

LEASE AGREEMENT FOR RIDGWAY CARRIER NEUTRAL LOCATION

THIS LEASE AGREEMENT (“Lease” or “Agreement”) is made and effective this ____ day of _____, 2019, by and between the TOWN OF RIDGWAY, a Colorado Home Rule Municipal Corporation, (“Town”), whose address is 201 N. Railroad St., Post Office Box 10, Ridgway, Colorado 81432 and Region 10 League for Economic Assistance and Planning, Inc. (LEAP, Inc.), a 501(c)(3) Colorado nonprofit corporation (“Region 10”) whose address is 145 South Cascade Ave., Montrose, Colorado.

Recitals

- A. The Town is the owner of land and improvements described as follows: A site located at 501 Otto Street, Ridgway, Colorado 81432 (commonly known as Town of Ridgway Public Works).
- B. The Town hereby makes available for lease a portion of the property described as the Carrier Neutral Location (CNL) and further described in Exhibit A (the "Leased Premises").
- C. The Town desires to lease the Leased Premises to Region 10, and Region 10 desires to lease the Leased Premises from Town for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

NOW THEREFORE, in consideration of the mutual promises herein contained, and other good and valuable consideration, it is agreed as follows:

1. TERM

The Town hereby agrees to lease the Leased Premises to Region 10, and Region 10 hereby leases the same from the Town, for an “Initial Term” beginning on the date set forth above, and ending on the same month and day, in the year 2039 (which period amounts to an Initial Term of twenty (20) years). Thereafter, this Lease shall renew on a year-to-year basis, under the same conditions set forth herein, unless and until terminated and/or amended as set forth herein. Either Party shall provide a sixty (60) days written notice of its intent not to renew prior to the expiration of the then existing term.

2. RENTAL

- A. Region 10 shall pay to the Town during the Term of this Lease rent payable in the amount of One Dollar (\$1.00) per year.
- B. The rent for any renewal lease term shall be subject to review and amendment at the time of renewal.

- C. Power usage is expected to begin at a minimal amount but will be metered and monitored by the Town. The Town may request payment for power if usage becomes excessive. Should the Town request payment for power usage and Region 10 fail to remit the same, the Town has the right to terminate this Lease by providing Region 10 a sixty (60) day written notice to terminate.

3. USE

Region 10 shall restrict its use to those reasonably related to computer servers and related appurtenances for the purposes of providing internet services and Internet Service Protocol (ISP), and shall not use or permit the use of the Leased Premises for any other purpose, except as set forth herein, without the express written consent of Town. The Region 10 shall carry on and conduct its business from time to time carried on upon the Leased Premises in such manner as to comply with all statutes, bylaws, rules and regulations of any federal, state, municipal or other competent authority and will not do anything on or in the Leased Premises in contravention of any of them. Region 10 shall not use Leased Premises for the placement and/or storage of any hazardous materials. It is Region 10's obligation to determine whether its business is properly operating in the Leased Premises under zoning and other applicable state, federal, county, and Town laws. Use of and access across any Town-owned property outside of the gated and fenced area of the leased premises, including access to the communication tower, will first be communicated to the Town Staff to ensure conflicts are minimized.

4. SUBLEASE AND ASSIGNMENT

Region 10 shall have the right, with the written consent of the Town, to sublease part of the Leased Premises for Internet Service Providers (ISP) or similar service providers' use. The Town will at all times maintain its rights of access to the Leased Premises and to any Town Equipment within the Leased Premises. Region 10 shall at all times provide the Town with access and space for Town Equipment within the Leased Premises

5. REPAIRS

During the Lease term, major repairs, such as those made to the HVAC system, and repair of structural failures not caused by Region 10, shall be borne by Town, if Town in its sole discretion is able to allocate funding to make said repairs; otherwise, in the event Town elects not to make said repairs, Region 10 may terminate this Lease. Region 10 shall make, at Region 10's expense, all necessary minor repairs to the Leased Premises. Minor repairs shall include such items as routine repairs of floors, walls, ceilings, and other parts of the Leased Premises damaged or worn through normal occupancy, minor electrical repairs, etc. The Town does not intend to provide any minor maintenance to the Leased Premises. Under no circumstances shall the Town be responsible for reimbursement of costs of any repairs made by Region 10. Repair of structural failures caused by Region 10 shall be repaired by the Town at Region 10's expense. Region 10 shall compensate the Town for repairs cause by Region 10 within thirty (30) days of written invoice from the Town.

