

Ridgway Town Council
Regular Meeting Agenda
Wednesday, May 12, 2021

Due to COVID-19, and pursuant to the Town's Electronic Participation Policy, the meeting will be conducted both in person and via a virtual meeting portal. Members of the Town Council and Town staff will meet in person at the Community Center, located at 201 N. Railroad Street, Ridgway, Colorado 81432. Members of the public can join the meeting virtually using the meeting information below.

Join Zoom Meeting

<https://us02web.zoom.us/j/88574248506?pwd=OUh0OFpyS2FZdDE1ZGo3ZWpDY1VqQT09>

Meeting ID: 885 7424 8506
Passcode: 938454

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OATH OF OFFICE

The Town Clerk will administer the oath of office to newly appointed Councilmember Adam Beck.

5:30 p.m.

ROLL CALL Councilors Adam Beck, Angela Ferrelli, Kevin Grambley, Beth Lakin, Terry Schuyler, Mayor Pro Tem Russ Meyer and Mayor John Clark.

ADDITIONS & DELETIONS TO THE AGENDA

ADOPTION OF CONSENT CALENDAR All matters listed under the consent calendar are considered to be routine by the Town Council and enacted by one motion. The Council has received and considered reports and recommendations prior to assigning consent calendar designations. Copies of the reports are on file in the Town Clerk's Office and are available to the public. There will be no separate discussion on these items. If discussion is requested, that item will be removed from the consent calendar and considered separately.

1. Minutes of the Regular Meeting of April 14, 2021.
2. Register of Demands for May 2021.
3. Renewal of Brew Pub Liquor License for Colorado Boy Pub and Brewery.
4. Renewal of Liquor Store License for Ridgway Liquors.
5. Renewal of 3.2 Beer Liquor License for Ridgway Shell.
6. Renewal of 3.2 Beer Liquor License for Ridgway Conoco.
7. Water and sewer leak adjustment for Ridgway Secondary School, Account # 7050.

PUBLIC COMMENTS Established time for the public to address the Council regarding any item not otherwise listed on the agenda. Comments will be limited to 5 minutes per person.

PUBLIC REQUESTS AND PRESENTATIONS Public comments will be limited to 5 minutes per person; discussion of each item may be limited to 20 minutes.

POLICY MATTERS Public comments will be limited to 5 minutes per person; overall discussion of each item may be limited to 20 minutes.

8. Review and action on Lease Agreement with Ridgway Bike Park for the use of a portion of Town property as a Bike Park - Town Manager.
9. Introduction of Ordinance No. 04-2021 Amending Section 3-2 "Sales Tax" of the Ridgway Municipal Code to Adopt Uniform Definitions to Address Sellers with No Physical Presence in the Town - Town Clerk.
10. Review and action on Fiber-Optic Indefeasible Right of Use Agreement between, Clearnetworx, LLC, Region 10 League for Economic Assistance and Planning, Inc., and the Town of Ridgway - Town Manager.
11. Discussion regarding 2021 Ridgway Concert Series - Town Manager.
12. Consideration of promulgating Voluntary Water Restrictions pursuant to the Town's Water Conservation and Management Plan - Town Manager.
13. Consideration of authorizing Mayor Clark to sign letter of support for installation of broadband infrastructure with US 50 Little Blue Creek Canyon Improvements Project - Mayor Clark.
14. Update on annual Council scholarship to a local high school senior - Mayor Clark.

EXECUTIVE SESSION The Council will enter into a closed session pursuant to 1) Colorado Revised Statutes 24-6-402(4)(b) for the purpose of receiving legal advice regarding enforcement of the Town of Ridgway Municipal Code and uses within the Residential Zone District; 2) Colorado Revised Statutes 24-6-402(4)(b) for the purpose of receiving legal advice regarding the Ridgway Wastewater Treatment Facility; and 3) Colorado Revised Statutes 24-6-402(4)(b) for the purpose of receiving legal advice regarding the Ridgway Space to Create Project.

WRITTEN REPORTS Written reports may be provided for informational purposes prior to the meeting updating Council on various matters that may or may not warrant discussion and action.

15. Letter from Mayor Clark appointing Michelle Montague to the Planning Commission.
16. Town Manager's Report.

COUNCIL COMMITTEE REPORTS Informational verbal reports from Councilors pertaining to the following committees, commissions and organizations:

Committees & Commissions:

Ridgway Planning Commission - Councilor Meyer and Mayor Clark
Ridgway Parks, Trails & Open Space Committee - Councilor Ferrelli
Ridgway Creative District Creative Advocacy Team - Councilor Grambley

Ridgway Scholarship Committee - Councilor Lakin and Mayor Clark

Board Appointments:

Ouray County Weed Board - Councilor Lakin; alternate - Town Engineer

Ouray County Joint Planning Board - Councilor Meyer, citizens Rod Fitzhugh & Tom McKenney;
alternate - Councilor Beck

Sneffels Energy Board - Councilor Lakin and Town Manager; alternate - Mayor Clark

Region 10 Board - Mayor Clark

WestCO Dispatch Board - Town Marshal; alternate - Town Manager

Gunnison Valley Transportation Planning Region - Town Manager

Ouray County Transit Committee - Public Works Services Administrator; alternate - Town Manager

Ouray County Water Users Association - Councilor Meyer

Water and Land Committee for the Uncompahgre Valley - Councilor Meyer; alternate - Town
Manager

Liaisons:

Chamber of Commerce - Councilmember Lakin

Communities That Care Coalition - Mayor Clark

Ouray County Fairgrounds - Councilor Schuyler

ADJOURNMENT

Deadline for agenda items for next regular meeting, Wednesday, June 2, 2021 at 4:00 p.m., Town
Clerk's Office, 201 N. Railroad Street, Ridgway, Colorado.

Consent Agenda

RIDGWAY TOWN COUNCIL
MINUTES OF REGULAR MEETING
APRIL 14, 2021

OATH OF OFFICE

The Town Clerk administered the oath of office to newly elected Councilmembers Angela Ferrelli, Beth Lakin and Russ Meyer.

CALL TO ORDER

The Town Council convened via Zoom Meeting, a virtual meeting platform, pursuant to the Town's Electronic Participation Policy, due to the COVID-19 pandemic.

The Mayor called the meeting to order at 5:30 p.m. via Zoom Meeting. The Council was present in its entirety with Councilors Ferrelli, Grambley, Lakin, Meyer, Schuyler and Mayor Clark in attendance.

CONSENT AGENDA

1. Minutes of the Regular Meeting of March 10, 2021.
2. Minutes of the Joint Workshop Meeting of April 1, 2021.
3. Register of Demands for April 2021.
4. Renewal of Tavern Liquor License for Steps Tavern.
5. Renewal of Tavern Liquor License for The Patio at Steps Tavern.
6. Proclamation Declaring May 2021 as Mental Health Awareness Month.

ACTION:

It was moved by Councilmember Lakin, seconded by Councilor Schuyler and unanimously carried by a roll call vote to approve the consent calendar.

ACKNOWLEDGEMENTS

7. Proclamation honoring Eric Johnson for service on the Town Council

A proclamation was presented, and a plaque displayed, honoring Eric Johnson for service on the Town Council. The Mayor read the proclamation which declared April 15th Eric Johnson Day and urged citizens to acknowledge and thank him for 18 years of service.

PUBLIC HEARINGS

8. Application for restaurant liquor license for Lazy Dog Saloon

Staff Report dated 3-16-21 from the Town Clerk presenting an application for restaurant license for Lazy Dog Saloon; Applicant: Lazy Dog LLC; to operate at 153 N. Highway 550, Unit 1.

The Town Clerk reported an application for restaurant liquor license was received from Buddy Young, owner of Lazy Dog Saloon LLC to license the premises at 153 N. Highway 550, Unit 1 to operate an establishment called Lazy Dog Saloon. The request before the Council, she explained, is to license the facility, existing patio to the south side of the building, and new patio on the west side. She reported a notice of hearing was posted and published; the premises posted; and all requirements for licensing have been met by the applicant.

ACTION:

Moved by Councilor Meyer to approve the restaurant liquor license for Lazy Dog Saloon. Councilor Lakin seconded the motion which carried unanimously on a roll call vote.

POLICY MATTERS

9. Award of bid for the Heritage Park Improvements Project

Staff Report from the Town Manager dated 4-9-21 presenting bids received for Phases 1 and 2 of the Heritage Park Improvements Project.

Town Manager Neill reported in early March a request for bids was solicited to complete Phases 1 and 2 of the improvements project at Heritage Park. The project includes irrigation and landscaping around the Visitors Center and along Highway 62. The lowest bid received was from Clarke and Company Inc. References have been checked and staff is recommending award of the bid which should be completed by early July. He noted the bid of \$88,707.80 is over the budgeted amount by \$14,000, and staff is certain the general fund can accommodate the overage.

ACTION:

It was moved by Councilor Meyer, seconded by Councilmember Ferrelli and approved by a unanimous roll call vote to issue notice of award for the Heritage Park Improvements Project to Clarke and Co. Inc. as presented.

10. Report and findings on the design for the Amelia Street Project

Joanne Fagan and Ron Alexander with Consolidated Consulting Services gave a PowerPoint presentation displaying findings on proposed design for alignment and improvements to Amelia Street. They explained the design is based on supplying curb, gutter and sidewalk, if practical, and is based on a topographic survey to local utilities, improvements and private property. A preliminary model and alignments were created to see encroachments and existing "challenges". It was reported encroachments on North Amelia Street are created by the department of transportation facility and elementary school, where the property is higher than the street and to correct, would require constructing retaining walls. It was noted on South Amelia, encroachments of fences, shrubbery and landscaping on private property, and the cottonwood culvert exiting on to the right of way, would force moving the road for accommodation. Another problem is drainage on the east side of the street would flow to private property, and "the design can not improve these existing problems". Additionally sidewalk would require ADA access, and there are "existing constraints to provide enough access". One development model would be twelve foot drive lanes with two, two foot curb with a five foot sidewalk on the west side of the street. "Ball park costs" to pave between the existing improvements \$500,000-\$600,000; adding curb & gutter an additional \$200,000; sidewalks & ADA improvements another \$200,000; lower the street for drainage \$1 to \$1.5 million; add width to the road for on street parking an additional \$1 million.

There were questions from the Council, and discussion between the Council and consultants. Direction of the Council was to proceed with preliminary design with sidewalk on one side of the street, attentive to drainage issues and present options and construction costs at another meeting.

11. Resolution Amending the Hartwell Park Performing Arts Stage Fee Schedule

Staff Report dated 4-8-21 from the Town Manager presenting a resolution changing the fee schedule for use of the performing arts stage in Hartwell Park.

Manager Neill explained in 2014 Council adopted a fee schedule for use of parks and facilities, including the performing arts stage. During fee discussions at the last regular meeting, staff was directed to change fees for stage use by eliminating the preparation and breakdown fees, and also to allow staff at the administrative level to reduce the use fee for local non-profit organizations. The proposed resolution would implement the changes, he noted.

ACTION:

Councilor Meyer moved to approve Resolution No. 21-05 Amending the Hartwell Park Performing Arts Stage Fee Schedule, seconded by Councilor Grambley the motion carried unanimously on a roll call vote.

12. Purchase of used street sweeper

Staff report from the Town Clerk/Treasurer dated 3-15-21 presenting a recommendation to purchase a used 2012 Challenger/Elgin Badger Street Sweeper.

The Town Clerk/Treasurer reported at the March meeting the Council authorized staff to research and receive quotes on the purchase of a used street sweeper with the remaining funds of \$95,000 in the fiscal year budget. Staff has located a used 2012 model, similar to the one that has been leased the past few years for \$94,000. The Challenger/Elgin Badger Sweeper has been rebuilt to the frame, which is a 2010 Isuzu Chassis, and has new side and rear sweepers. The cost includes delivery, a 90 day warranty and 30 day money back guarantee. The Town Treasurer noted the Town's procurement policy allows for waiving the formal bid process when only one vendor exists that can successfully furnish the equipment. She requested the Council waive the competitive bid process and authorize the purchase of the street sweeper.

ACTION:

Councilmember Lakin moved to approve the deviation from procurement procedures waive the formal request process for acquisition of equipment, and purchase a 2012 Challenger/Elgin Badger Sweeper from Sinclair Equipment Finance LLC in the amount of \$94,000 and authorize staff to enter into a purchase agreement. Councilor Meyer seconded the motion, and it carried unanimously on a roll call vote.

13. Review of letters of interest to fill vacancy on the Town Council

Staff Report from the Town Manager presenting the Town Clerk's Notice of Vacancy on the Town Council, and four letters of interest.

Manager Neill noted letters of interest to fill the vacant seat on the Council for the remaining year were received from Adam Beck, Rodney Fitzhugh, Michelle Montague and Jay Tunnicliff.

The Council interviewed each of the candidates. There was discussion by the Council.

ACTION:

Moved by Councilor Meyer to appoint Adam Beck to fill the vacancy and serve the one year term on the Town Council. Councilor Lakin seconded the motion which carried unanimously on a roll call vote.

14. Discussion regarding the annual concert series

The Town Manager reported at the last policy group meeting regarding COVID regulations the hosting of outdoor events was discussed, as statewide measures no longer contain restrictions on outdoor events. He asked for Council directions regarding the Town's annual concert series which is held every Thursday in July.

