any other substances required for the operation of Tenant's Communications Facilities so long as it does so in full compliance with all applicable laws.

12. ACCESS.

(a) At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and contractors, will have reasonable access, including emergency access, twenty-four (24) hours per day, seven (7) days per week pedestrian and

vehicular access to and over the Property, to the Leased Premises, for the installation, maintenance and operation of the Communications Facilities and any utilities serving the Leased Premises. All work to the maximum extent possible however, shall be performed by Tenant on non-holiday weekdays between 7:00 am and 5:00 pm. Tenant shall immediately call Chaffee County Dispatch at (719) 539-2596, or such other number as may be provided by Landlord to Tenant, to report any emergency to Landlord. Tenant shall provide to the Landlord a twenty-four (24) hour per day, seven (7) day per week, emergency contact name and telephone number. Notwithstanding the foregoing, Tenant understands and acknowledges that the Landlord may install Christmas lights above the road leading to the Tower at a height of approximately ten (10) feet during the months of November through January. In connection with accessing the Leased Premises during this time period, Tenant is solely responsible for ensuring that its vehicles and equipment can safely access the Leased Premises without causing any damage, including, without limitation, damage to the Christmas lights. Should Tenant, its employees or contractors cause any damage, including, without limitation damage to the Christmas lights, Tenant shall immediately repair such damage to Landlord's reasonable satisfaction at Tenant's sole cost and expense. Tenant shall additionally post such emergency contact information in a visible location at the Leased Premises. Tenant and its contractors' vehicles shall be clearly marked with a company logo or shall be otherwise reasonably identifiable. Landlord grants to Tenant a license for such access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such access at no additional cost to Tenant. In the event any public utility is unable to use the access provided to Tenant then the Landlord agrees to work with Tenant to identify and grant additional access in a location acceptable to both parties either to Tenant or to the public utility, for the benefit of Tenant.

(b) Security and Invitees. Landlord does not represent that the Property or Leased Premises are safe from theft, injury, or damage to Tenant or Tenant's property. Landlord does not represent that locks or security services or equipment, if any, are provided to protect Tenant's safety, property, or the Leased Premises. Notwithstanding any provision to the contrary, Landlord is not liable for any lack of security with respect to the Property or Leased Premises or for any damages caused by any error or other action regarding the admission to or exclusion from the Property of any person. Tenant is solely responsible for the security of the Leased Premises and its personal property on the Leased Premises. Tenant shall make good faith efforts to monitor and control the conduct of its staff and agents while on the Leased Premises. Tenant shall at all times bear the entire risk of loss to Tenant's property and equipment.

13. REMOVAL/RESTORATION. All portions of the Communications Facilities brought onto the Leased Premises by Tenant will be and will remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the Term. Landlord covenants and agrees that no part of the Communications Facilities constructed, erected, or placed on the Leased Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Landlord that all improvements of every kind and nature constructed, erected, or placed by Tenant on the Leased Premises will be and remain the property of the Tenant and may be removed by Tenant at any time during the Term. Within ninety (90) days following the expiration or earlier termination of this Agreement, Tenant will remove all of Tenant's improvements and Tenant will restore the Leased Premises to its condition immediately preceding the installation of such improvements. Any property not removed within such ninety (90) day period shall be deemed abandoned and thereafter, Landlord shall have a right to keep,

dispose, or sell such property in its sole discretion and to recover, if applicable, any expenses it may have in connection therewith from Tenant.

14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Leased Premises in good condition. Tenant shall maintain the outward appearance of any equipment shelter or other ground equipment.

(b) Landlord will maintain and repair the Property and access thereto, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. Notwithstanding the foregoing, it is acknowledged that Tenant along with other tenants at the Property store certain of their equipment in the Shelter owned by the Landlord, which Shelter is located on a portion of the Leased Premises. Landlord will from time to time during the Term of this Agreement renovate, make repairs to and maintain all components of such Shelter in its sole discretion. Landlord may request that Tenant perform and pay for any costs associated with updates or maintenance in return for equal credits towards the monthly Rent.

(c) Notwithstanding any other provision to the contrary and at Landlord's sole discretion, Landlord may at any time examine, inspect and protect the Property and make alterations, renovations, restorations, repairs, and/or improvements to the Property as long as they do not interfere with Tenant's ability to operate its Communications Facilities.

(d) In addition to the payment of Rent to Landlord, Tenant shall pay to the Landlord Forty Dollars (\$40.00) per month as its share of the utilities used at the Tower site (the "Monthly Utilities Expense"). The first Monthly Utilities Expense payment shall be paid by Tenant to Landlord upon the Commencement Date and subsequent Monthly Utilities Expense payments shall be due and payable on or before the first day of each calendar month thereafter during the Term. The Monthly Utilities Expense shall increase ten percent (10%) during each Extension Term.

