



**AGENDA**  
**for the Board of Trustees**  
**of the Town of Palisade, Colorado**  
**341 W 7<sup>th</sup> Street (Palisade Civic Center)**

**December 12, 2023**

**6:00 pm – 6:45 pm Work Session**

**7:00 pm Regular Meeting**  
**A live stream of the meeting may be viewed at:**  
<https://us06web.zoom.us/j/3320075780>

- I. **WORK SESSION BEGINS AT 6:00 pm – 6:45 pm**
  - A. Sewer Rates for Restaurants
  - B. Pre-Treatment Tank Install Program
  - C. CNL Lease Contract with Region 10
  
- II. **REGULAR MEETING CALLED TO ORDER AT 7:00 pm**
  
- III. **PLEDGE OF ALLEGIANCE**
  
- IV. **ROLL CALL**
  
- V. **AGENDA ADOPTION**
  
- VI. **ANNOUNCEMENTS**
  - A. **PUBLIC COMMENT REMINDER:** All emails sent to the Town Clerk for public comment on a specific agenda item prior to the day packets are published will be included in the staff report. Emails received after the packets are posted will be forwarded to the Board of Trustees. Any member of the public who wishes to have a statement or email read into the Minutes is required to appear in person and make said statements to the Board directly.
  
  - B. **GET INVOLVED WITH OUR COMMUNITY! UPCOMING PUBLIC MEETINGS (Palisade Civic Center 341 W 7<sup>th</sup> Street):**
    - 1. **Tourism Advisory Board** – Thursday, December 21, 2023, at 11:00 am
    - 2. **Board of Trustees** – Tuesday, January 9, 2024, at 6:00 pm
  
  - C. **ELECTION ANNOUNCEMENT: NOMINATION PETITIONS AVAILABLE** - The first day to pick up nomination petitions to run for the Board of Trustees in the April 2, 2024 election is January 2, 2024. Nomination petitions will be available at Town Hall and can be circulated until the return deadline of January 22, 2024.

**VII. TOWN MANAGER REPORT****A. 2022 Audit for the Town of Palisade****VIII. CONSENT AGENDA**

*The Consent Agenda is intended to allow the Board to spend its time on more complex items. These items are generally perceived as non-controversial and can be approved by a single motion. The public or any Board Member may ask that an item be removed from the Consent Agenda for individual consideration.*

**A. Expenditures**

- Approval of Bills from Various Town Funds – November 9, 2023 – December 7, 2023

**B. Minutes**

- Minutes from November 14, 2023, Regular Board of Trustees Meeting

**C. Resolution 2023-20**

A Resolution of the Board of Trustees for the Town of Palisade, Colorado, Appointing the Town Clerk of the Town of Palisade as the Designated Election Official and Directing the Town Clerk to Conduct the Regular Municipal Election scheduled for April 2, 2024, as a Mail Ballot Election

**D. Resolution 2023-21**

A Resolution of the Board of Trustees for the Town of Palisade, Colorado, Appointing Election Judges for the April 2, 2024, Municipal Mail Ballot Election

**E. Resolution 2023-22**

A Resolution of the Board of Trustees for the Town of Palisade, Colorado, Setting Time, Place, and Designated Posting Location for Public Meetings for the Town of Palisade, Colorado

**IX. PUBLIC HEARING****A. RESOLUTION 2023-19 – 2022 Garbage Budget Amendment**

*The Board of Trustees will consider Resolution 2023-19 amending the 2022 Budget to reflect an increase in garbage revenues and expenditures.*

1. Staff Presentation
2. Public Comment
3. Board Discussion
4. Decision – *Motion, Second, Rollcall Vote*

*Approve or deny Resolution 2023-19 amending the 2022 Budget to reflect an increase in garbage revenues and expenditures.*

**X. NEW BUSINESS**

**A. Contract with Region 10 for CNL Lease**

*The Board of Trustees will consider entering into a contract with Region 10 for the lease of the CNL.*

1. Staff Presentation
2. Board Discussion
3. Decision - Motion, Second, and Rollcall Vote to:

*Approve, deny, or postpone (until January 9, 2024) entering into a contract with Region 10 for the lease of the CNL.*

**XI. PUBLIC COMMENT**

***All those who wish to speak during public comment must sign up on the sheet provided outside the boardroom doors. Please keep comments to 3 MINUTES OR LESS and state your name and address.** Neither the Board of Trustees nor staff will respond to comments at this time. The Board may direct staff to look into specific comments to bring back as an Agenda item at a future meeting; however, the Board reserves the right to clarify information from comments that are factually incorrect.*

**XII. COMMITTEE REPORTS**

**XIII. ADJOURNMENT**



## PALISADE BOARD OF TRUSTEES

**Meeting Date:** December 12, 2023

**Re:** Consent Agenda

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The Consent Agenda has been attached as a separate document for ease of reading.