There was discussion by the Council, and questions to the Ouray County Health Director Tanner Kingery. Speaking from the audience Jake Niece, Josey Scoville, Autumn Lettau and Sue Husch.

Consensus of the Council was to pursue holding the series in July, but no decision can be made until further guidance is received from the State. It was agreed to revisit the item at the next regular meeting.

15. Cost of living and merit increase for Town Manager

Mayor Clark announced at the previous meeting the Council presented the Town Manager with an annual performance evaluation. Based on the evaluation Council is issuing a 3% cost of living increase, and a 2% merit increase.

ACTION:

Councilor Lakin moved to award Preston Neill a five percent merit and cost of living increase based on the most recent performance review, seconded by Councilor Meyer the motion carried unanimously on a roll call vote.

17. Letter regarding Ouray County Landmark designation for the structure located at 540 Clinton Street

The Town Manager presented a letter signed by the Mayor on behalf of the Council, requested by the Board of County Commissions, to include in a grant for landmark designation of the historic structure located at 540 Clinton Street.

ACTION:

Moved by Councilor Meyer to ratify the letter to the County Administrator endorsing a Ouray County Landmark, seconded by Councilmember Lakin, and carried on a roll call vote.

18. Annual appointment of Mayor Pro Tem and review of Council representation on boards, committees, and commissions

Staff Report from the Town Clerk dated 4-9-21 presenting a complete listing of Council representation on boards, committees and commissions and noting the annual appointment of the Mayor Pro Tem.

ACTION:

Moved by Councilor Schuyler to appoint Russ Meyer as Mayor Pro Tem for the next term seconded by Councilor Ferrelli and unanimously carried on a roll call vote.

The Council reviewed representation on boards, committees and commissions. Councilor Ferrelli will serve on the Parks, Trails and Open Space Committee; Councilor Lakin on the Scholarship Committee; Councilor Beck as the alternate to the Ouray County Joint Planning Board; and Mayor Clark alternate on the Sneffels Energy Board.

19. Return to in-person Council meetings

In lieu of lessening COVID restrictions, the Town Manager asked if the Council wished to begin meeting in person.

There was discussion by the Council and it was agreed the Council would meet in person wearing masks, with public participation to continue virtually through the Zoom meeting platform.

STAFF REPORTS

The Town Manager presented a written monthly report and reviewed some of the items.

Mayor Pro Tem Meyer presented an update on the Land and Water Commission. Councilor Schuyler reported on an earth day event at the secondary school.

EXECUTIVE SESSION

The Town Attorney suggested the Town Council enter into an executive session pursuant to Colorado Revised Statutes 24-6-402(4)(e) for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators, concerning the Riverfront Village PUD.

ACTION:

It was moved by Councilor Schuyler, seconded by Councilmember Lakin and unanimously carried on a roll call vote to enter into closed session.

The Council entered into executive session at 8:35 p.m. with the Town Attorney and Town Manager.

The Council reconvened to open session at 9:15 p.m.

The Council discussed other approaches to vacancy appointments.

ADJOURNMENT

The meeting adjourned at 9:30 p.m.

Respectfully Submitted,

Pam Kraft, MMC
Town Clerk

Town of Ridgway
Register of Demands
May 2021

Name	Memo	Account	Paid Amount
Ouray County Food Pantry		Alpine-Operating Account	
		5136GO1 · Ouray County Food Pantry	-1,000.00
TOTAL			-1,000.00
AED Everywhere, Inc.		Alpine-Operating Account	
	AED equip. for vehicles	832GO3 · Equipment & Supplies	-4,599.00
TOTAL			-4,599.00
Copy Cats		Alpine-Operating Account	
	TC nameplates (2)	546GOO · Council/PC - Materials/Equip...	-26.00
	PC nameplate	546GOO · Council/PC - Materials/Equip...	-13.00
	plaque - Eric Johnson	546GOO · Council/PC - Materials/Equip...	-24.95
TOTAL			-63.95
City of Grand Junction		Alpine-Operating Account	
		918SOO · Testing & Permits - sewer	-355.00
TOTAL			-355.00
SGS Accutest Inc		Alpine-Operating Account	
		990WOO · Testing - water	-102.56
TOTAL			-102.56
International Inst. of Municipal ...		Alpine-Operating Account	
		522GOO · Dues & Memberships	-175.00
TOTAL			-175.00
Pureline Treatment Systems		Alpine-Operating Account	
	May 2021	989WOO · Plant Expenses - water	-1,650.00
TOTAL			-1,650.00
SGM		Alpine-Operating Account	
	thru 4/10/21	552GOO · GIS Mapping - admin	-113.66
	thru 4/10/21	952WOO · GIS Mapping - water	-113.67
	thru 4/10/21	952SOO · GIS Mapping - sewer	-113.67
TOTAL			-341.00
The Paper Clip LLC		Alpine-Operating Account	
		541GOO · Office Supplies	-92.55
		941WOO · Office Supplies	-37.09
		941SOO · Office Supplies	-37.09
TOTAL			-166.73

Town of Ridgway
Register of Demands
May 2021

Name	Memo	Account	Paid Amount
Western Paper Distributors		Alpine-Operating Account	
		732POO · Supplies & Materials	-242.20
TOTAL			-242.20
True Value		Alpine-Operating Account	
		632GO2 · Supplies & Materials	-18.79
	bore hit - fiber install	631GO2 · Maintenance & Repairs	-92.05
		732POO · Supplies & Materials	-212.89
	pedestrian bridge - Cottonwood	775POO · Park Improvements	-338.69
		732PO1 · Supplies - community center	-64.32
		932SOO · Supplies & Materials	-64.84
		932WOO · Supplies & Materials	-136.53
	pliers	933WOO · Tools	-35.98
TOTAL			-964.09
UNCC		Alpine-Operating Account	
		915WOO · Dues & memberships	-31.68
		915SOO · Dues & Memberships	-31.68
TOTAL			-63.36
Hartman Brothers Inc		Alpine-Operating Account	
		661GO2 · Vehicle & Equip Maint & Repair	-2.20
		961SOO · Vehicle & Equip Maint & Repair	-2.20
		961WOO · Vehicle & Equip Maint & Repair	-2.20
TOTAL			-6.60
Ouray County Road & Bridge		Alpine-Operating Account	
	Apr 2021	660GO2 · Gas & Oil	-249.98
	Apr 2021	760POO · Gas & Oil	-168.36
	Apr 2021	960WOO · Gas & Oil	-243.78
	Apr 2021	960SOO · Gas & Oil	-531.48
	Apr 2021	860GO3 · Gas & Oil	-758.86
TOTAL			-1,952.46
Verizon Wireless		Alpine-Operating Account	
		741POO · Telephone	-40.66
		943SOO · Telephone	-65.39
		943WOO · Telephone	-113.44
		843GO3 · Telephone	-162.64
		543GOO · Telephone	-91.32
		643GO2 · Telephone	-40.66
		552GOO · GIS Mapping - admin	-10.00
		952SOO · GIS Mapping - sewer	-10.01
		952WOO · GIS Mapping - water	-50.02
		830GO3 · Computer	-160.04
TOTAL			-744.18

Town of Ridgway

Register of Demands

May 2021

Name	Memo	Account	Paid Amount
US Tractor & Harvest Inc		Alpine-Operating Account	
	battery - John Deere mower	761POO · Vehicle & Equip Maint & Repair	-54.60
TOTAL			-54.60
Sani Serv LLC		Alpine-Operating Account	
	portapotties - Weaver Park - May 2021	732POO · Supplies & Materials	-135.00
TOTAL			-135.00
San Miguel Power Assoc, Inc.		Alpine-Operating Account	
	3/19/21-4/18/21	542GOO · Utilities	-75.34
	3/19/21-4/18/21	5075GO1 · Region 10	-95.96
	3/19/21-4/18/21	638GO2 · Street Lighting	-347.44
	3/19/21-4/18/21	642GO2 · Utilities	-74.27
	3/19/21-4/18/21	742POO · Utilities	-309.76
	3/19/21-4/18/21	742PO1 · Utilities - community center	-75.34
	3/19/21-4/18/21	842GO3 · Utilities	-75.34
	3/19/21-4/18/21	942SOO · Utilities	-3,077.61
	3/19/21-4/18/21	942WOO · Utilities	-587.37
TOTAL			-4,718.43
Grand Junction Pipe & Supply ...		Alpine-Operating Account	
	pvc - irrigation	732POO · Supplies & Materials	-30.92
	sprinkler parts	732POO · Supplies & Materials	-1,250.40
		988WOO · Taps & Meters	-583.41
TOTAL			-1,864.73
Pro Velocity		Alpine-Operating Account	
	May 2021 maintenance	556GOO · IT Services	-189.17
	May 2021 maintenance	615GO2 · IT Services	-189.16
	May 2021 maintenance	729POO · IT	-189.16
	May 2021 maintenance	820GO3 · IT Services	-189.17
	May 2021 maintenance	917WOO · IT Services	-189.17
	May 2021 maintenance	917SOO · IT Services	-189.17
TOTAL			-1,135.00
Montrose Water Factory, LLC		Alpine-Operating Account	
		632GO2 · Supplies & Materials	-9.57
		732POO · Supplies & Materials	-9.56
		932SOO · Supplies & Materials	-9.56
		932WOO · Supplies & Materials	-9.56
TOTAL			-38.25
Caselle Inc		Alpine-Operating Account	
	June 2021	914SOO · Consulting & Engineering Servs	-159.50
	June 2021	914WOO · Consulting & Engineering Ser...	-159.50
TOTAL			-319.00

Town of Ridgway
Register of Demands
May 2021

Name	Memo	Account	Paid Amount
Pro Velocity		Alpine-Operating Account	
		556GOO · IT Services	-21.25
		615GO2 · IT Services	-21.25
		729POO · IT	-21.25
		820GO3 · IT Services	-21.25
		917WOO · IT Services	-212.50
		917SOO · IT Services	-21.25
		556GOO · IT Services	-255.00
TOTAL			-573.75
Xerox Financial Services		Alpine-Operating Account	
	Xerox lease - Apr 2021	948SOO · Office Equipment - Leases	-7.63
	Xerox lease - Apr 2021	948WOO · Office Equipment - Leases	-15.26
	Xerox lease - Apr 2021	548GOO · Office Equipment - Leases	-129.75
TOTAL			-152.64
Valvoline Instant Oil Change		Alpine-Operating Account	
	oil - Durango	860GO3 · Gas & Oil	-67.12
	oil - Fusion	860GO3 · Gas & Oil	-76.48
TOTAL			-143.60
WestCo		Alpine-Operating Account	
	2nd qtr 2021	885GO3 · Dispatch Services	-10,400.19
TOTAL			-10,400.19
Honnen Equipment Company		Alpine-Operating Account	
	return freight - loader	662GO2 · SnowRemoval Equip&Services	-675.00
TOTAL			-675.00
Grainger		Alpine-Operating Account	
	motor - plant	931WOO · Maintenance & Repairs	-170.85
TOTAL			-170.85
USABlueBook		Alpine-Operating Account	
	rotary drum pump	932WOO · Supplies & Materials	-99.67
TOTAL			-99.67
Black Hills Energy-Lift Station		Alpine-Operating Account	
		942SOO · Utilities	-23.63
TOTAL			-23.63

Town of Ridgway
Register of Demands
May 2021

Name	Memo	Account	Paid Amount
Black Hills Energy-Town Hall		Alpine-Operating Account	
		742PO1 · Utilities - community center	-39.97
		842GO3 · Utilities	-39.97
		542GOO · Utilities	-39.97
TOTAL			-119.91
Black Hills Energy-PW Building		Alpine-Operating Account	
		742POO · Utilities	-29.97
		642GO2 · Utilities	-29.98
		942SOO · Utilities	-29.98
		942WOO · Utilities	-29.98
TOTAL			-119.91
Black Hills Energy-Broadband		Alpine-Operating Account	
	broadband building	5075GO1 · Region 10	-13.34
TOTAL			-13.34
Black Hills Energy-Hartwell Park		Alpine-Operating Account	
		742POO · Utilities	-35.95
TOTAL			-35.95
Black Hills Energy-PW Office		Alpine-Operating Account	
		642GO2 · Utilities	-14.30
		942SOO · Utilities	-14.30
		942WOO · Utilities	-14.30
TOTAL			-42.90
Kim's Housekeeping LLC		Alpine-Operating Account	
	Apr 2021	779POO · Janitorial Service - parks	-892.50
	Apr 2021	779PO1 · Janitorial Services - comm cntr	-297.50
	Apr 2021	545GOO · Janitorial Services	-297.50
TOTAL			-1,487.50

STAFF REPORT

Subject: Request for water leak and sewer adjustment - Ridgway Secondary School

Initiated By: Pam Kraft, Town Clerk/Treasurer

Date: May 4, 2021

BACKGROUND:

We have received a request for a water leak and sewer adjustment for the Ridgway Secondary School at 1200 Green Street. A water line break in the irrigation system was repaired after being discovered.

Staff has reviewed the wastewater usage to create an adjustment since the water went into the ground, and not into the sewer system. Staff is recommending the fees for excess sewer be adjusted to the minimum charge. The water credit would be \$19.00 and sewer \$129.96 for a total adjustment of \$148.96.