6. ALTERATIONS AND IMPROVEMENTS

Region 10, at Region 10's expense, shall have the right following the Town's prior written consent to make such improvements and replacements of and to all or any part of the Leased Premises from time to time as Region 10 may deem desirable. Region 10 shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Leased Premises and fasten the same to the premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Region 10 at the commencement of the Lease term or placed or installed on the Leased Premises by Region 10 thereafter, shall remain Region 10's property free and clear of any claim by Town except as stated otherwise herein this Agreement. Region 10 shall have the right to remove the same at any time during the term of this Lease provided that all damage to the Leased Premises caused by such removal shall be repaired by Region 10 at Region 10's expense to the satisfaction of the Town. At the expiration of this Lease, any temporary improvements remaining on the Leased Premises, and the value of any permanent improvements made to the premises shall inure to Town. This Lease shall constitute a bill of sale for any and all said permanent improvements.

7. TAXES

The Town shall pay, prior to delinquency, all general real estate taxes and installments of special assessments coming due during the Lease term on the Leased Premises, and all personal property taxes with respect to Town's personal property, if any, on the Leased Premises. Region 10 shall be responsible for paying all personal property taxes with respect to Region 10's personal property at the Leased Premises.

During the Initial Term and any renewal term Region 10 shall promptly pay all taxes when due for taxes levied, charged, assessed, or similarly applied for Region 10's use of the Leased Premises.

8. INSURANCE

- A.** The Region 10 agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Region 10 pursuant to Paragraph 9 hereof. Such insurance shall be in addition to any other insurance requirements imposed by this Lease or by law. Region 10 shall not be relieved of any liability, claims, demands, or other obligations pursuant to Paragraph 9, by reason of its failure to procure or maintain insurance.
- B.** Region 10 shall procure and maintain the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain continuous coverage.
- C.** Workers' Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Lease.
- D.** Commercial General Liability insurance with minimum combined single limits of two million dollars (\$2,000,000.00) each occurrence and one million dollars (\$1,000,000.00) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including

coverage for contractual and employee acts), and blanket contractual. Vehicle insurance?

- E. The policy coverage as required above shall be endorsed to include the Town, its officers, agents and employees as additional insured. Every policy required by this Agreement shall be primary insurance and any insurance carried by the Town or its employees or carried by or provided through any insurance pool of the Town, shall be excess and not contributory insurance to that provided by Region 10. No additional insured endorsement to any policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The Region 10 shall be solely responsible for any deductible losses under any policy required by this Agreement.
- F. The certificate of insurance shall be completed by the Region 10's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and may be reviewed by the Town prior to execution hereof. Failure on the part of the Region 10 to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which the Town may immediately terminate this Lease. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto at any time during the terms of this Agreement. Region 10 is solely responsible for providing insurance coverage, as stated in this Agreement.
- G. Region 10 shall provide renter's insurance at Region 10's expense on the premises, adequate to cover any damage to the Leased Premises in connection with Region 10's use thereof under the terms of this Lease.

9. INDEMNIFICATION

Region 10 agrees to indemnify and hold harmless the Town, its officers, employees, insurers, and selfinsurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other losses of any kind whatsoever, which arise out of or are in any manner connected with this Lease, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Region 10, or any officer, employee, representative, contractor, or agent of the Region 10, or which arise out of any workers' compensation claim of any employee of Region 10. Region 10 shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims and demands, and bear all costs and expenses related thereto, including but not limited to court costs and attorney fees. The obligation of this paragraph shall not be construed to extend to any injury, loss, or damage which is caused by the any gross negligence of the Town, its officers, or its employees.

The parties hereto understand and agree that Town is relying on, and does not waive or intend to waive by any provision of this Lease, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §2410101 *et seq.*

10. UTILITIES

The Town shall pay all charges for water, sewer, natural gas, and electricity. Region 10 shall pay all charges for any and all communication utilities used by Region 10 on the Leased Premises during the term of this Lease unless otherwise expressly agreed in writing by the Town. Region 10 shall pay such amounts within fifteen (15) days of invoice. Region 10 acknowledges that the Leased Premises are designed to provide standard sixty (60) ampere electrical facilities and standard office lighting. Additional electrical facilities may be installed as determined by the Town. Region 10 may install, at Region 10's expense, additional outlets as needed. Region 10 shall not use any equipment or device that utilizes excessive electrical energy, or which may, in the Town's reasonable opinion, overload the wiring or interfere with electrical or other telecommunications or wireless services.

