

RESOLUTION NO. 2024-82

A RESOLUTION OF THE CITY OF MARINA APPROVING A NETWORK DISTRIBUTION EQUIPMENT SITE JOINT USE AND ACCESS AGREEMENT WITH THE INTERNET STORE, INC., A CALIFORNIA CORPORATION, D/B/A CRUZIO FOR THE JOINT USE AND LEASE OF A CITY PROPERTIES TO ESTABLISH A WIRELESS BROADBAND INTERNET NETWORK FOR MARINA RESIDENTS AND BUSINESSES

WHEREAS, Cruzio is a telecommunications provider that desires an agreement for the joint use and lease of a portion of City's Properties; and

WHEREAS, City as Landlord desires to grant to Cruzio as Tenant the right to use a portion of the Property in accordance with this Agreement; and

WHEREAS, Cruzio wishes to establish a wireless broadband internet network for Marina residents and businesses and currently provides wireless broadband internet services to the areas of Aptos, Aromas, Ben Lomond, Bonny Doon, Boulder Creek, Brookdale, Capitola, Corralitos, Davenport, Felton, Freedom, La Selva Beach, Lompico, Pajaro, Rio Del Mar, Santa Cruz, Scotts Valley, Seacliff, Soquel, Watsonville, & Zayante; and

WHEREAS, Cruzio shall construct, install, maintain and operate network distribution equipment and related backhaul connections and antenna, and appurtenances thereto on a portion of City's Properties together with a non-exclusive right-of-way for ingress and egress across a portion of the Properties for access and utilities for the sole purpose of providing telecommunications service(s) to customers, including but not limited to residents and businesses within range of its transmission facilities as set forth in this Agreement; and

WHEREAS, City has determined that this Agreement and Cruzio's Permitted Use of the Sites and Access Areas will not interfere with public safety or Airport control tower operations.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marina does hereby:

1. Approve a network distribution equipment site joint use and access agreement with The Internet Store, Inc., a California corporation, d/b/a Cruzio for the joint use and lease of a City properties to establish a wireless broadband internet network for Marina residents and businesses; and
2. Authorize the City Manager to execute the agreement on behalf of the City subject to final review and approval by the City Attorney.

PASSED AND ADOPTED by the Marina City Council at a regular meeting duly held on the 2nd day of July 2024 by the following vote:

AYES: COUNCIL MEMBERS: McAdams, McCarthy, Biala, Visscher, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

NETWORK DISTRIBUTION EQUIPMENT SITE JOINT USE AND ACCESS AGREEMENT

THIS NETWORK DISTRIBUTION EQUIPMENT SITE JOINT USE AND ACCESS AGREEMENT (“**Agreement**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is entered into by the City of Marina, a municipal corporation, having a mailing address of 211 Hillcrest Avenue, Marina, CA 93933 (“**Landlord**” or “**City**”) and **The Internet Store, Inc.**, a California corporation, d/b/a Cruzio, Cruzio Internet, Cruzio works, Cruzio Media and Santa Cruz Fiber, with its principal place of business located at 877 Cedar Street, Suite 150, Santa Cruz, California 95060 (“**Cruzio**”). (“**Tenant**” or “**Cruzio**”). Cruzio and City are at times collectively referred to herein as the “**Parties**”, or individually as the “**Party**”.

RECITALS

WHEREAS, Landlord is the record owner of certain real property and improvements located in the City of Marina, as described on **Exhibit 1**, together with all rights and privileges arising in connection therewith, located at three (3) locations as listed below (collectively, the “**Property**”):

1. The City of Marina Public Safety Building located at 208 Palm Avenue, Marina, CA (APN 032-303-030-000).
2. The Preston Park Scorers Booth located at 3100 Preston Drive, Marina, CA (APN 031-201-027-000).
3. The Marina Municipal Airport Control Tower located at 3262 Imjin Road, Marina, CA (APN 031-112-010-000).

WHEREAS, Cruzio is a telecommunications provider that desires an agreement for the joint use and lease of a portion of City’s Properties

WHEREAS, Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

WHEREAS, Cruzio wishes to establish a wireless broadband internet network for Marina residents and businesses. Tenant currently provides wireless broadband internet services to the areas of Aptos, Aromas, Ben Lomond, Bonny Doon, Boulder Creek, Brookdale, Capitola, Corralitos, Davenport, Felton, Freedom, La Selva Beach, Lompico, Pajaro, Rio Del Mar, Santa Cruz, Scotts Valley, Seacliff, Soquel, Watsonville, & Zayante.