Included in the consent agenda are:

**A. Expenditures**

- Approval of Bills from Various Town Funds – November 9, 2023 – December 7, 2023

**B. Minutes**

- Minutes from November 14, 2023, Regular Board of Trustees Meeting

**C. RESOLUTION 2023-20**

A Resolution of the Board of Trustees for the Town of Palisade, Colorado, Appointing the Town Clerk of the Town of Palisade as the Designated Election Official and Directing the Town Clerk to Conduct the Regular Municipal Election scheduled for April 2, 2024, as a Mail Ballot Election

**D. RESOLUTION 2023-21**

A Resolution of the Board of Trustees for the Town of Palisade, Colorado, Appointing Election Judges for the April 2, 2024, Municipal Mail Ballot Election

**E. RESOLUTION 2023-22**

A Resolution of the Board of Trustees for the Town of Palisade, Colorado, Setting Time, Place, and Designated Posting Location for Public Meetings for the Town of Palisade, Colorado



**PALISADE BOARD OF TRUSTEES**  
**Agenda Item Cover Sheet**

**Meeting Date:** December 12, 2023

**Presented By:** Gregg Mueller, Finance Director

**Department:** Finance Department

**Re:** Solid Waste Fund Supplemental Appropriation to Balance the 2022 Budget

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**SUMMARY:**

Following standard procedures the Solid Waste Budget needs to be amended as per law. Revenues and Expenses did exceed estimated Budgeted amounts mainly due to the cost of the two Town Clean-up Events held in 2022.

Attachments will show a 1% Fuel Surcharge reduction in our 2024 Collection Price Contractual increase.

**BOARD DIRECTION:**

Approve Resolution 2023-19 to balance our Solid Waste Fund Balance.

**TOWN OF PALISADE  
RESOLUTION NUMBER 2023-19**

**A RESOLUTION OF THE BOARD OF TRUSTEES FOR THE TOWN OF PALISADE, COLORADO, AMENDING THE FISCAL YEAR 2022 BUDGET BY SUPPLEMENTAL APPROPRIATION OF MONEY TO THE SOLID WASTE FUND.**

WHEREAS, the Board of Trustees of the Town of Palisade recognizes additional revenue and increase expenditures in the Solid Waste Fund; and

WHEREAS, upon due and proper notice, published and posted in accordance with the law, said amended budget was open for inspection by the public at the office of the Town Clerk, and a public hearing was held on December 12, 2023 and interested taxpayers were given the opportunity to file or register any objections to said amended budget; and

WHEREAS, for any increase in expenditures revenues will be added so the budget remains in balance as required by law;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF PALISADE, COLORADO FOR THE 2022 BUDGET:**

**Section 1.** The revenue to the Solid Waste Fund, as amended is as follows:

<u>Solid Waste Fund</u>	
Charges for Service	\$230,075
Fund Balance	<u>\$9,925</u>
Total Revenues	\$240,000

**Section 2.** The expenditure to the Solid Waste Fund, as amended is as follows:

<u>Solid Waste Fund</u>	
Personnel Wages	\$12,300
Personnel Benefits	\$3,000
Operating Expenses	<u>\$224,700</u>
Total Expenditures	\$ 240,000

**Section 3.** That said budget as amended by fund hereby is approved and adopted as the budget for the Town of Palisade for the year stated above.