(e) Tenant shall pay Landlord a late payment charge equal to ten percent (10%) of the late payment for any payment 30 days past due. Any amounts not paid when due shall bear interest until paid at the rate of one and one half percent (1.5%) per month.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than ten (10) days after receipt of written notice from Landlord of such failure to pay; (ii) Tenant's failure to perform any other term or condition under this Agreement within thirty (30) days after receipt of written notice from Landlord specifying the failure; or (iii) if Tenant is adjudicated as bankrupt, makes any assignment for the benefit of creditors, or if Tenant becomes insolvent. No such failure, however, except for payment of Rent, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default, except for payment of Rent, will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period,

Landlord will have the right to exercise any and all rights and remedies available to it at law or in equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide access to the Leased Premises or cure any interference problem within twenty-four (24) hours after written notice of such default or (ii) Landlord's failure to perform any term, condition, or breach of any warranty or covenant under this Agreement within thirty (30) days after receipt of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have the right to exercise any and all rights available to it at law or in equity.

16. ASSIGNMENT.

(a) Tenant may not assign, sublet or otherwise transfer any portion of its interest in this Agreement or the Communications Facilities, by operation of law or otherwise, without the prior written consent of Landlord, which may be withheld in Landlord's sole and absolute discretion. An assignment, subletting, or transfer in violation of this section shall be null and void and unenforceable against Landlord. Notwithstanding the immediately preceding sentences, Tenant may assign its interest under this Agreement and to the Communications Facilities without Landlord's consent but upon at least thirty (30) days prior written notice to Landlord to (a) one or more entities which shall control, be controlled by, or be under common control with, Tenant, or (b) to any entity which acquires all or substantially all of Tenant's stock or assets in the market defined by the FCC in which the Property is located, in connection with any merger, consolidation or reorganization of Tenant.

(b) Except with respect to any pending claim of default under this Agreement, effective upon transfer by Landlord of Landlord's interest in the Property and/or Tower, Landlord shall be released from all obligations and liabilities arising out of this Agreement.

(c) The parties hereby expressly agree and acknowledge that it is the intention of both parties that in the event that during the Term of this Agreement, Tenant shall become a debtor in any voluntary or involuntary bankruptcy proceeding under the United States Bankruptcy Code, 11 U.S.C. 101, et seq. (the "Code"), for the purposes of proceeding under the Code, this Agreement shall be treated as an unexpired lease of nonresidential real property under Section 365 of the Code, as it may be amended, and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of Section 365 of the Code. Any person or entity to which this Agreement is assigned pursuant to the provisions of the Code, shall be deemed without further act to have assumed all of the obligations of the Tenant arising under this Agreement both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the Landlord an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to the Landlord, shall be the exclusive property of the Landlord, and shall not constitute property of the Tenant or of the estate of the Tenant within the meaning of the Code. Any monies or other considerations constituting

the Landlord's property under the preceding sentence not paid or delivered to the Landlord shall be held in trust for the benefit of the Landlord and be promptly paid to the Landlord.

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

If to Tenant: Visionary Communications LLC
1001 S. Douglas Highway, Suite 201
Gillette, WY 82716
Attention: Brian Shepherd, VP – Grant Engagement

If to Landlord: City of Salida, Colorado
448 E. First Street, Suite 112
Salida, CO 81201
Attention: City Administrator

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

18. CONDEMNATION AND EMINENT DOMAIN.

(a) In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within fifteen (15) days. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's reasonable determination, to render the Leased Premises unsuitable for Tenant's permitted use, this Agreement will terminate as of the date the title vests in the condemning authority. Tenant shall have the right at its sole option and at its sole cost and expense, to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant on account of any and all damage to Tenant's business and any costs or expenses incurred by Tenant in moving/removing its equipment, personal property and leasehold improvements.

(b) If the entire Property or a portion sufficient to render the Leased Premises unfit for occupancy or make it impossible for Tenant to conduct its business is taken by the power of eminent domain, this Agreement shall terminate as of the date of taking. Tenant shall immediately surrender the Leased Premises and all interests to the Landlord. Tenant shall have no claim against Landlord for any loss or damage.

19. CASUALTY. Landlord will provide notice to Tenant of any casualty affecting the Property within seven (7) days of the casualty if the casualty is not caused by Tenant, its employees, agents, or contractors, and if such casualty renders the Leased Premises unsuitable for Tenant's operations. If any part of the Communications Facilities or Property is damaged by fire or other casualty so as to render the Leased Premises unsuitable, in Tenant's reasonable determination, then Tenant may terminate this Agreement by providing written notice to the

Landlord, which termination will be effective as of the date of such damage or destruction so long as such damage was not caused by Tenant, its employees, agents, or contractors. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof. Tenant shall have no other claims against Landlord for any loss by fire, the elements, or other cause. If notice of termination is not given, and should Landlord or Tenant undertake to rebuild the Communications Facilities and/or Tower, Landlord agrees to use its reasonable efforts to permit Tenant to place temporary transmission and reception facilities on the Property and Rent shall be abated until such time as Tenant is able to activate a replacement transmission facility at another location or the reconstruction of the Communications Facilities and/or Tower are completed.

20. WAIVER OF LANDLORD'S LIENS. Landlord waives all lien rights it may have, statutory or otherwise, concerning the Communications Facilities or any portion thereof. The Communications Facilities shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law, and Landlord consents to Tenant's right to remove all or any portion of the Communications Facilities from time to time in Tenant's sole discretion and without Landlord's consent.