WHEREAS, Cruzio shall construct, install, maintain and operate network distribution equipment and related backhaul connections and antenna, and appurtenances thereto (the “**Network Distribution Equipment**”) on a portion of City’s Properties (the “**Premises**” as further defined below), together with a non-exclusive right-of-way for ingress and egress across a portion of the Properties for access and utilities for the sole purpose of providing telecommunications service(s) to customers, including but not limited to residents and businesses within range of its transmission facilities as set forth in this Agreement (collectively, the “**Permitted Use**” as further defined below);

WHEREAS, City has determined that this Agreement and Cruzio’s Permitted Use of the Sites and Access Areas will not interfere with public safety or airport control tower operations; and

WHEREAS, the City Council of the City of Marina (“**Council**”) has authorized this Agreement at its regular meeting on _____.

Now, therefore, the parties agree as follows:

1. LEASE OF PREMISES.

Landlord hereby leases to Tenant the Premises including the air space above such ground space, as described on attached **Exhibit 1**, for the placement of Network Distribution Equipment in accordance with the terms of this Agreement.

2. PERMITTED USE.

(a) Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure (“**Structure**”), associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (the “**Network Distribution Equipment**”), as well as the right to test, survey and review title on the Property; 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 cost to Tenant or Landlord (collectively, the “**Permitted Use**”). Landlord and Tenant agree that any portion of the Network Distribution Equipment that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant’s Permitted Use. If **Exhibit 1** includes drawings of the initial installation of the Network Distribution Equipment, Landlord’s execution of this Agreement will signify Landlord’s approval of **Exhibit 1**. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, the right to use such portions of the Surrounding Property as may reasonably be required during construction and installation of the Network Distribution Equipment. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the Property’s main entry point to the equipment shelter or cabinet, install a generator and to make other improvements, alterations, upgrades or additions appropriate for Tenant’s Permitted Use, install warning signs to make individuals aware of risks, install protective barriers, install any other control measures reasonably required by Tenant’s safety procedures or applicable law, and undertake any other appropriate means to secure the Premises or equipment at Tenant’s expense. Tenant has the right to modify, supplement, replace, and upgrade the Network Distribution Equipment or relocate the Network Distribution Equipment within the Premises at any time during the Term. Tenant will be allowed to make such alterations to the Premises in order to ensure that the Network Distribution Equipment complies with all applicable federal, state or local laws, rules or regulations.

(b) Prior to the initial installation, or subsequent modification of the Network Distribution Equipment, Tenant will supply Landlord with plans and specifications (“**Plans**”) to be reviewed and approved by Landlord prior to commencement of construction. Landlord’s approval will not be unreasonably withheld, conditioned or delayed (and in no event delayed beyond thirty (30) days). Landlord’s approval right in the foregoing sentence shall include the right to approve the design, height, setbacks, and other physical and aesthetic characteristics of the proposed Network Distribution Equipment and any subsequent modification thereto. After approval, the Plans will be considered incorporated in this Agreement as **Exhibit 1**. If Landlord disapproves the Plans then the Tenant will provide Landlord with revised Plans, such revisions to be within Tenant’s reasonable discretion. In the event Landlord disapproves of the revised Plans, Tenant may either i) make further revisions to the Plans and submit them to Landlord for review or ii) terminate this Agreement without further liability by providing written notice to Landlord. Landlord will not knowingly permit or suffer any person to copy or utilize the Plans for any purpose other than as provided in this Agreement and will return the Plans to Tenant promptly upon request. Tenant maintains the right to perform routine maintenance, repairs, replacements and upgrades without Landlord approval when no changes to the exterior appearance of Tenant’s Network Distribution Equipment are made.

3. TERM.

(a) The initial lease term will be five (5) years (the “**Initial Term**”), commencing on the Effective Date. The Initial Term will terminate on the fifth (5th) anniversary of the Effective Date.

(b) This Agreement may be renewed for three (3) additional five (5) year term(s) (each additional five (5) year term shall be defined as an “**Extension Term**”), upon the same terms and conditions set forth herein. After expiration of the third Extension Term, Landlord will have the option to terminate this Agreement upon providing at least three (3) months’ prior written notice to Tenant.

