

ORDINANCE NO. 2023-10

AN ORDINANCE OF THE TOWN COUNCIL OF MOUNTAIN VILLAGE APPROVING A LICENSE AGREEMENT WITH VERO BROADBAND, LLC FOR COMMUNICATIONS EQUIPMENT SPACE AT 317 ADAMS RANCH ROAD, MOUNTAIN VILLAGE, COLORADO 81435

A. The Town of Mountain Village (the "Town"), in the County of San Miguel and State of Colorado, is a home rule municipality duly organized and existing under the laws of the State of Colorado and the Town Charter.

B. CRS. § 31-15-713(l)(c) authorizes the Town to lease or license any real estate owned by the Town when deemed by the Town Council to be in the best interest of the community; and

C. C.R.S. § 31-15-713(l)(c) requires any lease of Town property for a period of more than one year to be approved by ordinance.

D. The Town owns real property at 317 Adams Ranch Road, Mountain Village, Colorado 81435 (the "Property") which is used to house communications equipment necessary to operate the Town's broadband internet system.

E. The Town is selling its broadband internet system.

F. Vero Broadband, LLC ("Vero") has contracted with the Town to purchase the Town's broadband internet system and requires use of the Property following the close of the transaction to continue operating the broadband internet system.

G. Town Staff and Vero have negotiated a License Agreement ("Agreement"), Attached as Exhibit A, to permit use of the Property.

H. The Town Council desires to approve the Agreement.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO AS FOLLOWS:

Section 1. Legislative Findings.

The recitals to this Ordinance are adopted as findings of the Town Council in support of the enactment of this Ordinance.

Section 2. The License Agreement with Vero is hereby adopted as set forth on Exhibit A attached hereto.

Section 3. Severability.

If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions of

this Ordinance which can be given effect without the invalid provision or application, and, to this end, the provisions of this Ordinance are declared to be severable.

Section 4. Ordinance Effect.

Existing ordinances or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and any and all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed, provided however, that the repeal of any ordinance or parts of ordinances of the Town shall not revive any other section of any ordinance or ordinances hereto before repealed or superseded and further provided that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

Section 5. Safety Clause.

The Town Council finds and declares that this Ordinance is promulgated and adopted for the public health, safety and welfare of the citizens of the Town.

Section 6. Effective Date.

This Ordinance shall become effective on August 19, 2023 ("Effective Date") and shall be recorded in the official records of the Town kept for that purpose and shall be authenticated by the signatures of the Mayor and the Town Clerk.

Section 7. PUBLIC HEARING.

A public hearing on this Ordinance was held on the 20th day of July 2023, in the Town Council Chambers, 455 Mountain Village Boulevard, Mountain Village, Colorado.

INTRODUCED, READ AND REFERRED to public hearing before the Town Council of the Town of Mountain Village, Colorado on the 15th day of June 2023.

TOWN OF MOUNTAIN VILLAGE,
COLORADO, a home rule municipality

By: M. Prohaska
Martinique Prohaska, Mayor

ATTEST:

By: Susan Johnston
Susan Johnston, Town Clerk

HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village, Colorado, this 20th day of July 2023.

TOWN OF MOUNTAIN VILLAGE:

TOWN OF MOUNTAIN VILLAGE, COLORADO
A HOME-RULE MUNICIPALITY

By: M. Prohaska
Martinique Prohaska, Mayor

ATTEST:

Susan Johnston
Susan Johnston, Town Clerk

Approved as to Form:

David McConaughy
David McConaughy, Town Attorney



I, Susan Johnston, the duly qualified and acting Town Clerk of the Town of Mountain Village, Colorado ("Town") do hereby certify that:

1. The attached copy of Ordinance No. 2023-10 ("Ordinance") is a true, correct, and complete copy thereof.
2. The Ordinance was introduced, read by title, approved on first reading and referred to public hearing by the Town Council the Town ("Council") at a regular meeting held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on June 15, 2023, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Laila Benitez, Mayor	X			
Dan Caton, Mayor Pro-Tem	X			
Marti Prohaska	X			
Harvey Mogenson	X			
Patrick Berry	X			
Peter Duprey	X			
Jack Gilbride	X			