- A. The Town shall provide a conduit for access from the Leased Premises to the demarcated extension location, to be used for Region 10's access to communication utilities.
- B. Power usage is expected to begin at a minimal amount but will be metered and monitored by the Town. The Town may request payment for power if usage becomes excessive.

11. ENTRY AND SECURITY

The Town reserves the right to enter on the Leased Premises at reasonable times and during regular business hours to inspect them, to make additions, alterations, or modifications to any part of the building in which the Premises are located, and Region 10 shall permit Town to do so. The Town may erect scaffolding, fences, and similar structures, post relevant notices, conduct normal business and place moveable equipment in connection with the Leased Premises. Region 10 is required to keep entry to the Leased Premises secure from unauthorized access at all times.

12. DAMAGE AND DESTRUCTION

Subject to other applicable provisions herein, if the Leased Premises or any part thereof or any appurtenance thereto is so damaged by fire, casualty or structural defects that the same cannot be used for Region 10's purposes, then Region 10 shall have the right to terminate this Lease in writing, in conformance with the Notice section of this Lease, and provided that the Region 10 did not cause or contribute to the damage or destruction the Town shall return a pro-rated amount of rental money for the period of the month during which the damage occurred when the Leased Premises was unusable for Region 10's purposes. In the event of minor damage to any part of the Leased Premises, and if such damage does not render the Leased Premises unusable for Region 10's purposes, Region 10 shall have the option to either terminate this Lease as set forth in this Paragraph, or repair the minor damage at Region 10's expense; under no circumstances shall Town be obligated to pay for or reimburse Region 10 for any repairs made. Region 10 shall be relieved from paying rent and other charges during any portion of the Lease term that the Leased Premises are inoperable or unfit for occupancy, or use, in whole or in part, for Region 10's purposes. The provisions of this paragraph extend not only to the matters aforesaid, but also to any occurrence which is beyond Region 10's reasonable control and which renders the Leased Premises, or any appurtenance thereto, inoperable or unfit for occupancy or use, in whole or in part, for Region 10's purposes.

13. DEFAULT, TERMINATION, AND ABANDONMENT

- A. If default shall be made in any of the covenants or conditions to be kept, observed and performed by Region 10, without correction thereof for fifteen (15) days after written notice, the Town may declare the term of this Lease ended and terminated by giving Region 10 written notice of such intention, and if possession of the Leased Premises is not surrendered, Town may reenter said premises. Town shall have, in addition to the remedy above provided, any other right or remedy available to Town on account of any Region 10 default, either in law or equity. Town shall use reasonable efforts to mitigate its damages.
- B. Either party may rightfully terminate this Lease at will upon sixty (60) days written notice. Notice by the terminating party shall be provided in accordance with the Notice provisions below.
- C. If Region 10 abandons said Premises prior to the noticed termination of this Lease, the Town may, at its option, terminate this Lease and take immediate possession of the Premises without need of further written notice. The Town's possession of the Premises does not constitute any waiver of any right it may have for the enforcement of the terms herein.
- D. Upon termination of this Agreement for any reason Region 10 shall remove all Region 10's property from the Leased Premises within fifteen (15) calendar days. After fifteen (15) calendar days following termination of this Agreement Region 10 surrenders ownership of all Region 10 property left on, in, upon the Leased Premises to the Town. Any and all costs incurred by the Town to remove, move, and/or dispose of said surrendered property shall be reimbursed to the Town within fifteen (15) days written notice by the Town to Region 10. Said reimbursable costs shall be deducted from any remaining security deposit.

14. QUIET POSSESSION

Town covenants and warrants that in accordance with any provisions of this Agreement and upon performance by Region 10 of its obligations hereunder, the Town will keep and maintain Region 10 in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Leased Premises during the term of this Lease.