21. MECHANICS' AND MATERIALMANS' LIENS. Tenant shall not permit any mechanics' or materialmen's liens to be filed against the Leased Premises or the Property by reason of work, labor, services, or materials performed or furnished to or for the benefit of Tenant, its transferees, successors, or permitted assigns. If any such lien is filed, Tenant may contest the same in good faith, but notwithstanding contest, Tenant shall, within thirty (30) days after the filing thereof, cause such lien to be released of record by payment, bond, entry of an order of court of competent jurisdiction, or otherwise. The provisions of this Section 21 shall survive the expiration or earlier termination of this Agreement.

22. TAXES.

(a) Landlord is exempt from paying taxes. Tenant shall be solely responsible for and shall timely pay all personal property taxes levied and assessed against it or its personal property.

(b) Tenant shall have the right to, at its sole option and at its sole cost and expense, to contest all taxes, assessments, charges and impositions assessed against its personal property or improvements.

23. MISCELLANEOUS.

(a) **Amendment; Waiver.** This Agreement cannot be amended, modified, or revised unless done so in writing and then signed by an authorized agent of the Landlord and an authorized agent of the Tenant. No provision, benefit, or obligation under this Agreement shall be deemed waived, unless such waiver is in writing and signed by the party charged with such waiver. No course of dealing between the parties nor any failure by either party at any time, or from time to time, to enforce any term or condition of this Agreement shall constitute a waiver of such term or condition, nor shall such course of dealing or failure affect such term or condition in any way, or

affect the right of the parties at any time to avail themselves of such remedies as they may have for any breach of such term or condition.

(b) **Inurement.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(c) **Third Party Rights.** This Agreement does not create a standard of care for Landlord and does not enlarge Landlord's duties under any applicable law, regulation, or ordinance. This Agreement is for the sole benefit of the parties and their respective successors and permitted assigns. This Agreement affords no claim, benefit, or right of action to any third party. Any party besides Landlord or Tenant receiving services or benefits under this Agreement is only an incidental beneficiary.

(d) **Entire Agreement.** This Agreement together with the exhibits attached hereto constitutes the entire agreement of the parties hereto and supersedes all prior offers, negotiations, and agreements with respect to the subject matter of this Agreement.

(e) **Governing Law; Venue.** The provisions of this Agreement shall be governed by the laws of the State of Colorado, without giving effect to any conflict of law provisions. Any judicial proceeding brought hereunder shall be brought exclusively in Chaffee County, Colorado. Each party hereby consents to the jurisdiction of such county and waives any defense or objection to such jurisdiction and/or venue.

(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, without limitation"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; and (vi) reference to a default will take into consideration any applicable notice, grace and cure periods.

(g) **Estoppel.** Either party will, at any time upon twenty (20) business days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledge that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Property. The requested party's failure to deliver such statement within such time will be conclusively relied upon by the requesting party that (i) this Agreement is in full force and effect, without modification except as may be properly represented by the requesting party, (ii) there are no uncured defaults in either party's performance, and (iii) no more than one month's Rent has been paid in advance.

(h) **W-9.** Landlord 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 term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein.

(j) **Counterparts; Signatures.** 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 each of the parties. It being understood that all parties need not sign the same counterpart. Signatures on this Agreement delivered by facsimile or electronically in a portable document format (pdf) shall be deemed to constitute original signatures.

(k) **Survival of Provisions.** Any obligation of the parties relating to monies owed, as well as those provisions relating to limitations on liability and actions, shall survive the expiration or earlier termination of this Agreement.

(l) **Subordination.** Tenant accepts this Agreement subject and subordinate to any mortgage, deed of trust, or other lien presently existing or hereafter arising upon the Property and to any renewals, modifications, consolidation, refinancing, and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust, or other lien to this Agreement on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. This provision is hereby declared to be self-operative and no further instrument shall be required to effect such subordination of this Agreement.

(m) **Attorney's Fees.** In the event of any action filed in relation to this Agreement, the prevailing party in such matter shall be entitled to recover from the other party its reasonable attorney's fees and costs.

(n) **TABOR.** Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the City of Salida not performed during the current fiscal year is subject to annual appropriation by the City of Salida, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt, or liability beyond the current fiscal year.

(o) **Governmental Immunity.** The City of Salida is relying on and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the City of Salida.

(p) **Open Records.** The parties understand and agree that as a public entity, the City is subject to the Colorado Open Records Act, C.R.S. § 24-72-200, *et seq.*, as amended, and as such, this Agreement is subject to public disclosure.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the last signature below.

LANDLORD
City of Salida, Colorado

DATE: _____

By: _____
Print Name: _____
City Administrator

TENANT
Visionary Communications LLC,
a Wyoming limited liability company

DATE: _____

By: _____
Print Name: _____
Title: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

[*INSERT*]

EXHIBIT B

Description of Leased Premises with Drawings and Description/Location of Permitted Tower Use and Related Utility Easements

[*INSERT*]

EXHIBIT C

Existing Communication Facilities

[INSERT]