3. After the Council's approval of the first reading of the Ordinance, notice of the public hearing, containing the date, time and location of the public hearing and a description of the subject matter of the proposed Ordinance was posted and published in the Telluride Daily Planet, a newspaper of general circulation in the Town, on June 23, 2023 in accordance with Section 5.2(d) of the Town of Mountain Village Home Rule Charter.
4. A public hearing on the Ordinance was held by the Town Council at a regular meeting of the Town Council held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on July 20, 2023. At the public hearing, the Ordinance was considered, read by title, and approved without amendment by the Town Council, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Marti Prohaska, Mayor	X			
Scott Pearson, Mayor Pro-Tem	X			
Tucker Magid	X			
Harvey Mogenson	X			
Patrick Berry	X			
Peter Duprey	X			
Jack Gilbride	X			

5. The Ordinance has been signed by the Mayor, sealed with the Town seal, attested by me as Town Clerk, and duly numbered and recorded in the official records of the Town.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town this 20th day of July 2023.

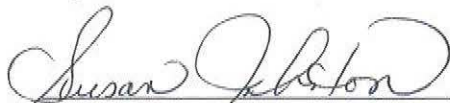

 Susan Johnston, Town Clerk
 (SEAL)



Exhibit A

[License Agreement]

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the “**Agreement**”) is made as of this ____ day of _____, 2023 (“**Effective Date**”) by and between the Town of Mountain Village, Colorado, a Colorado home rule municipality (“**Owner**”), and Vero Broadband, LLC, a Colorado limited liability company (“**Licensee**”). Each of Owner and Licensee may be referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**.”

WHEREAS Owner is the owner of that certain land and the building (the “**Building**”) thereon (together, the “**Property**”), having a street address of 317 Adams Ranch Road, Mountain Village, Colorado 81435.

WHEREAS Owner desires to license the Premises defined herein to the Licensee under the terms and conditions as set forth herein.

WHEREAS Licensee desires to license the Premises defined herein from the Owner under the terms and conditions set forth herein.

WHEREAS Owner is willing to permit Licensee to construct, replace, maintain, repair, operate, inspect, augment, and remove its communications system through, over, and under the Property, under the terms and conditions described below.

NOW, THEREFORE, for and in consideration of the covenants and obligations set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Licensee and Owner hereby agree as follows:

1. Grant.

a. Owner hereby grants to Licensee a non-exclusive license, at Licensee’s sole option and expense, to construct, replace, maintain, repair, operate, inspect, augment, and remove, on, within, under, across, and along those portions of the Property (the “**Licensed Area**”), as depicted on the attached Exhibit A, Licensee’s communications equipment and related wires, cables, underground conduit, aerial supports, aerial cabling, antennas, building entrance facilities, above-ground enclosures, markers and concrete pads and other appurtenant fixtures and equipment (together, the “**Facilities**”).

b. Without limiting the foregoing, Owner shall give Licensee reasonable access to vertical and horizontal shafts, conduits, roof, and the common areas, on within, under and along the Property and Licensed Area to enable Licensee, where necessary and at its expense, to install Facilities.

c. Nothing contained herein shall be construed as granting to Licensee any ownership rights in the Property or to create a partnership or joint venture between Owner and Licensee.

2. Term.

a. Commencing on the Effective Date, this Agreement shall have an initial term of ten (10) years (the “**Initial Term**”). This Agreement may renew for four (4) successive periods of five (5) years each (the “**Renewal Terms**”) upon approval by the Town Council (the “**Initial Term**” and the “**Renewal Terms**” are collectively referred to as the “**Term**”).

b. The license granted hereby may not be revoked during the Term, except as provided in Sections 9 and 13.

3. **Base Rent.** In consideration for the Agreement, Licensee shall pay Owner Three Thousand Dollar (\$3,000.00) a month (“**Base Rent**”) continuing throughout the Term. Base Rent is inclusive of all utility costs and the Owner’s obligations detailed in Section 6 below. The Base Rent for the Initial Term shall be paid monthly on the first of each month beginning on the Effective Date and the Base Rent for each Renewal Term shall be paid monthly on the first day of each month following the start of each such Renewal Term. Base rent shall be subject to a three percent (3%) annual escalation which shall increase annually on the anniversary of the Effective Date.