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

4. **RENT.**

(a) Commencing on the Effective Date of this Agreement as long as all required permits have been issued by the jurisdiction or on the first day of the month following the date that Tenant commences construction, whichever occurs first (the “**Rent Commencement Date**”), Tenant will pay Landlord on or before the fifth (5th) day of each calendar month in advance, Three Hundred and No/100 Dollars (\$300.00) (the “**Rent**”), at the address set forth above. The Rent is conditioned on Cruzio (1) providing a low-income rate for internet services to qualifying households throughout the duration of the Term as well as (2) providing free internet services to City facilities to be used as a back up to the City’s primary internet service. In any partial month occurring after the Rent Commencement Date, the Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within forty-five (45) days after the Rent Commencement Date.

(b) Upon the commencement of year two (2) of the Initial Term, and each year thereafter, including throughout any Extension Terms exercised, the monthly Rent will increase by three percent (3%) over the Rent paid during the previous year.

(c) At the end of the first Extension Term (e.g., year 10), the Parties will review the Rent and renegotiate the amount based on factors including, but not limited to, the number of subscribers of Cruzio’s internet service, fees for such internet service, and comparable lease rates at other Cruzio locations in California.

5. **APPROVALS.**

(a) Tenant acknowledges and agrees that, if, and to the extent required by applicable law, and provided that the City of Marina Municipal Code is not inconsistent with federal or state law, Tenant’s Permitted Use of the Premises may be subject to Tenant obtaining approval of a conditional use permit pursuant to section 17.58 of the Marina Municipal Code. Additionally, Tenant may be required to obtain other approvals from other governmental agencies, whether federal, state, or local (“**Government Approvals**”)

(b) Landlord agrees that Tenant’s ability to use the Premises is contingent upon the suitability of the Premises and Property for the Permitted Use and Tenant’s ability to obtain and maintain all Government Approvals. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for the Permitted Use and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.

(c) 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 its choice.

(d) Tenant may also perform and obtain, at Tenant’s sole cost and expense, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant’s use of the Premises will be compatible with Tenant’s engineering specifications, system, design, operations or Government Approvals.

6. **TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon thirty (30) days prior written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Network Distribution Equipment as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(c) by Tenant upon written notice to Landlord for any reason or no reason, at any time prior to commencement of construction by Tenant; or

(d) by Tenant upon sixty (60) days' prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to three (3) months' Rent, at the then-current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any termination provision contained in any other Section of this Agreement, including the following: Section 5 Approvals, Section 6(a) Termination, Section 6(b) Termination, Section 6(c) Termination, Section 11(d) Environmental, Section 08 Condemnation, or Section 19 Casualty.

7. **INSURANCE.** During the Term, Tenant will carry and maintain in effect such commercial general liability policy based on ISO form CG 00 01 or a substitute form providing substantially equivalent coverage, as Tenant may deem necessary. Said policy of commercial general liability insurance will provide a combined single limit of One Million and No/100 Dollars (\$1,000,000.00) per occurrence and Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate. The policy required by this Agreement shall be issued by an insurer eligible to do business in the State of California and with a rating of at least A-:VII in the latest edition of Best's Insurance Guide. At all times during the Term of this Agreement, Tenant shall maintain on file with City of Marina a certificate of insurance showing that the required coverage is in effect and including Landlord and its officers, employees, agents and volunteers as additional insureds by endorsement with respect to this Agreement. Prior to commencement of construction, Tenant shall file with the City of Marina such certificate(s) and blanket endorsements on current versions of ISO Forms CG 20 10 and CG 20 37 or the substantial equivalent including Landlord as an additional insured.

8. **INTERFERENCE.**

(a) Prior to or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant with a list of radio frequency user(s) and frequencies used on the Property as of the Effective Date. Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the Property, 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.

(b) Landlord will not grant, after the Effective Date, a lease, license or any other right to any third party, if the exercise of such grant may in any way adversely affect or interfere with the Network Distribution Equipment, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Landlord will not, nor will Landlord permit its employees, tenants, licensees, invitees, agents or independent contractors to interfere in any way with the Network Distribution Equipment, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant provided such interference is not due to equipment or operations of Landlord necessary to respond to an emergency. In the event of such emergency, the Parties will work together to reduce or eliminate such interference until such emergency has ceased at which time Landlord will cause such interference to cease within twenty-four (24) hours after which such emergency has ended.

(d) For the purposes of this Agreement, “interference” may include, but is not limited to, any use on the Property or Surrounding Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Network Distribution Equipment.