**Section 4.** That the budget hereby amended and adopted is made part of the public records of the Town of Palisade, Colorado

**INTRODUCED, PASSED AND APPROVED** this 12<sup>th</sup> day of December 2023.

**Town of Palisade:**

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Greg Mikolai, Mayor

**ATTEST:**

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Keli Frasier, Town Clerk



**Waste Management**  
222 S Mill Ave  
Suite 301  
Tempe, AZ 85281  
C 720-413-5511

November 29, 2023

Janet Hawkinson  
Town Manager  
PO Box 128  
Palisade, CO 81526

Re: Annual Rate Increase

Dear Ms. Hawkinson:

It has been a pleasure serving the Town of Palisade. Waste Management sincerely values your patronage and looks forward to continuing our partnership. This letter serves as notification of the scheduled annual increase as outlined in sections 4(b) and 4(e) of Solid Waste Collection Agreement, as amended.

**Summary of Adjustments**

- Contractual Increase – Rates will be increased by a fixed 3%. This percentage increase will be applied to all service components in the rate exhibit below.
- Fuel Surcharge – Based on re-evaluation methodology there will be a -1% change in the fuel surcharge as it does reflect a 10% decrease. The November 2022 fuel rate at prior review was \$5.392 per gallon and the fuel rate as of October 2023 is \$4.713. The fuel surcharge will be reduced from 4.83% to 3.83%.

Attached is the Rate Exhibit and Fuel Index which demonstrates how we calculated the annual adjustments.

WM is as committed as ever to provide best-in-class service to our customers and the communities we call home. We appreciate your partnership as we address these unusual market conditions. If you have any additional questions, I can be reached at 720-413-5511.

Sincerely,

Curtis Gardner  
Public Sector Solutions Manager



Waste Management  
 222 S Mill Ave  
 Suite 301  
 Tempe, AZ 85281  
 C 720-413-5511

### Fuel Index

<a href="#">Back to Contents</a>		<b>Data 2: M Diesel Prices - All Types</b>		1	8
Sourcekey	EMD_EPD2D_PTE_NUS_DPG	EMD_EPD2D_PTE_R40_DPG		12 Month Rolling Average	
					Rocky Mountain U.S. No 2 Diesel Retail Prices (Dollars per Gallon)
					Rocky Mountain No 2 Diesel Retail Prices (Dollars per Gallon)
Date	U.S. No 2 Diesel Retail Prices (Dollars per Gallon)	Rocky Mountain No 2 Diesel Retail Prices (Dollars per Gallon)		Month /Year	U.S. No 2 Diesel Retail Prices (Dollars per Gallon)
Nov-2022	5.255	5.392		Nov-2022	53.75%
Dec-2022	4.714	4.971		Dec-2022	52.36%
Jan-2023	4.576	4.727		Jan-2023	50.53%
Feb-2023	4.413	4.645		Feb-2023	47.16%
Mar-2023	4.211	4.378		Mar-2023	38.51%
Apr-2023	4.099	4.118		Apr-2023	30.21%
May-2023	3.915	4.101		May-2023	20.35%
Jun-2023	3.802	4.028		Jun-2023	10.58%
Jul-2023	3.882	3.983		Jul-2023	3.01%
Aug-2023	4.37	4.46		Aug-2023	-1.34%
Sep-2023	4.563	4.801		Sep-2023	-4.96%
Oct-2023	4.507	4.713		Oct-2023	-8.84%



**PALISADE BOARD OF TRUSTEES**  
**Agenda Item Cover Sheet**

**Meeting Date:** December 12, 2023

**Presented By:** Janet Hawkinson, Town Manager

**Department:** Administration

**Re:** Region 10 Community IRU and CNL Lease Agreement

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**SUMMARY:**

Palisade was awarded grant funding to construct middle-mile fiber and a Carrier Neutral Location (CNL) facility. The Town has completed this process. ClearNetworkx is a private fiber company that has built out last-mile fiber throughout the town. Similar fiber companies in town are UPN, CenturyLink, and Spectrum.

Region 10 is a government agency that assist with the operations of IRUs (Indefeasible Right of Use) and the CNL for the Town. Palisade entered into an MOU with Region 10 to maintain the middle-mile fiber & CNL. Attached are the lease agreements that reflect the MOU.

Palisade is one of the first towns on the western slope to complete the middle-mile & CNL project. Last-mile companies are ready to light up last-mile fiber to Palisade residents. The Town fiber project is ahead of the larger state fiber project. The Town will be connected to the I-70 fiber when it is lit up.

Region 10 will 'light up' the CNL with fiber connection from ClearNetworkx and UPN fiber company temporarily until CDOT fiber becomes live – then transition to middle-mile/I-70 fiber.