4. **Installation.** Licensee may construct, replace, maintain, repair, operate, inspect, augment, and remove its Facilities, at Licensee’s sole cost and expense, provided that Licensee shall:

- a. perform such work in a safe manner consistent with generally accepted construction standards;
- b. perform such work in such a way as to reasonably minimize interference with the operation of the Property; and
- c. obtain, prior to the commencement of any work, necessary federal, state, and municipal permits, licenses, and approvals.

5. **Facilities.** The Facilities shall belong to Licensee and shall be there at the sole risk of Licensee, and Owner shall not be liable for damage thereto or theft, misappropriation, or loss thereof, except in the event of the negligence or willful misconduct of Owner, its employees, agents, contractors, or invitees. At the expiration of this Agreement, Licensee shall, at Licensee’s sole cost and expense, remove the Facilities and Licensee’s other personal property from the Building, and return the Licensed Area to Owner in good condition and repair, ordinary wear and tear excepted. Any property not so removed within ninety (90) days after the expiration of this Agreement shall be deemed the property of Owner without further liability to Licensee.

6. **Owner’s Obligations.** At Owner’s expense, Owner shall:

- a. keep the Property in good order, repair, and condition.
- b. supply the following services and utilities: (i) heat, ventilation, and air conditioning; (ii) cleaning and janitorial services; (iii) hot and cold, running, potable water reasonably adequate for Tenant's needs; (iv) electricity for lighting and operating small equipment; (v) provide, install, and replace all necessary light bulbs and tubes; (vi) illuminate and maintain the parking area, walks, and driveways, including snow and ice removal.
- c. Maintain a service contract on the building generator to include periodic maintenance, load testing, and fuel supply.

7. **Licensee’s Obligations.** At Licensee’s expense, Licensee shall:

- a. keep the Facilities in good order, repair, and condition, and promptly and adequately repair all damage to the Property caused by Licensee, other than ordinary wear and tear.
- b. be responsible for all taxes assessed on Licensee’s Facilities.
- c. comply with federal, state, and municipal laws, orders, rules, and regulations applicable to the Facilities.

8. **Access.** Owner shall allow Licensee, and its employees, agents, and contractors, access to the Property at all times on a 24x7x365 basis. Licensee shall not be permitted to access Owner's proprietary systems unrelated to the Licensee's operation of their broadband network including but not limited to Owner's Supervisory Control and Data Acquisition ("SCADA") systems.

9. **Relocation.** Licensee acknowledges and understands that the Building may be required to be removed or relocated pursuant to Owner-approved development projects. Owner shall provide Licensee no less than one (1) year written notice of any proposed relocation or removal of the Building. In the event of a proposed relocation or removal, Owner will work in good faith with Licensee to propose an alternative location where headend access can be provided on substantially the same terms and conditions as provided under this Agreement. In the case that no suitable replacement location can be found this Agreement shall terminate upon one (1) year written notice by Owner that no such location could be found.

10. **Liens.** Licensee shall be responsible for the satisfaction or payment of any liens for any provider of work, labor, material or services claiming by, through or under Licensee. Licensee shall also indemnify, hold harmless and defend Owner against any such liens, including the reasonable fees of Owner's attorneys. Such liens shall be discharged by Licensee within sixty (60) days after notice by Owner of filing thereof by bonding, payment or otherwise, provided that Licensee may contest, in good faith and by appropriate proceedings any such liens.

11. **Performance of Work.** Licensee may contract or subcontract any portion of work at the Property contemplated by this Agreement to any person or entity competent to perform such work. In no event shall such subcontract relieve Licensee of any of its obligations under this Agreement.

12. **Limitation of Liability.** Neither Party shall be liable for loss or damage occasioned by a Force Majeure Event. No cause of action under any theory which accrued more than one (1) year prior to the filing of a complaint alleging a cause of action may be asserted by either Party against the other Party. Neither Party shall be liable to the other Party for any lost profits, special, incidental, punitive, exemplary, or consequential damages, including but not limited to frustration of economic or business expectations, loss of revenue, loss of capital, cost of substitute product(s), facilities or services, or down time cost, even if advised of the possibility of such damages.