(e) Notwithstanding the foregoing, Landlord shall have the right to upgrade, service, replace, and install new equipment on the Property that emit radio frequencies if such equipment is limited to governmental uses and only if such equipment does not interfere with the operations of the Network Distribution Equipment, or Tenant’s rights under this Agreement.

9. INDEMNIFICATION.

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim (including reasonable attorneys’ fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Network Distribution Equipment or Tenant’s breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act of Landlord, its employees, invitees, agents or independent contractors. Tenant shall promptly notify Landlord of any claim.

(b) The indemnified party: (i) shall promptly provide the indemnifying party with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section 9 and provide the indemnifying party with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the indemnifying party; and (iii) shall fully cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the indemnifying party of its indemnity obligation, except to the extent the indemnifying party can show it was prejudiced by the delay.

10. WARRANTIES.

Each of Tenant and Landlord (to the extent not a natural person) each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power, and authority or capacity, as applicable, to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

11. ENVIRONMENTAL.

(a) Landlord and 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 or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party’s activity conducted in or on the Property.

(b) Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding (“**Claims**”), to the extent arising from that party’s breach of its obligations under Section 11(a). Landlord agrees to hold harmless and indemnify Tenant from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Landlord for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the Property with hazardous substances prior to the Effective Date or from such contamination caused by the acts or omissions of Landlord during the Term. Tenant agrees to hold harmless and indemnify Landlord from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Tenant for, payment of penalties, sanctions, forfeitures, losses, costs or damages,

and for responding to any Claims, to the extent arising from hazardous substances brought onto the Property by Tenant.

(c) The indemnification provisions contained 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. The provisions of this Section 11 will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental, health or safety condition or matter relating to the Property, that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of liability to a government agency or other third party, then Tenant will have the right to terminate this Agreement upon written notice to Landlord.

12. ACCESS. At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have reasonable access upon twenty-four (24) hours' notice to Landlord ("**Access**") to and over the Property, from an open public road to the Premises, for the installation, maintenance and operation of the Network Distribution Equipment and any utilities serving the Premises, provided such Access does not interfere in any manner with Landlord's operations or access to the premises. Landlord has no obligation to improve the Property for Tenant's Access. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right of Access. Landlord shall execute a letter granting Tenant Access to the Property substantially in the form attached as **Exhibit 2**; upon Tenant's request, Landlord shall execute additional letters during the Term. If Tenant elects to utilize an Unmanned Aircraft System ("UAS") in connection with its installation, construction, monitoring, site audits, inspections, maintenance, repair, modification, or alteration activities at a Property, Landlord hereby grants Tenant, or any UAS operator acting on Tenant's behalf, upon providing Landlord twenty-four (24) hours' notice, express permission to fly over the applicable Property and Premises, and consents to the use of audio and video navigation and recording in connection with the use of the UAS.

13. REMOVAL/RESTORATION.

(a) All portions of the Network Distribution Equipment brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during or after the Term. Landlord covenants and agrees that no part of the Network Distribution Equipment constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during or after the Term. Tenant will repair any damage to the Property resulting from Tenant's removal activities. Tenant shall be responsible to restore the Property to its original condition, reasonable wear and tear excepted. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation.

(b) The Structure and Network Distribution Equipment shall be removed within sixty (60) days of the later of the end of the Term or termination or expiration of the Agreement, and cessation of Tenant's operations at the Premises. The Premises will be restored to its original, preconstruction condition. Written verification of the removal of the Structure and Network Distribution Equipment will be provided to the Marina Director of Public Works within ninety (90) days of such removal. If the Tenant fails to remove the Structure and Network Distribution Equipment from the Premises within the time period specified herein, the site may be deemed a public nuisance by the Landlord and the Landlord may initiate removal at Tenant's expense.

14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Network Distribution Equipment in good operating condition, and the Premises in good condition, free from trash, debris, litter and graffiti and other forms of vandalism, reasonable wear and tear and damage from the elements excepted (“**Adverse Conditions**”). Should the Landlord provide Tenant with notice of any Adverse Conditions, the Tenant shall remedy any Adverse Conditions within thirty (30) days of Tenant’s receipt of Landlord’s notice. Notwithstanding the foregoing, Tenant will remove graffiti as soon as practicable. 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.