ANALYSIS:

Pursuant to Municipal Code Section 9-1-23 the Council has the authority to make water leak adjustments. The language is as follows:

9-1-23:WATER BREAK ADJUSTMENTS.

(A) The Town Council shall have authority to make an equitable adjustment to a water bill when the bill is extraordinarily high due to an undiscovered break downstream of the customer's meter if the break was not caused by the customer's negligence and the customer did not have a reasonable opportunity to discover the break more quickly than it was discovered.

(B) No adjustment shall be allowed unless the customer submits a written request for the adjustment within fifteen days of the mailing of the bill in question and unless the leak has been repaired.

(C) The adjustment shall not reduce the customer's bill below the cost to the Town of producing the water supplied through the meter.

FINANCIAL CONSIDERATIONS:

In prior actions the Council has set a precedence and approved water and sewer leak adjustments for commercial buildings. There is a loss in revenue when the rate is decreased.

STAFF RECOMMENDATION:

Approve the water and sewer leak adjustments for Ridgway Secondary School/Account # 7050.0 in the amount of \$148.96.

ATTACHMENT 1. Letter dated April 14, 2021



April 14, 2021

Ridgway Town Hall
201 North Railroad Street
Ridgway, CO 81432

To Whom It May Concern:

Thank you for informing the Ridgway School District of the town's opportunity to request an adjustment to a water bill if a leak is detected which has caused a substantial increase in a monthly bill.

On April 1st, 2021 during the Ridgway School District Spring Break, our Superintendent, Susan Lacy, was notified that there was water running down the front yard of the secondary building onto the circle drive. Fortunately, the Town of Ridgway immediately turned the water supply off to the secondary school to control the issue. Susan notified the school principal, Russell Randolph, and we arranged for a plumber to meet us at the school on the morning of April 2nd. With the plumber and the town's maintenance crew, we were able to determine that the leak was from a main line that entered at the south side of the building and was buried 5 feet below the ground surface.

We kept the water off over the weekend, and on April 5th, an excavating crew and the plumber were able to locate the exact location of the leak on the line and repair it. On April 6th we turned the water on with no leaks. The leak was a result of a broken T-line off the main line that was used to water trees along the front of the school. The break was a clean break along a joint off the T. We are unsure what caused the break, but the plumber stated it was most likely the age of the PVC pipe along with natural ground shifts.

Please accept this letter as the school district's request to have our March water bill adjusted. We are unsure of when the water break actually began due to snow covering the ground prior to Spring Break, but we do know that the leak became extensive at the end of March.

If you have questions or concerns, please feel free to contact me or Susan Lacy.

Sincerely,

A handwritten signature in dark ink, appearing to be "Russell Randolph", written over a horizontal line.

Russell Randolph, Principal
Ridgway Secondary School

District Office
1115 West Clinton St., Ridgway, CO 81432
TEL: (970) 626-4320 * FAX: (970) 626-4437
www.ridgway.k12.co.us

AGENDA ITEM #8



To: Honorable Mayor Clark and Ridgway Town Council
From: Preston Neill, Town Manager
Date: May 7, 2021
Agenda Topic: Review and action on Lease Agreement with Ridgway Bike Park for the use of a portion of Town property as a Bike Park

ACTION BEFORE COUNCIL:

Council is asked to review and take action on a Lease Agreement with Ridgway Bike Park for the use of a portion of Town property as a bike park.

BACKGROUND:

Ridgway resident Matt McIsaac approached Town staff in June 2020 about the prospect of utilizing a piece of Town property, located to the south of the Athletic Park, for a bike park. Being related to parks and having potential for broad community impact, this idea was taken to the Parks, Trails and Open Space (PTOS) Committee in July 2020. Location, potential conflicts, funding, requests from Town and community interest were all discussed. The idea was brought back before the PTOS Committee in September 2020. Outcomes from both PTOS Committee meetings were as follows:

- Other user groups (primarily soccer, baseball and softball) voiced support as long as the park is located in the southeast corner of Athletic Park and does not interfere with planned field expansions.
- The land has no restrictions that would prevent a bike park from being built at this location.
- The bike park would be designed and built by a reputable, professional company.
- Mr. McIsaac plans to fund the entire project through donations and grants.
- A website (www.ridgwaybikepark.com) has been created to share information, depict support and collect donations.
- The park would provide a variety of features to fill a gap in youth programs and skill ranges.
- A smaller bike track was already approved and built on a portion of the proposed area many years ago.
- Numerous letters of support and support signatures were received.
- The PTOS Committee expressed support for this project and believes it will be an asset to the community.

In October 2020, Council approved, by motion and vote, the request to use the property for a public bike park. In addition, Council also approved 1) use of a Town water source for required maintenance, and 2) the Town to partner, if requested or required, for any grant funding opportunities. Finally, staff was directed to prepare a lease agreement with Ridgway Bike Park.

The lease agreement has been prepared and is attached for Council's review and consideration. The proposed term of the lease is for a period of three years, subject to renewal or termination in accordance with the provisions of the lease.

FINANCIAL IMPLICATIONS:

No financial contribution is being requested from the Town. The bike park is said to require little to no annual



maintenance, which staff believes is true as the pump track near the Ridgway Public Library requires very little staff time each year. As described in the Lease Agreement, the premises and eventual bike park shall be maintained at the sole expense of Ridgway Bike Park.

PROPOSED MOTION:

“I move to approve the Lease Agreement with Ridgway Bike Park for the use of a portion of Town property as a Bike Park.”

ATTACHMENT:

Lease Agreement

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into as of the ____ day of May, 2021 between the Town of Ridgway, a Colorado home rule municipality ("Lessor") and Ridgway Bike Park, an incorporated 501(c)(3) Non-Profit Corporation, ("Lessee") (collectively the "Parties") for use of a defined portion of Town-owned land located adjacent to the Ridgway Athletic Park, upon the terms and conditions set forth in this Lease.

1. Premises:

The Lessor hereby agrees to lease to the Lessee, subject to the terms and conditions of this Lease, a portion of Town-owned land, which is depicted on **Exhibit A**, and which shall henceforth be referred to in this Lease as "the premises". Lessee accepts the premises in its existing condition. Lessor makes no representations or warranty about the suitability of the premises for a bike park, or the Lessor's title or authority to enter into this lease.

2. Term of Lease:

The term of this Lease shall be for a period of three (3) years from the effective date first above written, subject to renewal or termination of the Lease in accordance with the provisions of this Lease.

3. Consideration:

In consideration for this lease, Lessee shall establish and operate a bike park on the premises in accordance with the terms and conditions of this Lease and develop a Management Plan mutually agreeable to the Lessor and Lessee.

4. Miscellaneous Provisions:

- A. Lessee agrees to maintain all improvements upon the premises in good repair and Lessor shall have no monetary obligation whatsoever to maintain the premises or to maintain any access thereto, all of which shall be maintained solely at Lessee's expense. Lessee shall maintain the premises reasonably free from unsightly debris or accumulations of trash, and the like, and in compliance with the standards set by Lessor of Ridgway junk, weed, litter and nuisance ordinances.
- B. The premises shall be used only as a bike park. Lessee's use of the premises shall conform to all applicable laws, ordinances, and regulations of the United States of America, the State of Colorado, the County of Ouray, and Town of Ridgway.
- C. The Parties state and agree that any improvements currently located on the premises have always been, and shall remain, the sole property of the Lessor

throughout the term of this Lease.

- D. No additional improvements shall be constructed on the premises without the express written permission of Lessor.

5. Termination of Lease:

This Lease may be terminated upon any of the following events:

- A. Dissolution, insolvency or bankruptcy of the Lessee or Lessee's vacancy of the premises;
- B. The foreclosure and sale of the leasehold interest resulting from any lien that is not satisfied and paid by Lessee;
- C. A material breach of any of the obligations of Lessee under this Lease, including the Management Plan, unless the said breach is cured within the time provided in Paragraph 5(E) below;
- D. Any unauthorized use of the premises, if the said breach is not cured within the time provided in Paragraph 5(E) below;
- E. In the event the Lessor wishes to terminate this Lease pursuant to the provisions of Paragraphs 5(C), (D) or (E), written notice of the intent to terminate shall first be given to the Lessee by certified mail, return receipt requested, at the address of the Lessee stated below, or at any other subsequent address given to the Lessor in writing. Said notice shall provide a clear statement of the reasons for termination.

The Lessee shall then have a period of thirty (30) days from the date or receipt of said notice within which to cure the default which forms the basis of the notice of termination, and in the event such cure is timely made by Lessee, the Lease shall remain in full force and effect.

The Lessor shall have the right, at its option, to either temporarily suspend or permanently terminate this Lease Agreement, if there is a dispute as to the legal authority of either Lessor or Lessee or the persons signing the Lease Agreement to enter into this Lease Agreement. The Lessor shall not be obligated for any performance of the provisions of this Lease Agreement after the Lessor has suspended or terminated this Lease Agreement as provided in this paragraph.

6. Disclaimer of Lessor of any Liability for Liens:

Nothing in the terms of this Lease shall be construed as the Lessor authorizing the Lessee to make any improvements on the real premises that would subject the property to a mechanic's lien. To the extent that the Lessee may make improvements

upon the premises and fail to pay for the same, such that a mechanic's lien is placed upon the premises, said liens shall attach only to the leasehold interest of Lessee to the premises, and shall subject to all the terms of this Lease (including the provisions for termination of the Lease upon the filing of a mechanic's lien). Lessee shall not create or allow any liens upon said property and liens shall attach only to Lessee's leasehold interest.

7. Access to and use of the Property:

- A. The Lessor shall have the right to enter upon or across the leased premises or to cross such premises at any and all times and may authorize any of its officers, agents or employees to do so also.
- B. The Lessor shall also have the right to inspect the inside of any of the buildings or improvements on the premises at any reasonable time by making prior arrangements with Lessee.
- C. Lessor reserves easements for existing Lessor owned and public utility facilities on the Leased premises. Lessor shall have the right to install additional utility facilities on the leased premises or authorize other utility providers to do so, provided that such new facilities will not unreasonably interfere with Lessee's use of the premises.

8. Taxes and Utilities:

- A. Lessor is tax exempt. In the event any ad valorem, real or personal property taxes or payments in lieu thereof, or any other taxes, are due or assessed upon the leased property or any improvements thereon, the payment of such taxes shall be the sole obligation of the Lessee. In the event the Lessor receives any tax notices, it shall deliver them to the Lessee for payment as due.
- B. Lessee shall promptly pay as due all bills for utilities to serve the premises except the Lessor will not bill the Lessee for water which it may elect to supply at Lessor's option.

9. Insurance and Indemnification:

9.1 Indemnification:

The Lessee agrees to indemnify and hold harmless Lessor, its officers, employees, insurers, and self-insurance 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 loss 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 the Lessee, any contractor of the Lessee, or any officer, employee,

representative, or agent of the Lessee or of any employee or volunteer of the Lessee, or which arise out of any workers' compensation claim of any employee of the Lessee or of any employee of any contractor of the Lessee. The Lessee agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims or demands at the sole expense of the Lessee, or at the option of Lessor, agrees to pay Lessor or reimburse Lessor for the defense costs incurred by Lessor in connection with, any such liability, claims, or demands. The Lessee also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims, or demands alleged are groundless, false, or fraudulent. If it is determined by the final judgment of a court of competent jurisdiction that such injury, loss, or damage was caused in whole or in part by the act, omission, or other fault of the Lessor, its officers, or its employees, the Lessor shall reimburse the Lessee for the portion of the judgment attributable to such act, omission, or other fault of the Lessor, its officers, or employees. The Lessee waives all claims for any damages against the Lessor and its officers and employees, which arise under this lease.

9.2. Insurance:

- A. The Lessee 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 Lessee pursuant to Paragraph 9.1. Such insurance shall be in addition to any other insurance requirements imposed by this Lease Agreement or by law. The Lessee shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to Paragraph 9.1 by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
- B. Lessee shall procure and maintain, and shall cause any contractor of the Lessee to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to Lessor. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Lessee pursuant to Paragraph 9.1. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
 - 1. Worker's Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work for Lessee.
 - 2. Commercial General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for

contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

- C. The policy required by paragraphs (B)(2) above shall be endorsed to include Lessor and Lessor's officers and employees as additional insureds. Every policy required above shall be primary insurance and any insurance carried by Lessor, its officers, or its employees, or carried by or provided through any insurance pool of Lessor, shall be excess and not contributory insurance to that provided by Lessee. No additional insured endorsement to any policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The Lessee shall be solely responsible for any deductible losses under any policy required above.
- D. A certificate of insurance shall be completed by the Lessee's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by Lessor prior to commencement of the Lease. The certificate shall identify this Lease and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least 30 days prior written notice has been given to Lessor. The completed certificate of insurance shall be sent to Lessor.
- E. Failure on the part of the Lessee to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which Lessor may immediately terminate this contract, or at its discretion Lessor may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by Lessor shall be repaid by Lessee to Lessor upon demand, or Lessor may offset the cost of the premiums against any monies due to Lessee from Lessor.
- F. Lessor reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- G. The parties hereto understand and agree that Lessor is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$350,000 per person and \$990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado, Governmental Immunity Act, {2440401 et seq., 10 C.R.S., as from time to time amended, or otherwise available to Lessor, its officers, or its employees.
- H. Lessee shall have the premises including all structures and improvements on the premises covered by Lessee's fire and casualty insurance policies including Lessor as an additional insured therein and provide Lessor with a certificate of such

insurance. Lessee shall be responsible for all losses to Lessee's property including losses not covered due to said policy's deductible, or for losses outside the scope of such policy's coverage and hereby waives any claim against Lessor for such losses.