13. **Default.** Should either Party default in the performance of a material provision of this Agreement and fail to correct same within sixty (60) days after having received written notice specifying the nature of such default, unless such default is of a nature that it cannot be completely cured within sixty (60) days, if a cure is not commenced within such time and thereafter diligently pursued to completion, then the non-defaulting Party may terminate this Agreement and may pursue all other remedies available to it at law and/or equity.

14. **Indemnification.** Licensee shall indemnify, hold harmless, and defend Owner, its employees, agents, contractors, invitees, officers, directors, affiliates and subsidiaries from and against any and all claims, actions, damages, liabilities and expenses, including reasonable attorneys' and other professional fees, arising from or out of the installation, operation, maintenance or removal by Licensee of the Facilities, except to the extent that any such claims, actions, damages, liabilities, expenses or damage are caused by Owner, its employees, agents, contractors, invitees, officers, directors, affiliates or subsidiaries.

15. **No Waiver of Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Owner, its elected and appointed officials, employees, contractors, or agents, or any other person acting on behalf of the Owner and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

16. **Insurance.** Licensee shall maintain insurance coverage insuring against claims, demands, or actions for personal injuries or death resulting from the use or operation of the Facilities with limits of not less than One Million Dollars (\$1,000,000) any one occurrence, in an aggregate amount of Two Million Dollars (\$2,000,000), and for damage to property in an amount of not less than Two Million Dollars (\$2,000,000). Such insurance shall name Owner as additional insured for coverage only, with no premium payment obligation, and shall provide that it is primary insurance and not "excess over" or contributory with any other valid, existing, and applicable insurance in force for or on behalf of Owner. The policy shall not eliminate cross-liability and shall contain a severability of interest clause. Upon Owner's request, Licensee shall provide a certificate of insurance to Owner.

17. **Damage to Building.** In the event that the Building is damaged or destroyed by fire or other casualty such that Licensee is unable to occupy the Premises for its permitted use, Licensee may at its option terminate this Agreement.

18. **Assignment.** Licensee shall not assign or transfer this Agreement without the written consent of the Owner, which consent will not be unreasonably withheld, conditioned, or unduly delayed; except that, upon written notice to the Owner, Licensee may, without obtaining Owner's prior consent, make such assignment to:

- a. any subsidiary, affiliate, or parent of Licensee.
- b. any partnership in which it has a majority interest.
- c. any entity which succeeds to all or substantially all of Licensee's assets or ownership interests, whether by merger, sale or otherwise.
- d. any business reorganization that may result in a change in majority control, investor ownership, or refinancing.

The surviving entity of any of the above assignments shall assume the obligations of Licensee or its assignees under this Agreement.

19. **Force Majeure.** Neither Party shall be liable for loss, damage, or failure to perform its obligations hereunder due to acts or conditions beyond its reasonable control including but not limited to acts of God, the failure of equipment or facilities not belonging to Licensee (including, but not limited to, utility facilities or service), denial of access to facilities or rights-of-way essential to accessing the Property or Building, government order or regulation, or any other circumstances beyond the reasonable control of the Licensee.

20. **Notice.** All notices, demands, requests or other communications given under this Agreement shall be in writing and shall be deemed properly given (a) if delivered in person to a Party; or (b) if delivered by an overnight delivery service, private courier, or commercial courier; or (c) if delivered by the United States mails, certified, or registered mail with return receipt requested. All notices so given

shall be deemed effective on actual delivery or if delivery is refused, upon refusal. All notices shall be delivered at the following addresses:

If to Owner: Town of Mountain Village
411 Mountain Village Blvd.
Mountain Village, CO 81435
Attn: Town Manager

If to Licensee: Vero Broadband, LLC
1023 Walnut St.
Boulder, CO 80302
Attn: Chief Operating Officer

With a copy to:
Gregg Strumberger
Chief Legal Officer
At the same address.