(b) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to sub-meter from Landlord. When sub-metering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Tenant shall reimburse Landlord for such utility usage at the same rate charged to Landlord by the utility service provider. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within thirty (30) days of receipt of the usage data and required forms. Landlord shall maintain accurate and detailed records of all utility expenses, invoices and payments applicable to Tenant’s reimbursement obligations hereunder. Within fifteen (15) days after a request from Tenant, Landlord shall provide copies of such utility billing records to the Tenant in the form of copies of invoices, contracts and cancelled checks. If the utility billing records reflect an overpayment by Tenant, Tenant shall have the right to deduct the amount of such overpayment from any monies due to Landlord from Tenant.

(d) Any utility fee recovery by Landlord is limited to a twelve (12) month period. If Tenant submeters electricity from Landlord, Landlord agrees to give Tenant at least twenty-four (24) hours advance notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended period of time, in Tenant’s reasonable determination, Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

(e) Tenant will have the right to install utilities, at Tenant’s expense, and to improve present utilities on the Property and the Premises. Landlord hereby grants to any service company providing utility or similar services, including electric power and telecommunications, to Tenant an easement over the Property, from an open public road to the Premises, and upon the Premises, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such service companies may from time to time require in order to provide such services to the Premises. Upon Tenant’s or service company’s request, Landlord will execute a separate recordable easement evidencing this grant, at no cost to Tenant or the service company.

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 fifteen (15) days after such Rent is due; or (ii) Tenant’s failure to perform any other term or condition under this Agreement within forty-five (45) days after written notice from Landlord specifying the failure. No such failure, however, 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 will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, then Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after 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: (i) the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant, and (ii) any and all other rights available to it under law and equity, including termination of this Agreement.

16. ASSIGNMENT/SUBLEASE. Landlord will have the right to assign this Agreement or its interest in the Premises and its rights herein, in whole or in part, without Tenant's consent. Upon notification to Tenant of such assignment, Landlord will be relieved of all future performance, liabilities and obligations under this Agreement to the extent of such assignment.

17. NOTICES. All notices, requests and demands 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 the parties hereto as follows:

If to Tenant: The Internet Store, Inc.
 dba Cruzio, Cruzio Internet, Cruzioworks and
 Santa Santa Cruz Fiber
 877 Cedar Street, Suite 150
 Santa Cruz, CA 95060
 Attn: Legal Department

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

If to Landlord: City Manager
 City of Marina
 211 Hillcrest Avenue.
 Marina, CA 93933

With a copy to: City Attorney
 City of Marina
 SHUTE, MIHALY & WEINBERGER LLP
 396 Hayes Street
 San Francisco, CA 94102

Either party hereto may change the place for the giving of notice to it by fourteen (14) days' prior written notice to the other party hereto as provided herein.

18. CONDEMNATION. In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Network Distribution Equipment, moving expenses, prepaid Rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent on a *pro rata* basis.

19. CASUALTY. Landlord will provide notice to Tenant of any casualty or other harm affecting the Property within twenty-four (24) hours of the casualty or other harm. If any part of the Network Distribution Equipment or the 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 Landlord, 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 Rent on a *pro rata* basis. Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property, but only until such time as Tenant is able to activate a replacement transmission facility at another location; notwithstanding the termination of this Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement, including Rent. If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Network Distribution Equipment, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until the reconstruction of the Premises and/or the Network Distribution Equipment is completed. If Landlord determines not to rebuild or restore the Property, Landlord will notify Tenant of such determination within thirty (30) days after the casualty or other harm. Landlord agrees that the Rent shall be abated until the Property and/or the Premises are rebuilt or restored, unless Tenant places temporary transmission and reception facilities on the Property.

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

21. TAXES.

(a) Landlord shall be responsible for (i) all taxes and assessments levied upon the lands, improvements and other property of Landlord including any such taxes that may be calculated by a taxing authority using any method, including the income method, (ii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with this Agreement, and (iii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with a sale of the Property or assignment of Rent payments by Landlord. Tenant shall be responsible for (y) any taxes and assessments attributable to and levied upon Tenant's leasehold improvements on the Premises if and as set forth in this Section 21 and (z) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with an assignment of this Agreement or sublease by Tenant. Nothing herein shall require Tenant to pay any inheritance, franchise, income, payroll, excise, privilege, rent, capital stock, stamp, documentary, estate or profit tax, or any tax of similar nature, that is or may be imposed upon Landlord.