10. Waiver:

No waiver of any breach of all or one or more of the conditions and covenants of this Lease by the Lessee or Lessor shall be deemed and constitute a waiver of any succeeding or other breach under this Lease.

11. All notices required to be given to the Lessor or the Lessee herein shall be mailed to them at the following addresses:

Town of Ridgway
P.O. Box 10
Ridgway, CO 81432

Ridgway Bike Park
Mailing Address

Notice shall be effective when deposited in the U.S. Mail, certified return receipt requested, addressed to the above address or any address notice of which address change has been given in writing to the other party.

12. Lessee may neither sublease nor assign its interest hereunder. This Lease shall be binding upon the successors and assigns of the Parties hereto. It will be binding on any sub-lessees.
13. Nothing herein shall be construed to create a financial obligation of the Lessor beyond any current fiscal year. Lessor may not make any expenditures or provide water under this lease unless an annual appropriation therefore has been adopted by the Ridgway Town Council.
14. This lease may be extended for additional terms upon the written agreement of the parties. Lessee shall submit to Lessor by October 31, an annual report describing operations and other matters for the garden season containing such information as may be outlined in the Management Plan. Lessor shall review such report and other information to determine if the bike park is meeting goals and objectives of the Lessor, in making its decision as to renewal.
15. Lessee shall erect a sign, in accordance with the Town of Ridgway's Sign Regulations, that states that each bike park guest who elects to participate in bike-related activities on the Premises agrees to waive and release the Lessor and the Lessor's officers, employees, and agents.

16. Improvements, alterations, and installations of a permanent nature on the Premises shall not be removed by Lessee at the termination of this Lease Agreement. Equipment and property placed by Lessee at its expense in, on, or about the Premises, including fixtures temporarily affixed to the Premises but which may be removed without damage, shall remain the property of Lessee, and Lessee shall have the right to remove all such equipment, property, and temporary fixtures and shall so promptly remove at the termination of this Lease.
17. Lessee shall enforce weed management and chemical application protocols outlined in Ridgway Comprehensive Plan: Integrated Weed Management and Native Plant Restoration 2011.
18. Any water conservation restrictions or requirements imposed by the Lessor shall be strictly applied and enforced by Lessee on the Premises.
19. NO THIRD-PARTY BENEFICIARIES: It is expressly understood and agreed that enforcement of the terms and conditions of this Lease Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Lessor and Lessee, and nothing contained in this Lease Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the Lessor and Lessee that any person other than the Lessor or Lessee receiving services or benefits under this Lease Agreement shall be deemed to be an incidental beneficiary only.
20. AMENDMENTS: No amendments to this Lease Agreement may be made except in writing, agreed to by all parties to this Lease Agreement, and approved and executed in the same manner as this Lease Agreement.
21. VENUE AND GOVERNING LAW: This Lease Agreement and the rights and duties of the parties hereunder shall be interpreted in accordance with the laws of the State of Colorado. Venue for any and all legal actions arising hereunder shall lie in Ouray County, Colorado.
22. INTEGRATION: This Lease Agreement is intended as the complete integration of all understandings between the Lessor and Lessee. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect, unless embodied in this Lease Agreement in writing. Any oral representation by any officer or employee of the Lessor at variance with terms and conditions of this Lease Agreement or any written amendment to this Lease Agreement shall not have any force or effect nor bind the Lessor.
23. SEVERABILITY: The Lessor and Lessee agree that if any provision of this Agreement or any portion thereof is held by a court of competent jurisdiction to be invalid, illegal, unenforceable, or in conflict with any law of the State of Colorado or the federal

government, except for the provisions of the Agreement requiring prior appropriation of funds and limiting the liability of the Lessor, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

24. CLAIMS: In the event that any claim, demand, suit, or other action is made or brought in writing by any person, firm, corporation, or other entity against Lessee related in any way to this Lease Agreement, Lessee shall give written notice thereof to the Lessor within five (5) working days after being notified of such claim, demand, suit, or action. Such notice shall state the date and hour of notification and shall include a copy of any such claim, demand, suit, or other action received by Lessee. Such written notice shall be delivered either personally or by mail to the address of the Lessor specified in the notice provision of this Lease Agreement.

25. APPROPRIATION REQUIRED: This Agreement shall not be construed to constitute a debt of the Town beyond any current fiscal year and shall be subject to the availability of an annual appropriation therefore by the Town.

IN WITNESS WHEREOF, the Parties have entered into this Lease as of the day and year first above written.

LESSOR: TOWN OF RIDGWAY

BY _____
John Clark, Mayor

ATTEST:

Pam Kraft, Town Clerk

LESSEE: RIDGWAY BIKE PARK
EIN#

By: _____
Matt McIsaac, Executive Director

EXHIBIT A



AGENDA ITEM #9

STAFF REPORT

Subject: Ordinance pertaining to Economic Nexus and Marketplace Facilitators

Initiated By: Pam Kraft, Town Clerk/Treasurer

Date: May 4, 2021

BACKGROUND:

As a home rule municipality the Town self collects sales tax, unlike statutory cities which must use the Colorado Department of Revenue (DOR) to administer and collect sales tax. (The DOR receives a portion of the taxes collected for providing this service). Ridgway requires a local sales tax license for all persons selling, or delivering items into Town, and remittance of taxes is paid directly to the Clerk/Treasurer Department.

In 2014 the Colorado Municipal League (CML) started a uniformity project to address simplification of sales tax remittance for out of state retailers, and large marketplace sellers, like Amazon. CML staff oversaw the project, with finance directors from participating jurisdictions forming the Sales Tax Simplification Committee. As part of those discussions state legislation requested all self collecting home rule municipalities to adopt standard definitions. The committee then began to work with finance directors from home rule municipalities, which self collect sales tax, to prepare uniform and standard definitions for adoption statewide. In 2017 the General Assembly adopted regulations for simplification of sales tax collection statewide; in 2019 the State Legislator created a single point remittance portal through the DOR, allowing for implementation of single point remittance software for use by out of state sales tax remitters.

By participating in the single point remittance portal it allows out of state sellers to remit taxes with a single sales tax payment, as the system is set up to pay each individual jurisdiction for the taxes received; assists businesses to find tax rates for each jurisdiction, and identify which jurisdiction they are selling within (i.e. town boundary to county); it also requires only a single sales tax license within the state, versus accruing different licenses from each jurisdiction.

In late 2019 the Town entered into a Standard Uniform Tax Simplification Agreement with the DOR for use of the single remittance portal. The State contracted with Muni-Revs to administer this service, and since the Town already contracted with Muni-Revs for tax collection services, no changes were necessary to begin using the single remittance portal. It is probable that the Town will receive more revenue from sales tax, as many on-line sellers were remitting only to the state due to confusion of home rule jurisdiction.

CML is now asking that all municipalities adopt a model ordinance, which if adopted by the Council, will be incorporated into the Town's sales tax regulations in the Municipal Code, and assist in economic nexus, and provide uniformity for remittance by remote sellers and marketplace facilitators.

BACKGROUND FROM CML:

The attached ordinance pertaining to Economic Nexus and Marketplace Facilitators was developed by municipal tax professionals as part of a sales tax simplification effort initiated by numerous municipalities through out the state and sponsored by the Colorado Municipal League (CML). This was organized after it was recognized that various home rule municipalities giving the same term different meanings was a source of complexity in the tax system for businesses that operate in multiple municipalities. It was determined by a committee which was formed to determine simplification, that the use of "standardized" definitions, such as

those addressed in the ordinance, can help minimize this complexity and provide clarity for companies remitting taxes to local governments within the State.

CML and the Sales Tax Simplification Committee spent two years to develop the Model Ordinance Project. The discussion around clarification to marketplace facilitators and economic nexus began two years ago when the United States Supreme Court decided a case called *South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080 (2018) (hereinafter “Wayfair”). South Dakota enacted a statute requiring internet sellers with no physical presence in the state to collect and remit sales tax, which was not allowed under prior Supreme Court rulings. The Supreme Court overturned their prior rulings and held that out-of-state seller's physical presence in taxing state is not necessary for state to require seller to collect and remit its sales tax. South Dakota had showed that their ordinance did not place a burden on interstate commerce, therefore violating the Commerce Clause, by doing the following: enacting a threshold amount to not require small businesses to remit, using a single state level tax administration, creating uniform definitions of products and services, simplifying the tax rate structures, and other uniform rules. In Colorado, the sales tax system is more complicated than South Dakota, however, the Committee created an easier process businesses, while still allowing self-collection afforded to home rule municipalities.

A subcommittee of the Committee started with the state definitions of economic nexus and marketplace facilitators, and began to work in definitions that were clear and concise. Once the Model Ordinance was developed, it was reviewed by a group of business tax experts and attorneys, as well as by a group of municipal attorneys.

Following these discussions, several final revisions were made to the Model Ordinance and it was finalized by the Standard Definitions Subcommittee of the CML Sales Tax Simplification Committee.

The goal of this Model Ordinance is to clarify who can collect and remit taxes along with clarifying the authority given to taxing jurisdictions, and also clarifies administrative authority for home rule municipalities. Under Wayfair, part of the reason South Dakota did not overburden interstate commerce was due to an easy way for businesses to remit to all taxing jurisdictions.

This ordinance was designed to be adopted to help with any potential challenge under the Commerce Clause (under Wayfair). The goal with the ordinance is uniformity and simplicity so that all municipalities in Colorado can collect from online or remote retailers.

Senate Bill 19-006 House Bill 006 (2019) gave the Department of Revenue and the Office of Information Technology the go ahead to contract with vendors and create a single point of remittance. The idea of a single portal for businesses to remit has been offered many times before by the business community. However, with the Wayfair decision confirmed the importance of a single portal for remote sellers, and the state moved forward with the creation of this portal. The portal allows businesses to go to one website and remit taxes to taxing jurisdictions who have signed on to use the portal.

The CML Sales Tax Simplification Committee had previously been discussing sales tax for remote sellers prior to ‘Wayfair’, for voluntary compliance to keep the sales tax system as simple as possible. The South Dakota ruling had three essential things for the US Supreme Court to allow collection of sales tax from remote sellers without violating the Commerce Clause - the threshold limit; a ban on applying requirements retroactively; a single tax administration system. If all 72 self collection home rule municipalities continue to implement their own collection from out of state retailers, it could cause a challenge under the Supreme Court case. The State’s single point of remittance software was an option to align with what South Dakota did, and reduce the risk of a constitutional challenge.

STAFF RECOMMENDATION:

Introduce Ordinance 04-2021 Amending Section 3-2 "Sales Tax" of the Ridgway Municipal Code to Adopt Uniform Definitions to Address Sellers with No Physical Presence in the Town.

ATTACHMENT 1. Ordinance No. 04-2021

**TOWN OF RIDGWAY, COLORADO
ORDINANCE NO. 04-2021**

**AN ORDINANCE OF THE TOWN OF RIDGWAY, COLORADO
AMENDING SECTION 3-2 “SALES TAX” OF THE RIDGWAY MUNICIPAL CODE TO
ADOPT UNIFORM DEFINITIONS TO ADDRESS SELLERS WITH NO PHYSICAL
PRESENCE IN THE TOWN**

WHEREAS, the Town of Ridgway, Colorado (“Town”) is a home rule municipality existing pursuant to the laws of the Colorado Constitution, the Colorado Revised Statutes and the Town's Home Rule Charter; and

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce sales taxes is clearly within the constitutional grant of power to the Town and is necessary to raise revenue with which to conduct the affairs and render the services performed by the Town; and

WHEREAS, pursuant to such authority, the Town has adopted and enacted Sales Tax Regulations (the “Code”), under which Town sales tax is levied on all sales and purchases of tangible personal property or taxable services at retail unless prohibited, as applicable to the provision of this Ordinance, under the Constitution or laws of the United States; and

WHEREAS, the United States Supreme Court in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), overturned prior precedent and held that a State is not prohibited by the Commerce Clause from requiring a retailer to collect sales tax based solely on the fact that such retailer does not have a physical presence in the State (“Remote Sales”); and

WHEREAS, based upon such decision, the retailer’s obligation to collect Remote Sales is no longer based on the retailer’s physical presence in the jurisdiction by the Constitution or law of the United States, and the Town’s Sales Tax Regulations need to be amended to clearly reflect such obligation consistent with said decision; and

WHEREAS, the delivery of tangible personal property, products, or services into the Town relies on and burdens local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services; and

WHEREAS, the failure to tax remote sales creates incentives for businesses to avoid a physical presence in the State and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the State and its municipalities; and

WHEREAS, it is appropriate for Colorado municipalities to adopt uniform definitions within their sales tax codes to encompass marketplace facilitators, marketplace sellers, and multichannel sellers that do not have a physical presence in the Town, but that still have a taxable connection with the Town; and

WHEREAS, the goal of adopting this ordinance is to join in on the simplification efforts of all the self-collecting home rule municipalities in Colorado; and

WHEREAS, this ordinance provides a safe harbor to those who transact limited sales within the Town; and

WHEREAS, absent such amendment, the continued failure of retailers to voluntarily apply and remit sales tax owed on remote sales exposes the municipality to unremitted taxes and permits an inequitable exception that prevents market participants from competing on an even playing field; and

WHEREAS, the Town adopts this ordinance with the intent to address tax administration, and, in connection with, establish economic nexus for retailers or vendors without physical presence in the State and require the retailer or vendor to collect and remit sales tax for all sales made within the marketplace.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF RIDGWAY, COLORADO the following:

Section 1. Recitals Incorporated. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

Section 2. Section 3-2-2 of the Code is hereby amended as follows:

“Engaged in Business in the Town” means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property, products, or services for storage, use or consumption, within the Town. Engaged in Business in the Town includes, but is not limited to, any one of the following activities by a person: (1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction; (2) Sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons; (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction; (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; (5) Retailer or vendor in the state of Colorado that makes more than one delivery into the taxing jurisdiction within a twelve month period; or (6) Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in Subsection 3-2-2.