15. SUBORDINATION

Region 10 accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the Leased Premises, or upon the Building and to any renewals, refinancing and extensions thereof, but Region 10 agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Town is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or other lien now existing or hereafter placed upon the Leased Premises, and Region 10 agrees upon demand to execute such further instruments subordinating this Lease or attorning to the holder of any such liens as Town may request. In the event that Region 10 should fail to execute any instrument of subordination herein required to be executed

by Region 10 promptly as requested, Region 10 hereby irrevocably constitutes Town as its attorney-in-fact to execute such instrument in Region 10's name, place and stead, it being agreed that such power is one coupled with an interest. Region 10 agrees that it will from time to time upon request by Town execute and deliver to such persons as Town shall request a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have been paid, stating that Town is not in default hereunder (or if Region 10 alleges a default stating the nature of such alleged default) and further stating such other matters as Town shall reasonably require.

17. NOTICE

Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by hand delivery, or via United States Postal Service certified mail, return receipt requested, addressed as follows:

If to Town to:

Town of Ridgway
Attn: Town Manager
201 N. Railroad St.,
Post Office Box 10,
Ridgway, Colorado 81432

If to Region 10 to:

Region 10 LEAP, Inc.
Attn: Michelle Haynes
145 S. Cascade
Montrose, Colorado 81401

Town and Region 10 shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

18. BROKERS

Region 10 represents that Region 10 was not shown the Leased Premises by any real estate broker or agent and that Region 10 has not otherwise engaged in, any activity which could form the basis for a claim for real estate commission, brokerage fee, finder's fee or other similar charge, in connection with this Lease.

19. WAIVER

No waiver of any default of the Town or Region 10 hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only

for the time and to the extent therein stated. One or more waivers by the Town or Region 10 shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

20. RECORDING OF LEASE

This Lease may be recorded in the public records of the Ouray County Clerk and Recorder, or in lieu thereof, at the request of either party, the Town and Region 10 shall execute a Memorandum of Lease to be recorded for the purpose of giving record notice of the appropriate provisions of this Lease.

21. GENERAL PROVISIONS

- A.** The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease. All covenants are to be construed as conditions of this Lease. This Agreement may be executed in counterparts. Time shall be of the essence of this Agreement.
- B.** The provisions of this Lease shall extend to and be binding upon the Town and Region 10 and their respective legal representatives, successors and assigns.
- C.** Region 10 shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Region 10's use of the Leased Premises. The Town shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.
- D.** This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.
- E.** This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Colorado. If either party commences an action to enforce any covenant contained in this Lease, or for breach of any covenant or condition, shall be filed and if possible, tried in Ouray County, Colorado; the prevailing party shall recover reasonable attorney's fees in arbitration or litigation.
- F.** Region 10 covenants and warrants that at the termination or cancellation of this Lease, Region 10 shall quit, and surrender said Premises in good condition, reasonable wear and tear excepted.
- G.** No representations, warranties or certifications, express or implied, shall exist as between the parties, except as specifically stated in the Lease.
- H.** Nothing herein shall represent a multi-year fiscal obligation to the Town, and any expenditures of money by the Town in accordance with this Lease shall be subject to the annual appropriation of funds.
- I.** The Region 10 shall be responsible for collecting all sales and use tax associated with the

business related to taxable sales made upon the Leased Premises, and submitting said tax to the Town, and keeping appropriate books and records thereof, pursuant to applicable Town Ordinances and Regulations. Payment of sales and use taxes to the Town shall be a material provision of this Lease.

- J.** There shall be no third-party beneficiaries to this Lease with rights of enforcement.
- K.** No key copies may be made by Region 10 or at its direction without the express written consent of the Town. All keys shall be obtained from the Town, and all keys shall be returned to the Town upon the end of the tenancy. Region 10 acknowledges that copies of all keys will be retained by the Town and Region 10 agrees that the locks shall not be changed or new locks installed by Region 10, unless at the Town's request.

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

TOWN: TOWN OF RIDGWAY

REGION 10: REGION 10 LEAP, INC.

John Clark, Mayor

Michelle Haynes, Executive Director

ATTEST:

ATTEST:

Pam Kraft, Town Clerk/Treasurer

_____, _____

Exhibit A
Leased Premises

Legal Description: Fenced and gated area located at the southwest aspect of the Town of Ridgway property situated at 501 Otto Street, Ridgway, Colorado 81432, within which is a 10'x17' concrete building with a sloped metal roof. Leased premises include the real property enclosed within the fenced and gated area, the 10' x 17' concrete building, a 40' tall communication tower, air conditioning units, emergency power generator and related appurtenances associated with the operation of a carrier neutral location.