(b) In the event Landlord receives a notice of assessment with respect to which taxes or assessments are imposed on Tenant's leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice immediately upon receipt, but in no event later than thirty (30) days after the date of such notice of assessment. If Landlord provides a notice of assessment to Tenant within such time period and requests reimbursement from Tenant as set forth below, then Tenant shall reimburse Landlord for the tax or assessments identified on the notice of assessment on Tenant's leasehold improvements, which has been paid by Landlord. If Landlord seeks reimbursement from Tenant, Landlord shall, no later than thirty (30) days after Landlord's payment of the taxes or assessments for the assessed tax year, provide Tenant with written notice including evidence that Landlord has timely paid same, and Landlord shall provide to Tenant any other documentation reasonably requested by Tenant to allow Tenant to evaluate the payment and to reimburse Landlord.

(c) For any tax amount for which Tenant is responsible under this Agreement, Tenant shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as permitted by law. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate with respect to the commencement and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant, to the extent the amounts were originally paid by Tenant. In the event Tenant notifies Landlord by the due date for assessment of Tenant's intent to contest the assessment, Landlord shall not pay the assessment pending conclusion of the contest, unless required by applicable law.

(d) Intentionally Omitted.

(e) Tenant shall have the right but not the obligation to pay any taxes due by Landlord hereunder if Landlord fails to timely do so, in addition to any other rights or remedies of Tenant. In the event that Tenant exercises its rights under this Section 21(e) due to such Landlord default, Tenant shall have the right to deduct such tax amounts paid from any monies due to Landlord from Tenant as provided in Section 15(b).

(f) Any tax-related notices shall be sent to Tenant in the manner set forth in Section 17. Promptly after the Effective Date, Landlord shall provide the following address to the taxing authority for the authority's use in the event the authority needs to communicate with Tenant. In the event that Tenant's tax address changes by notice to Landlord, Landlord shall be required to provide Tenant's new tax address to the taxing authority or authorities.

(g) Notwithstanding anything to the contrary contained in this Section 21, Tenant shall have no obligation to reimburse any tax or assessment for which the Landlord is reimbursed or rebated by a third party.

22. SALE OF PROPERTY.

(a) Landlord may sell the Property or a portion thereof to a third party, provided: (i) the sale is made subject to the terms of this Agreement; and (ii) if the sale does not include the assignment of Landlord's full interest in this Agreement, the purchaser must agree to perform, without requiring compensation from Tenant, any obligation of Landlord under this Agreement, including Landlord's obligation to cooperate with Tenant as provided hereunder.

(b) If Landlord, at any time during the Term of this Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Premises, or all or any part of the Property or the Surrounding Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and Tenant's rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord or its successor shall send the documents listed below in this Section 22(b) to Tenant. Until Tenant receives all such documents, Tenant's failure to make payments under this Agreement shall not be an event of default and Tenant reserves the right to hold payments due under this Agreement.

- i. Old deed to Property
- ii. New deed to Property
- iii. Bill of Sale or Transfer
- iv. Copy of current Tax Bill
- v. New IRS Form W-9
- vi. Completed and Signed Tenant Payment Direction Form
- vii. Full contact information for new Landlord including phone number(s)

(c) The provisions of this Section 22 shall in no way limit or impair the obligations of Landlord under this Agreement, including interference and access obligations.

23. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed by both parties. 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) **Memorandum of Lease.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum of Lease substantially in the form attached as **Exhibit 3**. Either party may record this Memorandum of Lease at any time during the Term, in its absolute discretion. Thereafter during the Term, either party will, at any time upon fifteen (15) business days' prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease.

(c) **Limitation of Liability.** Except for the indemnity obligations set forth in this Agreement, and otherwise 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, however caused, based on any theory of liability.

(d) **Compliance with Law.** Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations ("Laws") applicable to Tenant's use of the Network Distribution Equipment on the Property. Landlord agrees to comply with all Laws relating to Landlord's ownership and use of the Property and any improvements on the Property.

(e) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law & Venue.** This Agreement will be governed by the laws of the State of California. Any dispute regarding the terms of this Agreement will be decided in the appropriate court with proper jurisdiction in the County of Monterey.

(h) **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) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) 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; (viii) the singular use of words includes the plural where appropriate; and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of

this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Survival.** Any provisions of this Agreement relating to indemnification, removal, or restoration 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.

(j) **W-9.** As a condition precedent to payment, 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, including any change in Landlord's name or address.

(k) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant. 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. All parties need not sign the same counterpart.