Section 3. Section 3-2-2 of the Code is hereby amended as follows:

“Retailer or Vendor” means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. The terms “retailer” shall include, but is not limited to, any:

- (1) Auctioneer;
- (2) Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;
- (3) Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes;
- (4) Retailer-contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property.
- (5) Marketplace facilitator, marketplace seller, or multichannel seller.

Section 4. Section 3-2-2 of the Code is hereby amended to include the following new definitions:

“Economic Nexus” means the connection between the Town and a person not having a physical nexus in the State of Colorado, which connection is established when the person or marketplace facilitator makes retail sales into the Town, and:

- (A) In the previous calendar year, the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended; or
- (B) In the current calendar year, 90 days has passed following the month in which the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended.

This definition does not apply to any person who is doing business in this state but otherwise applies to any other person.

“Marketplace” means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property, taxable products, or taxable services are offered for sale.

“Marketplace Facilitator”

- (A) Means a person who:
 - (1) Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the sale of the marketplace seller’s tangible personal property, products, or services through the person’s marketplace;
 - (2) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; and
 - (3) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.
- (B) “Marketplace Facilitator” does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.

“Marketplace Seller” means a person, regardless of whether or not the person is engaged in business in the Town, which has an agreement with a marketplace facilitator and offers for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

“Multichannel Seller” means a retailer that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.

Section 5. Section 3-2-4 of the Code is hereby amended by the addition of the following new subsection:

3-2-4 (C) Marketplace Sales

“Marketplace Sales”

(C) Marketplace Sales

- (1) (a) A marketplace facilitator engaged in business in the Town is required to collect and remit sales tax on all taxable sales made by the marketplace facilitator, or facilitated by it for marketplace sellers or multichannel sellers to customers in the Town, whether or not the marketplace seller for whom sales are facilitated would have been required to collect sales tax had the sale not been facilitated by the marketplace facilitator.

(b) A marketplace facilitator shall assume all the duties, responsibilities, and liabilities of a vendor under Section 3-2-2. Marketplace facilitators shall be liable for the taxes collected from marketplace sellers or multichannel sellers. The Town may recover any unpaid taxes, penalties, and interest from the marketplace facilitator that is responsible for collecting on behalf of marketplace sellers or multichannel sellers.

(c) The liabilities, obligations, and rights set forth under this article are in addition to any duties and responsibilities of the marketplace facilitator has under this article if it also offers for sale tangible personal property, products, or services through other means.

(d) A marketplace seller, with respect to sales of tangible personal property, products, or services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this article if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:

 - (i) With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this article; or
 - (ii) From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect sales tax and will collect sales tax on all sales subject to tax under this article made in or through the marketplace facilitator's marketplace.

(e) If a marketplace seller makes a sale that is not facilitated by a licensed marketplace facilitator in a marketplace, the marketplace seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.
- (2) Auditing. With respect to any sale, the Town shall solely audit the marketplace facilitator for sales made by marketplace sellers or multichannel sellers but facilitated by the marketplace. The Town will not audit or otherwise assess tax against marketplace sellers or multichannel sellers for sales facilitated by a marketplace facilitator.

Section 3. No obligation to collect the sales and use tax required by this article may be applied retroactively. Responsibilities, duties and liabilities described in Section 5(C) of a marketplace facilitator, marketplace seller, or multichannel seller begin upon the earlier of when they became licensed to collect the Town's sales tax or when they became legally obligated to collect the Town's sales tax under Section 4.

Section 4. Codification of Amendments. The Town Clerk, as the codifier of the Town's Municipal Code, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Ridgway Municipal Code. The Town Clerk is authorized to correct, or approve the correction by the codifier, of any typographical error in the enacted regulations, provided that such correction shall not substantively change any provision of the regulations

adopted in this Ordinance. Such corrections may include spelling, reference, citation, enumeration, and grammatical errors.

Section 5. Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications 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. The Town Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term “provision” means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term “application” means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

Section 6. Effective Date. This Ordinance shall take effect thirty (30) days after the date of final passage in accordance with Article 3-7 of the Ridgway Charter.

Section 7. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Ridgway, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 8. No Existing Violation Affected. Nothing in this Ordinance shall be construed to release, extinguish, alter, modify, or change in whole or in part any penalty, liability or right or affect any audit, suit, or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing which may have been incurred or obtained under any ordinance or provision hereby repealed or amended by this Ordinance. Any such ordinance or provision thereof so amended, repealed, or superseded by this Ordinance shall be treated and held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions, for the enforcement of such penalty, liability, or right, and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered, or made in such actions, suits or proceedings, or prosecutions imposing, inflicting, or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force for the purpose of sustaining any and all proceedings, actions, hearings, and appeals pending before any court or administrative tribunal.

Section 9. Publication. The Town Clerk is ordered to publish this Ordinance in accordance with Article 3-7 of the Ridgway Charter.

[Execution Page follows]

INTRODUCED AND REFERRED TO PUBLIC HEARING on May 12, 2021 and setting such public hearing for June 9, 2021 at Ridgway Town Hall, located at 201 N. Railroad Street, Ridgway, Colorado.

BY:

ATTEST:

John Clark, Mayor

Pam Kraft, Town Clerk

ADOPTED on June 9, 2021.

BY:

ATTEST:

John Clark, Mayor

Pam Kraft, Town Clerk

APPROVED AS TO FORM:

Bo James Nerlin, Town Attorney

AGENDA ITEM #10



To: Honorable Mayor Clark and Ridgway Town Council
From: Preston Neill, Town Manager
Date: May 6, 2021
Agenda Topic: Review and action on Fiber-Optic Infeasible Right of Use Agreement between Clearnetworx, LLC, Region 10 League for Economic Assistance and Planning, Inc., and the Town of Ridgway

ACTION BEFORE COUNCIL:

In March 2021, Council provided direction to move forward with getting an Infeasible Right-Of-Use (IRU) Agreement developed, complete with a 30-year IRU term, to pursue broadband connections to anchor institutions. Attached for Council review and consideration is the IRU Agreement with Clearnetworx, LLC and Region 10. It is labeled as Attachment 1.

BACKGROUND:

In September 2020, Council provided direction to move forward with the money that had been earmarked in the 2020 Budget to match the DOLA grant funding to pursue broadband connections to anchor institutions. Please refer to the staff report from September 4, 2020, labeled as Attachment 2, for additional background. The specific direction received at that meeting was as follows:

- Pursue IRUs for the following anchors based on estimated prices:
 - Athletic Park
 - Town Hall
 - Elementary School
 - High School
- Obtain pricing for a 20-year IRU term, as well as a 30-year IRU term.
- Obtain clarity on the ongoing operation and maintenance (O&M) costs.

Getting final costs took much longer than expected. In March 2021, Council revisited this topic and was asked to provide direction on how to proceed with the final proposal that had been submitted by Region 10 and Clearnetworx. The proposal showed that the IRU costs for the four identified anchors were higher than initially expected. The proposal also identified O&M costs at a 30-year IRU term. The total came to \$122,001.00. Ridgway would be responsible for 50% of that cost based on the DOLA grant funding, bringing Ridgway's share to \$61,000.50. Again, this would be for a 30-year IRU term. The Town could opt for 20-year IRU term, which would bring Ridgway's share to \$53,255.50. **Based on all that and for economical reasons, Council provided direction to move forward with a 30-year IRU term at a total cost of \$61,000.50.**

FINANCIAL IMPLICATIONS:

The FY2021 Budget has \$55,000 earmarked for broadband initiatives. Staff feels that the Budget can accommodate the increased cost for the 30-year IRU term.

RECOMMENDED MOTION:

"I move to approve the Fiber-Optic Infeasible Right of Use Agreement between Clearnetworx, LLC, Region 10 League for Economic Assistance and Planning, Inc., and the Town of Ridgway."

ATTACHMENTS:

Attachment 1 – Fiber-Optic Infeasible Right of Use Agreement
Attachment 2 – September 4, 2020 Staff Report

FIBER-OPTIC INDEFEASIBLE RIGHT OF USE AGREEMENT

Clearnetworkx, LLC

and

Town of Ridgway

and

Region 10 League for Economic Assistance and Planning, Inc.

THIS FIBER-OPTIC INDEFEASIBLE RIGHT OF USE AGREEMENT ("Agreement") is made and entered into on the ____ day of _____, 20__ (the "Effective Date") by and between CLEARNETWORKX, LLC, a Colorado limited liability company, having a principal address of 301 North Cascade Avenue, Montrose, Colorado, 81401 (hereinafter referred to as "**Company**") the TOWN OF RIDGWAY, a Colorado Home-Rule Municipal Corporation, having a principal address of 201 North Railroad Street, Ridgway, CO 81432 (hereinafter referred to as the "**Town**") and the REGION 10 LEAGUE FOR ECONOMIC ASSISTANCE AND PLANNING, INC., a 501(c)(3) nonprofit corporation with principal offices located at 145 South Cascade Avenue, Montrose, Colorado 81401 ("**Region 10**"). Company, Town and Region 10 are each referred to as a "Party" and collectively referred to as the "Parties."

AGREEMENT

In consideration of the mutual covenants, promises and agreements contained in this Agreement, and for other good and valuable consideration, the Parties agree as follows:

A. BACKGROUND

1. Company has constructed a fiber optic communications system within the Town of Ridgway (the "COMPANY System").
2. Town and Region 10 desire to obtain an Indefeasible Right of Use (IRU) for certain portions of the COMPANY System, and Company is willing to grant Town and Region 10 such an IRU.
3. Region 10 has been awarded grant funds from the State of Colorado Department of Local Affairs (DOLA), and local match for this grant from the Town of Ridgway to acquire an IRU grant of fibers on the Company System.
4. In consideration of the IRU grant for four (4) strands of fiber-optic cables as identified in Appendix A (**the Fibers**) on the Company System, Region 10 shall pay to Company in one lump sum payment of one hundred and twenty two thousand and one dollars (\$122,001.00).
5. Company retains complete ownership of the Fibers and will regain control of the Fibers following expiration or termination of this Agreement.

B. GRANT OF INDEFEASIBLE RIGHT; TERM OF AGREEMENT

1. Company grants to Town and Region 10 an IRU of the Fibers identified in Appendix A for the Term of this Agreement. As set forth in Appendix A, two Fiber strands will be assigned to the Town and two Fiber strands will be assigned to Region 10. The Parties may agree to expand the route segments in Appendix A by written

consent subject to mutual benefit. The IRU does not include the right of Town or Region 10 to own, control, maintain, or modify the Fibers, or the right of physical access to, the right to encumber, or other use of the COMPANY System except as expressly provided in this Agreement.

2. The term of this Agreement shall commence on the Effective Date and expire after thirty (30) years (the “Term”) unless otherwise agreed to by the parties. This Agreement is not deemed by Town to be a multi-year fiscal obligation. Any monies to be expended by the Town under this Agreement shall be subject to annual appropriation by the Town.

C. GENERAL AND OPERATIONAL PROVISIONS

1. Legal title to the COMPANY System—including the Fibers and the remainder of the fiber optic communications system, with fiber and cable sheathing and any bridge attachments, conduits, brackets, insulators, fixtures, guy wires, anchors, splice boxes, fiber distribution centers and other hardware needed or used to fasten or support the cable—shall be held by Company. Nothing in this Agreement, nor any use of the IRU Fibers by Town and Region 10, nor any placement of Town and Region 10’s facilities on or in the COMPANY System shall create or vest in Town and Region 10 any right, title or interest in or to any real or personal property owned by Company other than the IRU for the Fibers during the Agreement’s Term.
2. The Parties agree that, unless otherwise expressly provided in this Agreement, Company is not supplying any optronics or electrical equipment or facilities—including without limitation, generators, batteries, air conditioners, fire protection and monitoring and testing equipment—all of which are the sole responsibility of Town and Region 10. The Parties agree that Company is not responsible for performing any work other than as specified in the Agreement.
3. Company will provide Town and Region 10 with access to the Fibers at splice points and connection points for the routes listed under Appendix A. Each access point will be specifically identified and agreed upon by the Parties. All access will be outside of Company facilities, including headquarters and substations, unless otherwise mutually agreed to by the Parties.
4. If Town and Region 10 desires to connect other fiber optic cables to the Fibers, Company agrees to cooperate, as appropriate, with Town and Region 10 in accessing the access point locations. Such cooperation shall not be construed as requiring Company to create connections. Company shall cooperate in good faith with requests of the Town and Region 10, and shall not unreasonably withhold, condition or delay consent to access the access point locations.
5. Town and Region 10 shall endeavor to keep Company’s facilities and other property subject to this Agreement free from any liens, rights or claims of any third party attributable to Town and Region 10 that adversely affects or impairs Company’s exclusive ownership and use of its facilities or other property.
6. Town and Region 10 may use the Fibers for any lawful broadband or telecommunications purpose, but such use may not interfere with use of the COMPANY System for other telecommunications purposes, to the extent that both the Town and Region 10 are fully aware of the Company’s use of the COMPANY System for telecommunication purposes.
7. Town and Region 10 agree that they lack the right to use fiber on the COMPANY System except the Fibers listed in Appendix A. Company acknowledges that it has no right to use the Fibers during the Term of this Agreement.