**BOARD DIRECTION:**

Approve the IRU and CNL lease agreements, directing the Town Attorney to make small changes if needed per Region10's review.

## COMMERCIAL LEASE AGREEMENT FOR CARRIER NEUTRAL LOCATION

THIS COMMERCIAL LEASE AGREEMENT ("Lease" or "Agreement") is made and effective this 12<sup>th</sup> day of December 2023 by and between the Town of Palisade, a Colorado municipal corporation whose address is 175 East 3<sup>rd</sup> Street, Palisade, CO 81526 ("COMMUNITY/Landlord") and Region 10 LEAP, Inc., a 501(c)(3) Colorado nonprofit corporation ("Tenant" or "Lessee").

Landlord is the owner of land and improvements described as follows (the "Premises"): A site located in the building of the Palisade Fire Department, 341 W 7th St, Palisade, Colorado 81526 and further described on Exhibit A incorporated herein.

Landlord hereby makes available for lease the room or space in the building described above (the "Leased Premises").

Landlord desires to lease the Leased Premises to Tenant, and Tenant desires to lease the Leased Premises from Landlord for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

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

### **1. TERM**

Landlord hereby leases the Leased Premises to Tenant, and Tenant hereby leases the same from Landlord, for an "Initial Term" beginning on the date set forth above, and ending on the same month and day, in the year 2033 (which period amounts to an Initial Term of ten (10) years). Thereafter, this Lease shall renew on a year-to-year basis, under the same conditions set forth herein, unless and until terminated as set forth herein. Either party shall provide the other sixty (60) days written notice of its intent not to renew.

### **2. RENTAL**

- A. Tenant shall pay to Landlord during the Term of this Lease rental payable in installments of \$1.00 per year. Each installment payment shall be due in advance on the 15th day of January of each calendar year during the lease term to Landlord at 175 East 3<sup>rd</sup> Street, Palisade, CO 81526 or at such other place designated by written notice from Landlord to Tenant. The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis. Tenant shall also pay to Landlord a "Security Deposit" in the amount of \$0.00.
- B. The rental for any renewal lease term, if created as permitted under this Lease, shall be as set forth above.

### **3. USE**

Notwithstanding the foregoing, Tenant shall not use the Leased Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous

substance, chemical, thing or device. Tenant shall restrict its use to those reasonably related to computer servers and related appurtenances, and shall not use or permit the use of the Leased Premises for any other purpose, except as set forth herein, without the written consent of Landlord. The Tenant shall carry on and conduct its business from time to time carried on upon the Leased Premises in such manner as to comply with all statutes, bylaws, rules and regulations of any federal, state, municipal or other competent authority and will not do anything on or in the Leased Premises in contravention of any of them. It is Tenant's obligation to determine whether its business is properly operating in the Leased Premises under zoning and other applicable state, federal, county, and city laws.

#### **4. SUBLEASE AND ASSIGNMENT**

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

#### **5. REPAIRS**

During the Lease term, major repairs, such as those made to the emergency/backup generator, furnace or HVAC repairs, and repair of structural failures not caused by Tenant, shall be borne by Landlord, if Landlord in its sole discretion is able to allocate funding to make said repairs; otherwise, in the event Landlord elects not to make said repairs, Tenant may terminate this Lease, and Tenant shall receive a refund of any rental payment, prorated for the remainder of the month in which the damage or failure occurred. Tenant shall make, at Tenant's expense, all necessary minor repairs to the Leased Premises. Minor repairs shall include such items as routine repairs of floors, walls, ceilings, and other parts of the Leased Premises damaged or worn through normal occupancy, minor electrical repairs, replacement of cracked or broken windows, etc. Landlord does not intend to provide any minor maintenance to the Leased Premises. Under no circumstances shall Landlord be responsible for reimbursement of costs of any repairs made by Tenant.