(l) **Attorneys' Fees.** In the event that any dispute between the parties related to this Agreement should result in litigation, the prevailing party in such litigation shall be entitled to recover from the other party all reasonable fees and expenses of enforcing any right of the prevailing party, including reasonable attorneys' fees and expenses. Prevailing party means the party determined by the court to have most nearly prevailed even if such party did not prevail in all matters. This provision will not be construed to entitle any party other than Landlord and Tenant to recover their fees and expenses.

(m) **WAIVER OF JURY TRIAL.** EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES.

(n) **Further Acts.** Upon request, a Party will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents, and assurances as the other Party may request from time to time in order to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all transactions and permitted use contemplated by this Agreement.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the Effective Date.

“LANDLORD”

City of Marina, a municipal corporation

By: _____

Print Name: _____

Its: _____

Date: _____

Approved as to form:

By: _____

Print Name: _____

Its: City Attorney

Date: _____

“TENANT”

The Internet Store, Inc.

,

a California corporation

By:

Its:

By: _____

Print Name: _____

Its: _____

Date: _____

[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE]

TENANT ACKNOWLEDGMENT

State of California

County of _____)

On _____ before me, _____
 (insert name and title of the officer)

personally appeared _____,
 who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
 subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their
 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
 person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph
 is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

LANDLORD ACKNOWLEDGMENT

State of California

County of _____)

On _____ before me, _____
 (insert name and title of the officer)

personally appeared _____,
 who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
 subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their
 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
 person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph
 is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page of

The Premises are described and/or depicted as follows:

EXHIBIT 2
STANDARD ACCESS LETTER
[FOLLOWS ON NEXT PAGE]

{ This Letter Goes On Landlord's Letterhead }

[Insert Date]

Building Staff / Security Staff
[Landlord, Lessee, Licensee]
[Street Address]
[City, State, Zip]

Re: Authorized Access granted to []

Dear Building and Security Staff,

Please be advised that we have signed a lease with [] permitting [] to install, operate and maintain telecommunications equipment at the property. The terms of the lease grant [] and its representatives, employees, agents and subcontractors ("representatives") access to the leased area.

To avoid impact on telephone service during the day, [] representatives may be seeking access to the property outside of normal business hours. [] representatives have been instructed to keep noise levels at a minimum during their visit.

Please grant the bearer of a copy of this letter access to the property and to leased area. Thank you for your assistance.

Landlord Signature

EXHIBIT 3

MEMORANDUM OF LEASE

[FOLLOWS ON NEXT PAGE]

**MEMORANDUM
OF
LEASE**

This Memorandum of Lease is entered into on this _____ day of _____, 20____, by and between the City of Marina, a municipal corporation, having a mailing address of 211 Hillcrest Avenue, Marina, CA 93933 (hereinafter called "**Landlord**"), and **The Internet Store, Inc.**, a California corporation, d/b/a Cruzio, Cruzio Internet, Cruzio works, Cruzio Media and Santa Cruz Fiber, with its principal place of business located at 877 Cedar Street, Suite 150, Santa Cruz, California 95060 ("**Tenant**").

1. Landlord and Tenant entered into a certain Network Distribution Equipment Site Joint Use and Access Agreement ("**Agreement**") on the _____ day of _____, 20____, for the purpose of installing, operating and maintaining a Network Distribution Equipment and other improvements. All of the foregoing is set forth in the Agreement.
2. The initial lease term will be five (5) years commencing on the Effective Date, with three (3) successive five (5) year options to renew.
3. The portion of the land being leased to Tenant and associated easements are described in **Exhibit 1** annexed hereto.
4. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

LANDLORD:

City of Marina, a
a California Municipal Corporation

By: _____
Print Name: Layne Long
Its: City Manager
Date: _____

TENANT:

The Internet Store,
a California Corporation

By: _____
Its: _____
By: _____
Print Name: [_____]_____
Its: _____[Insert Title]
Date: _____[Insert Date]

[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE]

TENANT ACKNOWLEDGMENT

State of California

County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

LANDLORD ACKNOWLEDGMENT

State of California

County of Monterey)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT 1 TO MEMORANDUM OF LEASE
DESCRIPTION OF PROPERTY AND PREMISES

Page of

The Property is legally described as follows:

The Premises are described and/or depicted as follows:

June 28, 2024

Item No. **10g(4)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of July 2, 2024