Company further agrees that it shall not operate or maintain the COMPANY System in any manner that interferes with the Town's and Region 10's use of the Fibers as contemplated in this Agreement.

D. DELIVERY AND TESTING OF THE FIBERS

1. Company will deliver the Fibers to Town and Region 10 within sixty (60) days of the Effective Date, tested to telecommunication industry standards. Test results will meet minimum specifications set forth in Appendix B. Company will provide testing documentation to Town and Region 10.

E. MAINTENANCE AND REPAIR; SERVICE OBLIGATIONS; DISCLAIMER OF WARRANTIES

1. Prior to the Town and Region 10 assuming use of the Fibers, the Company shall test the Fibers to verify that the Town and Region 10 Fibers have been installed and that the Fibers meet industry standards for single-mode dark fiber and the minimum specifications set forth in Appendix B ("Fiber Testing"). Company shall provide a copy of any report generated as a result of Fiber Testing to Town and Region 10.
2. Although Company shall maintain and repair the conduit in which the IRU Fibers are located, Company shall make no guarantee of service or lost revenue or goodwill as a result of poor or no service, other than its obligations to maintain the Fibers as set forth in Appendix C. Town and Region 10's use of the Fiber is subject to both scheduled and unscheduled maintenance outages; Company shall use commercially reasonable efforts, however, to minimize the impact of any maintenance outages.
3. Company shall respond to any interruption of service or failure of the IRU Fibers as it does to its own fiber-optic network. Fiber-optic maintenance and repair is subject to Company priorities; no guarantee of services is represented, except as provided in Appendix C.
4. Company shall be responsible for maintenance, repair, replacement or upgrade of the fiber-optic cable for the length of the Term in return for a one-time payment included in the outlined costs of this agreement and Appendix A. These costs are outlined as O+M in Appendix A.
5. The Town and Region 10 shall pay Company its reasonable costs for any additional/special work or maintenance requested by the Town and Region 10 in writing and furnished by Company on or related to the IRU Fibers. Costs shall include labor, contractor costs, reasonable overhead costs, material, and any other expenses directly associated with Town/Region 10-requested work done on the IRU Fibers.
6. The Parties agree that they are not entitled to damages from any other Party under this Agreement except, if applicable, the replacement or repair of any Town and Region 10 facilities or equipment necessary to utilize the Fiber, the Fiber itself and the COMPANY System. ALL PARTIES, THEIR OFFICERS, BOARD MEMBERS, SUBSIDIARIES, EMPLOYEES, AFFILIATES AND AGENTS SHALL NOT BE LIABLE FOR ANY INTERRUPTIONS IN SERVICE OR LIABLE FOR ANY DELAY OR FAILURE TO PERFORM, NOR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT ARISE OUT OF OR RELATE TO THIS AGREEMENT OR THE SERVICE PROVIDED HEREUNDER, INCLUDING, WITHOUT LIMITATION, BUSINESS INTERRUPTION, LOST PROFITS, COMPUTER FAILURE OR MALFUNCTION, ANY DAMAGES FOR LOSS OF DATA RESULTING FROM DELAYS, NON-DELIVERIES, MISDELIVERIES OR SERVICE INTERRUPTIONS. THE COMPANY PARTIES MAKE NO WARRANTY, EITHER EXPRESSED OR IMPLIED, AND NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE FIBER OR COMPANY EQUIPMENT, OR ANY SERVICES FURNISHED TO TOWN AND REGION 10 UNDER THIS

AGREEMENT. ALL SUCH WARRANTIES ARE EXPRESSLY EXCLUDED. IN NO EVENT SHALL ANY PARTY HAVE ANY LIABILITY FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES RELATING TO THE FIBERS OR THE COMPANY SYSTEM.

F. PERMITS; UNDERLYING RIGHTS; RELOCATION

1. Town and Region 10's rights under this Agreement are subject to the terms of the underlying property rights through or across which the COMPANY System is located, including but not limited to covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages, and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession.
2. Company will act with due diligence and in no event longer than thirty (30) days, and take all actions reasonably necessary to ensure that the underlying property rights do not preclude Company's ability to grant the IRU to Town and Region 10 for the uses contemplated herein. At whatever time Company determines that it is able to move forward with the use of the COMPANY System over the route described on Appendix A, Town and Region 10 shall have full use of the four (4) fibers described. Should Company receive notification from any party, suggesting any concerns or problems with Company's ability to grant the IRU to Town and Region 10 for the use intended, it will provide such information to Town and Region 10 within three (3) business days, and will work collaboratively with Town and Region 10 to resolve the concerns. Company will share all of its due diligence activities, correspondence with property owners and any other related information with Town and Region 10, after receipt of such notification from any party or at the request of Town and Region 10. Company represents, based upon its information, knowledge and belief, that there are no provisions in the underlying property rights that would negatively impact anticipated use of the IRU contemplated herein. To the extent there are certain provisions in the underlying property rights that would negatively impact the anticipated use of the IRU as contemplated herein, Company shall be responsible for providing to the Town and Region 10 a pro-rata refund on amount of property impacted.
3. The IRU granted under this Agreement is further subject and subordinate to the prior right of Company to use the right of way for other business activities and other telecommunications uses, subject to applicable law.
4. If during the Term Company is required by the owner of any underlying property right to relocate any part of the COMPANY System, including any facilities used or required in providing the IRU, Company shall proceed with such relocation; provided that (a) any such relocation shall be constructed and tested to make sure it works properly; and (b) the relocation shall be coordinated with Town and Region 10 to minimize any effect on Town and Region 10.

G. INSURANCE

1. During the Term, each Party or its designated agent shall procure and maintain in force, at its own expense:
 - a. Not less than \$2,000,000 combined single limit liability insurance, on a claims made basis, for personal injury and property damage, including, without limitation, injury or damage arising from the operation of vehicles or equipment and liability for completed operations;
 - b. Worker's compensation insurance in amounts required by applicable law; and
 - c. Employers' liability insurance with a limit of at least \$1,000,000 per occurrence;
 - d. Any other insurance coverages specifically required by Company right-of-way agreements with third parties.

2. If coverage is denied or reimbursement of a properly presented claim is disputed by the carrier for insurance provided above, the Party carrying such coverage shall make good-faith efforts to pursue such claim with its carrier.

H. TERMINATION OF AGREEMENT

1. Upon expiration of the term, this agreement shall not renew and a new agreement shall need be drafted and agreed to by all Parties.
2. The Parties may terminate this Agreement by mutual consent, made in writing, at any time for their convenience. No full or partial refund shall be due from any Party in this instance.
3. Every term and condition shall be deemed to be a material element of this Agreement. A Party may terminate this Agreement before expiration of the Term in the case of any material breach of this Agreement by the other Party, where that other Party has failed to cure the material breach within one hundred and twenty (120) days after receiving written notice. The failure of any Party hereto to enforce any provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part or any such provision, but the same shall nevertheless be and remain in full force and effect.
4. Town and Region 10 may terminate the IRU for any of the Fibers in the COMPANY System listed in Appendix A by providing written notice to Company. In such event, this Agreement shall terminate as to the Fibers in such segment of the COMPANY System. No full or partial refund shall be due from either party in this instance.
5. Should the Agreement be terminated by either Party and if requested by Company in writing within thirty days of such termination, Town and Region 10 shall promptly remove all of its electronics, equipment or other property from the COMPANY System and at any related Company facilities at Town and Region 10's sole cost. The Town or Region 10 shall notify Company of the time of such removal, and the Company may be present if it so chooses.

I. REPRESENTATIONS AND WARRANTIES

1. Each Party represents and warrants that:
 - a. It has the full right and authority to enter into, exercise, deliver and perform its obligations under this Agreement;
 - b. This Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with its terms, subject to bankruptcy, insolvency, creditor's rights and general equitable principles; and
 - c. Its execution of and performance under this Agreement shall not violate any applicable regulations, rules, statutes, or court orders of any local, state or federal government agency, court or body.
2. The Parties agree to cooperate in all reasonable respects necessary to consummate the transactions contemplated by this Agreement, and from time to time to execute and deliver such documents and instruments as may reasonably be required in order to implement the contemplated transactions.
3. Company represents and warrants to Town and Region 10 that:
 - a. Company will obtain permits and other governmental and third-party approvals required for the installation of the COMPANY System and the performance of its obligations under this Agreement.

- b. In its ownership, operation and maintenance of the COMPANY System, Company will comply with all applicable local, municipal, state or federal laws, orders and regulations.

J. FORCE MAJEURE

No Party shall be liable for the failure to fulfill its obligations under this Agreement if and to the extent such failure is caused by an occurrence beyond its reasonable control, including, without limitation: expropriation or confiscation of facilities, compliance with any order or decree of any governmental authority; acts of war or terrorism, floods or abnormal severe weather; pandemics; riots, rebellion, or sabotage; fires or explosions; labor disputes, strikes, or other concerted acts of workmen; accidents or other casualty; and failures of utilities, local exchange carriers, municipalities, and other political subdivision to follow laws, agreements, or contracts. Further, no Party shall be liable for delays caused by the inaction of utilities, local exchange carriers, or other political subdivisions in granting access to rights of way, structures, or any other required items needed for the installation or operation of the fiber-optic cable facilities. If a Party believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Agreement, that Party shall provide documentation as reasonably required by the other Party to substantiate the non-complying Party's claim. If that Party has not yet cured the deficiency, it shall also provide the other Party with its proposed plan for remediation, including the timing for such cure.

K. NOTICE

1. Each Party giving or making any notice, request, demand or other communication (each, a "Notice") pursuant to this Agreement shall (i) give the Notice in writing; (ii) cause the Notice to be signed by an individual with authority to represent the Party sending the Notice; and (iii) use one of the following methods of delivery, each of which for purposes of this Agreement is a writing: personal delivery, or Registered or Certified Mail, in each case, return receipt requested and postage prepaid.
2. Each Party giving a Notice shall address the Notice to the appropriate person at the receiving Party (the "Addressee"), as indicated below or to another Addressee or at another address designated by a Party in a Notice pursuant to this Section. Except as provided elsewhere in this Agreement, a Notice is effective only if the Party giving the Notice has complied with all applicable provisions in this section, and if the Addressee has received the Notice.

All notices and other communications shall be given to Town at:

Preston Neill
Town of Ridgway
201 N Railroad St
Ridgway, Colorado, 81432

All notices and other communications shall be given to Region 10 at:

Michelle Haynes
Region 10 League for Economic Assistance and Planning, Inc.
145 South Cascade Avenue
Montrose, Colorado 81401

All notices and other communications shall be given to Company at:

Doug Seacat
Clearnetworx, LLC
301 N Cascade Avenue

L. OTHER PROVISIONS

1. The Town and Region 10 may not assign, or transfer rights granted under this Agreement or any portion thereof without the prior written consent of Company, which shall not be unreasonably withheld, conditioned or delayed. Company may not assign this Agreement without notice to Town and Region 10.
2. Nothing in this Agreement shall be deemed to create a joint venture or principal-agent relationship between the Parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.
3. If it is properly determined by any federal, state, or local governmental authority that this IRU or Town or Region 10's operation or use of the Fibers requires payment of any fee, tax, or similar charge, Town and Region 10 agrees to pay the same.
4. Amendments to this Agreement shall be made in a writing signed by all parties.
5. Appendices to this Agreement are incorporated herein by reference and are a part of this Agreement.
6. If any term of this Agreement is to any extent invalid or otherwise unenforceable, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.
7. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Electronic or e-signatures shall be sufficient to bind the parties to this Agreement.
8. Nothing in this Agreement, express or implied, is intended to or shall confer upon any third party any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
9. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content.
10. This Agreement contains the only terms and conditions that govern the subject matter of the Agreement. There are no promises or representations other than those set forth in this Agreement.
11. To the extent permitted by applicable laws, Parties agree to release and hold harmless the other, as well as its officers and employees, from and against all liability, claims and demands on account of injury, loss, or damage which arise out of, or are in any manner connected with, this Agreement and which are caused in whole or in part by its own act, omission, error, or negligence, or by that of its officers, employees, agents or representatives.
12. This Agreement and each of the Parties' respective rights and obligations under this Agreement, shall be binding on and shall inure to the benefit of the Parties hereto and each of their respective permitted successors and assigns.

ATTACHMENT 1

13. The Parties agree that exclusive jurisdiction for any claim or dispute relating to or arising from this Agreement resides in the courts of either Montrose County or Ouray County, Colorado, and that this Agreement shall be governed by Colorado law.