21. Governing Law. This Agreement shall be governed by and construed under the laws of the state of Colorado.

22. Miscellaneous. This Agreement shall run with the land and shall bind and benefit the Parties and their respective successors and assigns. This Agreement is the entire understanding between the Parties and supersedes any prior agreements or understandings whether oral or written. This Agreement may not be amended except by a written instrument executed by both Parties. If any provision of this Agreement is found to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement will not be affected or impaired. Each Party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such Party to the commitments and obligations set forth herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

Owner:

Town of Mountain Village

Signature

Name

Title

Date

Licensee:

Vero Broadband, LLC

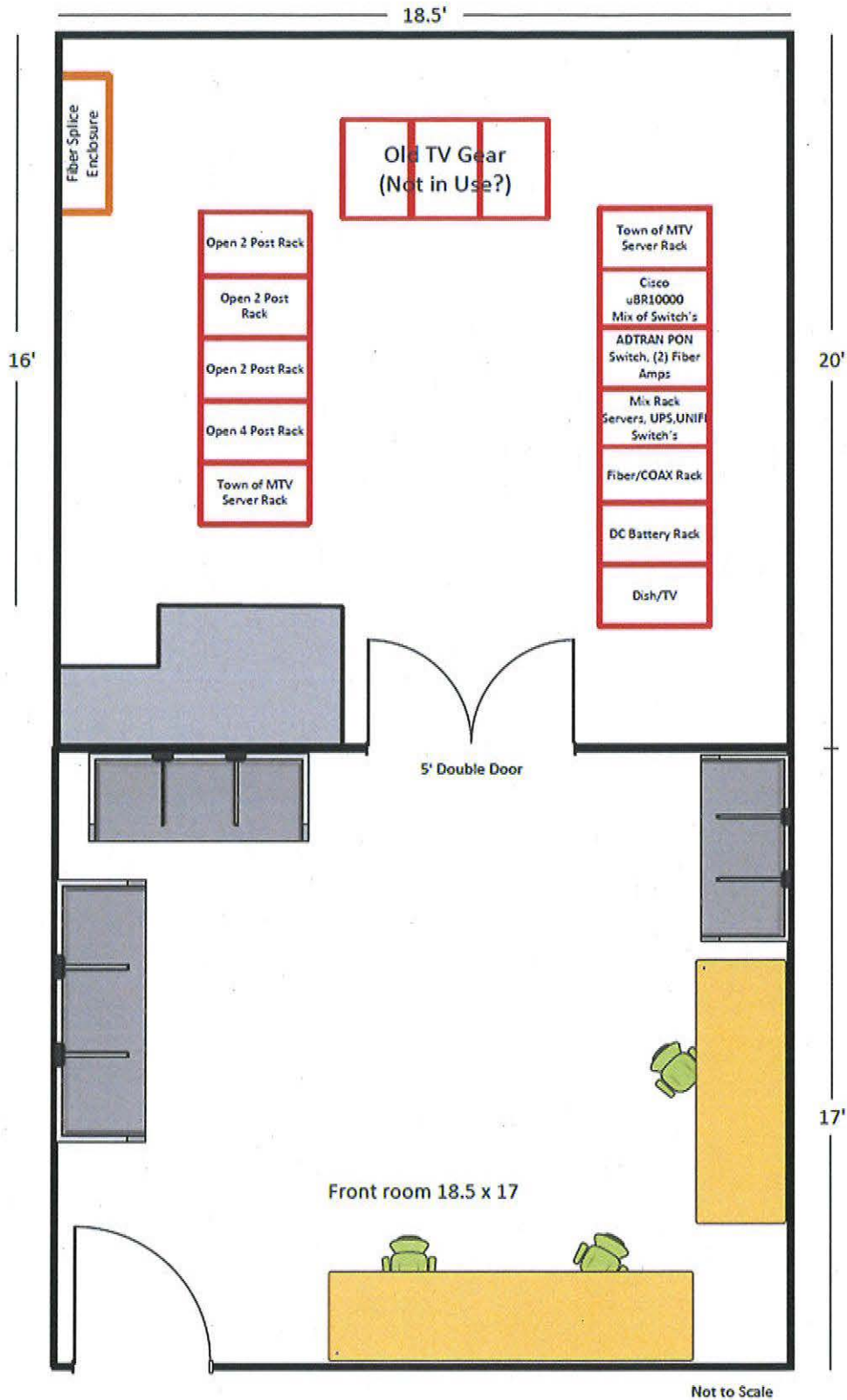
Signature

Name

Title

Date

EXHIBIT A
Property and Licensed Area



Not to Scale