**CITY COUNCIL TO CONSIDER ADOPTING RESOLUTION 2024-,
APPROVING A NETWORK DISTRIBUTION EQUIPMENT SITE JOINT
USE AND ACCESS AGREEMENT WITH THE INTERNET STORE, INC.,
A CALIFORNIA CORPORATION, D/B/A CRUZIO FOR THE JOINT USE
AND LEASE OF A CITY PROPERTIES TO ESTABLISH A WIRELESS
BROADBAND INTERNET NETWORK FOR MARINA RESIDENTS AND
BUSINESSES.**

RECOMMENDATION:

It is requested that the City Council:

1. Consider adopting Resolution No. 2024-, approving a network distribution equipment site joint use and access agreement with The Internet Store, Inc., a California corporation, d/b/a Cruzio for the joint use and lease of a City properties to establish a wireless broadband internet network for Marina residents and businesses; and
2. Authorize the City Manager to execute the agreement on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

One of the City Council's established priorities (consolidated list #31) is to analyze and present plans to bring a 3rd High Speed Internet Provider to the City. Towards this priority, staff has been participating in the Monterey Bay Economic Partnership (MBEP) consortium meetings, involved in the Monterey County Broadband Strategic Plan, engaged in the State of California Middle-Mile Broadband Initiative, and has met with potential broadband partner providers. Bringing broadband services to the community and deploying broadband infrastructure throughout the community will require significant investment and effort. The California Middle-Mile Broadband Initiative is the most promising opportunity to connect the community with additional broadband service. The project is scheduled to be delivered to our area by December 2026. Once open access is available, there will need to be additional work/partnerships to deploy service throughout the community.

Staff's participation in the County's Broadband Strategic Planning efforts and MBEP meetings has resulted in discussions and a proposal from Cruzio Internet. Currently, Cruzio provides air fiber internet services to areas of Santa Cruz and Monterey Counties and has partnerships with area school districts to provide internet services to students. Their infrastructure consists of point-to-point air fiber connections that originate atop Mount Toro and send wireless internet signals to distribution hubs (Points of Presence or POPs). The signal is then sent to subscribers that have their own smaller rooftop access point to receive the broadband services.

ANALYSIS:

Cruzio provides broadband to commercial and residential customers. Approximately 30% of their existing customers receive a low-income rate of \$14.95 per month. MPUSD has expressed interest in Cruzio's services to meet the needs of its low-income student population. Residential subscribers that are not considered low income pay approximately \$80 per month for the services. The internet provider reports that their internet connectivity speeds range from 100 Mbps – 1Gbps.

The addition of Cruzio internet service would be an alternative option for some businesses and residents and the only option for others that are not currently serviced by Comcast or AT&T.

As mentioned above, Cruzio's internet service would be provided via air fiber. The signal would be transmitted to distribution hub locations in Marina. Cruzio has identified 4 locations in Marina to establish their network. Three of the locations are existing City owned structures with enough height to achieve the line of sight needed. These structures are:

1. The City of Marina Public Safety Building located at 208 Palm Avenue, Marina, CA (APN 032-303-030-000).
2. The Preston Park Scorers Booth located at 3100 Preston Drive, Marina, CA (APN 031-201-027-000).
3. The Marina Municipal Airport Control Tower located at 3262 Imjin Road, Marina, CA (APN 031-112-010-000).

Cruzio is also proposing a hub on the top of the Springhill Suites.

Cruzio will need to obtain a lease from the City to locate the distribution hubs on top of the structures identified. The rates and terms that are currently proposed include the following:

- \$100 per month per location for the initial lease rate. Each year the rate would increase by 2.5%.
- The term would be 5-years, with 3 mutual options to continue for 5-years each.
- Cruzio will provide a low-income rate for qualifying households throughout the duration of the lease term.
- Cruzio will provide free internet services to City facilities to be used as a back up to the primary internet service.

The monthly lease payment will be \$100 per site per month, which will be paid for by Monterey County. Cruzio will be required to invest in new infrastructure in the City with no subscribers to begin with. The model will take many years to have enough subscribers to support higher lease payments. During that time, low income subscribers and those that current do not have access to broadband will receive the benefits of the new Cruzio internet services. At the 5-year extension review, the City can renegotiate a higher lease payment upon an audit of the number of subscribers and current fees for internet services.

FISCAL IMPACT:

\$3,600 Annual to the general fund.

CONCLUSION:

This request is submitted for City Council consideration and action.

Respectfully submitted,

Cyrah Caburian
Executive Assistant
City of Marina

REVIEWED/CONCUR:

Layne P. Long
City Manager
City of Marina