IN WITNESS WHEREOF, Company, Town, and Region 10 have caused this Grant of IRU to be executed by their duly authorized representatives effective as of the date last set forth below.

Clearnetworkx, LLC

Town of Ridgway

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Region 10 League for Economic Assistance and Planning, Inc.

By: _____

Name: _____

Title: _____



**FIBER INTERNET
IS HERE**

APPENDIX A FIBER IRU

Costs represented below are based on a 30-Year IRU agreement. Footages are based on Clearnetworkx existing and planned fiber builds with the each connection originating at the closest CNL location and ending at the respectively labeled locations. The ownership of these Fibers is as follows: Region 10 shall have Indefeasible Right of Use to two (2) Fibers on each of the identified routes, and Town shall have Indefeasible Right of Use to two (2) Fibers on each of the identified routes.

IRU'S

FIBER IRU	QTY	UNIT	PRICE	STRAND	TOTALS
Athletic Park	4,300	LF	\$4.60	4	\$19,780.00
Town Hall	1,700	LF	\$5.44	4	\$9,248.00
Elementary School	4,150	LF	\$4.50	4	\$18,675.00
High School	5,400	LF	\$5.12	4	\$27,648.00
				TOTAL:	\$75,351.00

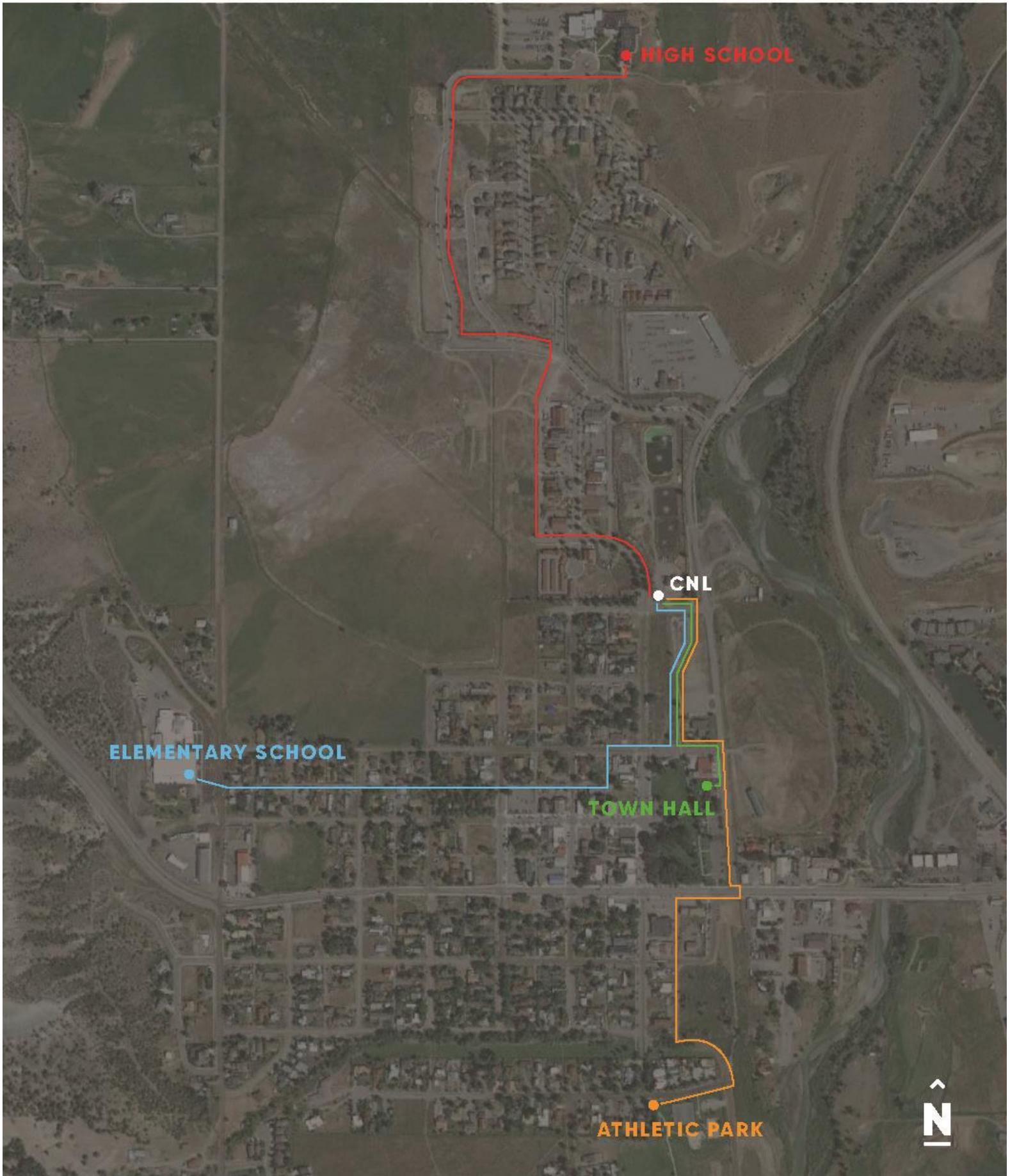
OPERATION + MAINTENANCE

IRU O+M	QTY	UNIT	PRICE	TYPE	TOTALS
Anchor Sites	15,550	LF	\$0.10	ANNUAL	\$1,550.00
					x 30 YEARS
				TOTAL:	\$46,650.00

TOTAL: \$122,001.00



**FIBER INTERNET
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Appendix B: Technical Specifications

1. **General:** This Appendix B sets forth the technical specifications and performance requirements pertaining to the IRU Fibers.
2. **Definitions:** All other terms not otherwise defined herein shall have their respective meanings as set forth in this Agreement:
 - a. "ORL" means "optical return loss", the amount of optical power loss in dB that a reflected light pulse incurs relative to its associated incident pulse.
3. **Fiber Splicing, Testing and Acceptance Procedures:**
 - a. All splices will be performed with an industry standard fusion-splicer and industry-accepted splicing techniques and practices, except during Emergency Unscheduled Maintenance situations requiring restoration of the Dark Fiber signal continuity as soon as possible.
 - b. Splice loss testing shall be performed at 1550 nm wavelength as follows:
 - (a) A bi-directional splice loss test for each individual splice in a span of Dark Fiber(s) between Connection Points or from Connection Point to bare fiber end, whichever applies, will be performed.
 - (b) A fiber acceptance report, containing the bi-directional splice loss span average for all splices in each individual Dark Fiber, in a given fiber optic cable span, will be prepared. The actual splice loss span average for each Dark Fiber in the span shall not exceed 0.15 dB.
 - c. Power Loss Span Testing will be performed at 1550 nm wavelength as follows:
 - (a) All power loss readings will be bi-directional and measured in dB.
 - (b) End-to-end power loss test readings for each Dark Fiber, in a given fiber optic cable span, between Connection Points or from Connection Point to bare fiber end, whichever applies, will be performed.
 - (c) Actual power loss readings will be compared to the calculated, maximum expected loss, in dB, of the fiber optic cable span. The power loss test readings shall not exceed the calculated maximum expected loss of the fiber optic cable span under test. The maximum expected loss will be calculated by the following formula:

$$(\text{span length in kilometers} \times 0.25 \text{ dB/km}) + (\text{number of splices} \times 0.15 \text{ dB per splice}) + (0.50 \text{ dB} \times \text{number of mated pair of connectors}) = \text{maximum expected span loss in dB.}$$
 - d. ORL, as calculated by an OTDR, will be provided.
 - e. The fiber optic cable containing the IRU Fibers shall be properly protected from foreign voltage and grounded using industry-accepted practices.
 - f. Type SC connectors will be used on IRU Fibers terminated on a fiber distribution or termination panel as a Connection Point, unless another type of connector is specified by Company.

Appendix C: Maintenance and Repair

1. Upon acceptance by Town and Region 10 of the applicable Fibers, the maintenance of the COMPANY System containing those Fibers shall be provided by the Company in accordance with the maintenance requirements and procedures set forth herein.
2. Scheduled Maintenance. Routine maintenance and repair of the Fibers shall be performed by or under the direction of Company and at its reasonable discretion consistent with industry standards. Scheduled Maintenance with respect to particular fibers shall commence upon the Fiber Acceptance Date applicable to said fibers. Company shall notify Region 10 and the Town via electronic mail at least 24 hours in advance of any scheduled maintenance.
 - a. Should Town or Region 10 require additional testing, requesting party agrees to pay associated costs with said testing.
3. Unscheduled Maintenance. Non-routine maintenance and repair of the Fibers shall be performed by or under the direction of Company. Unscheduled Maintenance with respect to particular fibers shall commence upon the Fiber Acceptance Date applicable to said fibers.
 - a. "Emergency Unscheduled Maintenance" is maintenance in response to an alarm identified by the dispatch center or notification by any third Person of any failure or interruption or impairment in the operations of the fibers within the COMPANY's System defined in Appendix A to this Agreement or any event imminently likely to cause failure, interruption or impairment in the fibers.
 - b. "Non-Emergency Unscheduled Maintenance" is maintenance in response to any potential service-affecting situation to prevent failure, service interruption or impairment in the operation of the COMPANY's System defined in the respective Appendix A to this Agreement, not covered by Scheduled Maintenance. Town or Region 10 shall immediately report the need for Unscheduled Maintenance to Company. Company will log the time of the Town or Region 10 notification, verify the problem and dispatch personnel immediately to take corrective action. Determining priorities over which facilities get repaired remains at the discretion of Company. Company will be the sole determinant of said resource allocation.
 - c. In performing Scheduled or Unscheduled Maintenance, Company shall comply with industry standards and the Specifications set forth in Appendix B to this Agreement. Company shall provide to Town and Region 10 any modifications to these Specifications as may be necessary or appropriate in any particular instance.
4. Dispatch Center. To the extent it determines, Company may operate a dispatch center that is staffed on a 24-hour per day basis that will aid in the dispatch of maintenance crews for fiber failure. Company shall maintain a telephone number to contact personnel at the dispatch center. The dispatch center personnel shall dispatch maintenance and repair personnel along the COMPANY's System described in the respective Appendix A to this Agreement to handle and repair problems detected in the Fibers: (a) through the Region 10's or the Town's remote surveillance equipment and/or upon notification by Region 10 or Company, or (b) upon notification by a third Person. If Company does not operate a dispatch center, at a minimum, it shall provide Region 10 and the Town a telephone number where Company can be reached 24/7/365 to address repair problems as described herein.

Company shall not be responsible for monitoring the performance or operation of the Fibers. In the event that Region 10 or the Town detects a failure in the operation of the Fibers which may indicate the need for

Unscheduled Maintenance, Region 10 or the Town shall report the same to the dispatch center so long as it is available.

5. Planned Service Work Period. Written notification (which may be by electronic mail) of Scheduled Maintenance which is reasonably expected to produce any signal discontinuity must be provided to Region 10 and the Town a minimum of 24 hours in advance. Generally, this work should be scheduled after 12:00a.m. and before 6:00a.m. local time. Discretion shall be used in taking fiber out of service for any reason.
6. Facilities. Company shall maintain the COMPANY's System in such a manner which will permit Region 10's and the Town's use of the Fibers in accordance with the terms and conditions of this Agreement.
7. Cable/Fibers:
 - a. Company shall perform Scheduled Maintenance on the fiber cables in accordance with the current preventative maintenance procedures, which shall not substantially deviate from standard industry practice.
 - b. Company shall try to have qualified representatives on site any time they are aware or have reasonable advance knowledge that another person or entity is engaging in construction activities or otherwise digging within five (5) feet of any underground cable.
 - c. Company shall maintain sufficient capability to teleconference with Region 10 and the Town during an Emergency Unscheduled Maintenance in order to provide regular communications during the repair process. When correcting or repairing cable discontinuity or damage, including but not limited to an event of Emergency Unscheduled Maintenance, Company shall use reasonable efforts to repair traffic-affecting discontinuity as soon as is practical. In order to accomplish such objective, it is understood that the repairs so affected may be temporary in nature. In such event, Company shall commence its planning for permanent repair within an appropriate time thereafter. Restoration of non-provisioned fibers or fiber strands not immediately required for service shall be completed as soon as practical.
8. Restoration
 - a. Company shall respond to any event giving rise to the need for Unscheduled Maintenance (in any event, an outage) as quickly as possible but in no event more than four (4) hours (allowing for delays caused by Force Majeure Events) in accordance with the procedures set forth herein. When restoring a cut cable on the COMPANY's System, the Parties agree to work together to restore all service as soon as possible. Company, in its sole judgment will determine restorations methods for said unscheduled maintenance.
 - b. The maintenance representatives shall give first priority to repairing and restoring the fiber strands that are carrying traffic.
9. Subcontracting
 - a. Company may subcontract any of the maintenance services hereunder, provided that Company shall require the subcontractor(s) to perform in accordance with the requirements set forth herein. The use of any such subcontractor shall not relieve Company of any obligations hereunder.
10. Contact Telephone Numbers:

COMPANY:

REGION 10:

TOWN OF RIDGWAY Network Operations Center:

ATTACHMENT 1

Doug Seacat
(970) 240-6600

Virgil Turner
(970) 596-1093

Town Manager
(970) 626-5308, x212

(970) 240-6600

ATTACHMENT 2

To: Honorable Mayor Clark and Ridgway Town Council
From: Preston Neill, Town Manager
Date: September 4, 2020
Agenda Topic: Review and direction on anchor build as part of Region 10-Phase 2 DOLA Broadband Grant

SUMMARY:

Several years ago, Region 10 members requested and received funding from the Department of Local Affairs (DOLA) to develop a regional broadband implementation plan. As a result, a plan was developed to improve the broadband infrastructure within the region. Great strides have been made in establishing a fiber network for the communities within Region 10. The network aims to provide abundant and redundant services to the community that utilizes existing networks, prevents overbuild, and brings affordable services into the region.

A number of partnerships have formed as part of this project. Specific to our area, the following organizations are involved:

- Ouray County
- Town of Ridgway
- City of Ouray
- Montrose County
- San Miguel Power Association
- DOLA
- Universal Service Admin. Company

Matching grant funding from DOLA has been set aside for the various communities to pursue connections to anchor institutions. Funding in the amount of \$50,000 has been earmarked in the Town of Ridgway 2020 Fiscal Year Budget to match the DOLA funding in order to complete the following list of anchor builds by way of Indefeasible Rights of Use (IRUs). An IRU is a contractual agreement that confers an indefeasible and exclusive right of access to, in this case, fiber strands for an agreed-upon period in return for an upfront payment.

<u>Anchor Name</u>	<u>Cost using IRU's w/ 10% overage</u>	<u>Estimated cost for building new fiber</u>	<u>IRU fiber owner</u>
Ridgway Public Works	\$6,907.78	\$6,279.80	CNL
Regional Athletic Park	\$17,713.30	\$83,758.00	CLEARNETWORKX
Town Hall	\$12,777.60	\$36,651.00	CLEARNETWORKX
Water Treatment Plant	\$29,424.18	\$110,603.00	CLEARNETWORKX
Ridgway Elementary School	\$15,211.35	\$54,716.00	CLEARNETWORKX
Ridgway Secondary School	\$22,562.10	\$103,591.00	CLEARNETWORKX
TOTAL	\$104,596.31	\$395,598.80	
Pros	Less expensive	Town would own full, dedicated fiber lines	
Cons	Ongoing O&M costs; limited IRU term	More expensive	

ATTACHMENT 2

Please note that the IRU costs are based on a 20-year IRU and that there would be yearly operations and maintenance costs to the tune of \$0.10 per linear foot. The footages are based on Clearnetworkx's existing and planned fiber builds, and, based on the list above, the footage totals 24,935. Based on that, the Town's yearly O&M cost would be \$2,493.50.

Region 10 is requesting a response from the Town soon on how the Town would like to proceed given that the term of the DOLA grant expires at the end of 2020. There may be a possibility of having the term extended through the first quarter of 2021.

DIRECTION REQUESTED:

Council is asked to provide direction on the list of connections to anchor institutions. Staff has met with Region 10 twice over the last few weeks and has heard that the recommended option is to pursue IRUs in order to complete most, if not all, of the anchor connections on the list above. Opting for new build option would substantially increase the total cost and would decrease the amount of anchor builds the Town could complete this year. Again, the Town has only budgeted \$50,000 in this year's budget to match the DOLA grant funding to complete anchor connections.

Representatives from Region 10 and Clearnetworkx will attend Wednesday's virtual meeting to help answer questions and provide more information about this project.

AGENDA ITEM #11

AGENDA ITEM #12



To: Honorable Mayor Clark and Ridgway Town Council
From: Preston Neill, Town Manager
Date: May 7, 2021
Agenda Topic: Consideration of promulgating Voluntary Water Restrictions pursuant to the Town's Water and Conservation Management Plan

SUMMARY:

In 2018, the Council approved Resolution No. 18-06 (attached), ratifying the Town of Ridgway Water Conservation and Management Plan. At that time, Council expressed a desire to conserve water in times of need to ensure effective and safe delivery of water to the Ridgway community during all times, including in times of restricted or limited water supply and drought. According to the U.S. Drought Portal, accessible at www.drought.gov, areas in southwestern Colorado, and particularly Ouray County, are experiencing either Severe, Extreme or Exceptional drought conditions. Staff recommends that Council promulgate, by motion and vote, Stage I Voluntary Water Restrictions for the Town of Ridgway. If the restrictions are put into effect, staff will utilize the Town's various communication channels to promote "voluntary water restrictions" and to encourage residents to reduce their water use.

RECOMMENDED MOTION:

"I move to promulgate Stage I Voluntary Water Restrictions for the Town of Ridgway."

ATTACHMENT:

Resolution No. 18-06

Resolution No. 18-06

**Resolution of the Town Council of Ridgway, Colorado
Ratifying the Town of Ridgway Water Conservation and Management Plan**

WHEREAS, the water supply for the Town of Ridgway is a precious, valuable and critical resource for the Ridgway community; and

WHEREAS, the Town of Ridgway, State of Colorado and the United States have seen periods of drought that significantly impact the local water supply, threatening the health, safety and welfare of our communities; and

WHEREAS, the Town Council desires to be proactive in communicating with the Ridgway community and water users of town-supplied water regarding the water conservation efforts that will be employed and the timing of such water restrictions; and

WHEREAS, the Town Council desires to conserve water in times of need to insure effective and safe delivery of water to the Ridgway community during all times, including in times of restricted or limited water supply and drought.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF RIDGWAY, COLORADO the Ridgway Water Conservation and Management Plan as defined herein is ratified.

Water Conservation and Management Plan

Stage	Trigger Condition	Actions
Stage I	Voluntary Restrictions: Statewide Drought Status (Begins May 1)	<ul style="list-style-type: none"> • Does not apply to drip systems and use of hand-watering containers. • No irrigating between the hours of 9:00 am and 6:00 pm, or when windy, in order to minimize evaporation, and anytime on Mondays. • Properties located on the SOUTH side of Hwy 62 & Hunter Parkway – irrigate only on Tuesdays, Thursdays and Saturdays. • Properties located on the NORTH side of Hwy 62 & Hunter Parkway – irrigate only on Wednesdays, Fridays and Sundays. • Outreach on water use and fixing leaks, limited gardening, etc.
Stage II	Mandatory Restrictions: Demand exceeds system capacity (water from the town storage reservoir is the only source)	<ul style="list-style-type: none"> • Properties located on the SOUTH side of Hwy 62 & Hunter Parkway – irrigate only on Tuesdays and Saturdays. • Properties located on the NORTH side of Hwy 62 & Hunter Parkway – irrigate only on Wednesdays and Sundays. • Town Parks irrigation limited to the same as properties north and south of Highway 62.
Stage III	Demand remains above system capacity and tank levels are not sustained after Stage I and Stage II actions	<ul style="list-style-type: none"> • Maintain all Stage II curtailments plus: • Water Waste Ordinance activated, including emergency rate structure reducing base water use allocation and increasing cost of water (may require more frequent meter readings – 2x month – for use and leak detection). • Largest outdoor water users significantly curtailed. • Restaurants only serve water upon customer request.

Stage	Trigger Condition	Actions
Stage IV	Demand remains above system capacity and tank levels are not sustained after Stage III actions	<ul style="list-style-type: none"> • Maintain all Stage III curtailments plus: • Properties located on the SOUTH side of Hwy 62 & Hunter Parkway – irrigate only on Tuesdays and Saturdays on the 2nd and 4th weeks of the month. • Properties located on the NORTH side of Hwy 62 & Hunter Parkway – irrigate only on Wednesdays and Sundays on the 1st and 3rd weeks of the month • Town Parks irrigation limited to the same as all properties north and south of Highway 62.
Stage V	Demand remains above system capacity and tank levels are not sustained after Stage IV actions	<ul style="list-style-type: none"> • Maintain all Stage IV curtailments plus: <ul style="list-style-type: none"> ○ No outdoor irrigation. ○ No car washing, pond, or pool filling. ○ No sidewalk washing. ○ No use of potable water in water features (e.g., fountains).
Stage VI	Demand remains above system capacity and tank levels are not sustained after Stage V actions	<ul style="list-style-type: none"> • Maintain all Stage V curtailments plus: <ul style="list-style-type: none"> ○ Allow no new connections to system until fall or relief from drought. ○ Contact largest commercial/industrial customers and meet to develop a plan to reduce indoor consumption by 30%.

Enforcement

Enforcement of this Water Conservation and Management Plan is per the Ridgway Municipal Code (RMC) and other enforcement provisions for the Town of Ridgway, including but not limited to **RMC Section 2-4: Administrative Enforcement of the Ridgway Municipal Code**:

Under the existing Code Section for Administrative Enforcement, the general process, in part, is as follows, and is only provided here to provide notice to the Ridgway Community:

First Violation – Optional Verbal or written notice, or written Notice of Violation

Second Violation – written Notice of Violation

Third Violation – Administrative Citation pursuant to RMC 2-4-13

RMC 2-4-13:

(B) If the responsible party fails to correct the violation cited, commits the same violations again, or fails to correct a violation as specified in accordance with an administrative enforcement order of the AHO, subsequent administrative citations may be issued for violations of the same code section. The penalties assessed for each administrative citation issued for violations of the same code section or sections shall not exceed the following amounts regardless of the number of violations per citation:

(1) First administrative citation: one hundred and fifty dollar (\$150.00).

(2) Second administrative citation: five hundred dollars (\$500.00).

(3) Third and each subsequent administrative citation: nine hundred and ninety-nine dollars (\$999.00).

(C) Payment of the penalty shall not excuse the failure to correct the violations nor shall it bar further enforcement action by the Town.

In addition, pursuant to **RMC 9-1-3: Limitations on the Use of the Water and Sewer System**, the following may be pursued:

RMC 9-1-3, in part:

(B) The Mayor may promulgate emergency regulations restricting the use of Town water for irrigation or other uses subject to confirmation or amendment by the Town Council.

(C) The Town Council may declare by resolution a moratorium on taps or line extensions for the entire water or sewer systems or any part of them at any time due to limitations on system capacity or other circumstances which require such action.

(D) The Town shall have the right to temporarily interrupt service without notice for the purpose of making repairs, taps, extensions or for other reasons as necessary for the proper operation and maintenance of the water and sewer systems. If practical, reasonable notice shall be given to the customer.

(E) No customer located outside of the corporate limits of the Town may significantly increase the amount or degree of his use of Town water or sewer service beyond the extent of his use at the effective date of this Section.

(F) The Town Council may set regulations governing the use of water for irrigation and sprinkling by resolution.

Other Ridgway Municipal Code provisions may apply.

PASSED AND APPROVED this 11th day of April 2018.

ATTEST

TOWN OF RIDGWAY

Pam Kraft, MMC,
Town Clerk

John Clark,
Mayor

AGENDA ITEM #13



May 7, 2021

The Honorable Jared Polis
Governor of Colorado
Governor's Office
State Capitol Building
200 E. Colfax Ave., Rm. 136
Denver, CO 80203

SENT VIA E-MAIL: governorpolis@state.co.us

RE: Support for installation of broadband infrastructure with US 50 Little Blue Creek Canyon Improvements Project

Dear Governor Polis,

The US 50 Little Blue Creek Canyon Improvements being completed by the Federal Highway Administration and the Colorado Department of Transportation (CDOT) is a much needed project to improve safety on this critical transportation route. We are writing to convey our support for a proposed initiative of CDOT to install a fiber optic conduit in conjunction with this project.

The telecommunication system between Montrose and Gunnison is currently served by a single fiber cable. In November 2020, this fiber was accidentally cut which completely isolated Gunnison and Hinsdale counties from the rest of the world for over 10 hours. Region 10 members have been focused on increasing resiliency in our telecommunications system and for many years have made good strides, but as evidenced by last November's outage, much work remains.

When this construction project was approved, a discussion was initiated about the possibility of including an underground conduit as a part of this project as it would provide route diversity to the current fiber path. We have learned CDOT also sees the value of installing this conduit to support its infrastructure needs.

We, the Ridgway Town Council, urge your support of this timely and important initiative. There will never be a better time to complete this project than now in conjunction with the construction project. Our communities are prepared to endure the hardships facing us from the closures of this critical link, and hope when the project is complete, we do not face future closures to install this infrastructure at some later date.

Respectfully,

John I. Clark
Mayor
On behalf of the Ridgway Town Council

AGENDA ITEM #14

AGENDA ITEM #15



April 19, 2021

Town of Ridgway
Attention: Ridgway Town Council & Preston Neill
201 N. Railroad Street
Ridgway, CO 81432

RE: Ridgway Planning Commission Appointment

Members of Council and Preston:

Last month, Larry Falk announced his resignation from the Planning Commission. The Town has received two letters of interest in response to the issued *Notice of Vacancy on the Town of Ridgway Planning Commission*. Section 7-1-1 of the Ridgway Municipal Code states, "...Any vacancy [on Planning Commission] shall be filled by the Mayor for remaining term." In addition, the Planning Commission Bylaws state, "In the event of a resignation or removal of a Commissioner by the Mayor, the Mayor shall appoint a replacement to serve for the remaining term of the member leaving the Commission."

I am formally appointing Ridgway resident Michelle Montague to fill the open seat on the Planning Commission, effective immediately. She will serve the remainder of Larry Falk's term, which expires on November 1, 2023.

Thank you for your time and attention to this matter.

Sincerely,

John I. Clark
Mayor
Town of Ridgway

AGENDA ITEM #16