#### **6. ALTERATIONS AND IMPROVEMENTS**

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

## **7. PROPERTY TAXES**

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

## **8. INSURANCE**

- A.** The Tenant 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 Tenant pursuant to Paragraph 9 hereof. Such insurance shall be in addition to any other insurance requirements imposed by this Lease or by law. The Tenant shall not be relieved of any liability, claims, demands, or other obligations pursuant to Paragraph 9, by reason of its failure to procure or maintain insurance.
- B.** Tenant shall procure and maintain the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to COMMUNITY. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain continuous coverage.
- C.** Workers' Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Lease.
- D.** Commercial General Liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence and one million dollars (\$1,000,000.00) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), and blanket contractual.
- E.** The policy coverage as required above shall be endorsed to include the COMMUNITY, its officers, agents and employees as additional insured. Every policy required above shall be primary insurance and any insurance carried by the COMMUNITY or its employees, or carried by or provided through any insurance pool of the COMMUNITY, shall be excess and not contributory insurance to that provided by Tenant. No additional insured endorsement to any policy shall contain any exclusion for bodily injury or property damage arising from completed operations. The Tenant shall be solely responsible for any deductible losses under any policy required above.
- F.** The certificate of insurance shall be completed by the Tenant's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the COMMUNITY prior to execution hereof. Failure on the part of the Tenant to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which COMMUNITY may immediately terminate this Lease. COMMUNITY reserves the right to request and receive a certified copy of any policy and

any endorsement thereto.

- G. Tenant shall provide renter's insurance at Tenant's expense on the premises, adequate to cover any damage to the Leased Premises in connection with Tenant's use thereof under the terms of this Lease.

## **9. INDEMNIFICATION**

The Tenant agrees to indemnify and hold harmless the COMMUNITY, 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 losses of any kind whatsoever, which arise out of or are in any manner connected with this Lease, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Tenant, or any officer, employee, representative, or agent of the Tenant, or which arise out of any workers' compensation claim of any employee of the Tenant. The Tenant shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims and demands, and bear all other costs and expenses related thereto, including court costs and attorney fees. The obligation of this Paragraph shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the COMMUNITY, its officers, or its employees.

The parties hereto understand and agree that COMMUNITY is relying on, and does not waive or intend to waive by any provision of this Lease, the monetary or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §24-10-101 *et seq.*

## **10. UTILITIES**

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

- A. Landlord shall provide a four (4) inch diameter conduit for access from the Leased Premises to the demarc extension location, to be used for Tenant's access to communication utilities.

## **11. ENTRY**

Landlord reserves the right to enter on the Leased Premises at reasonable times and during regular business hours to inspect them, to make additions, alterations, or modifications to any part of the building in which the Premises are located, and Tenant shall permit Landlord to do so. Landlord

may erect scaffolding, fences, and similar structures, post relevant notices, and place moveable equipment in connection with the Leased Premises.

## **12. DAMAGE AND DESTRUCTION**

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

## **13. DEFAULT, TERMINATION, AND ABANDONMENT**

- A.** If default shall at any time be made by Tenant in the payment of rent when due to Landlord as herein provided, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to Tenant by Landlord, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by Tenant, without correction thereof for fifteen (15) days after written notice, Landlord may declare the term of this Lease ended and terminated by giving Tenant written notice of such intention, and if possession of the Leased Premises is not surrendered, Landlord may reenter said premises. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity. Landlord shall use reasonable efforts to mitigate its damages.
- B.** Notwithstanding the term as listed in Paragraph 1 above, either party may rightfully terminate this Lease at will upon sixty (60) days written notice. Notice by the terminating party shall be provided in accordance with the Notice provisions below.
- C.** If Tenant abandons said Premises prior to the noticed termination of this Lease, the COMMUNITY may, at its option, terminate this Lease and take immediate possession of the Premises without need of further written notice. The COMMUNITY's possession of the Premises does not constitute any waiver of any right it may have for the enforcement of the terms herein.

#### **14. QUIET POSSESSION**

Landlord covenants and warrants that upon performance by Tenant of its obligations hereunder, Landlord will keep and maintain Tenant in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Leased Premises during the term of this Lease.

#### **15. SUBORDINATION**

Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the Leased Premises, or upon the Building and to any renewals, refinancing and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or other lien now existing or hereafter placed upon the Leased Premises of the Building, and Tenant agrees upon demand to execute such further instruments subordinating this Lease or attorning to the holder of any such liens as Landlord may request. In the event that Tenant should fail to execute any instrument of subordination herein required to be executed by Tenant promptly as requested, Tenant hereby irrevocably constitutes Landlord as its attorney-in-fact to execute such instrument in Tenant's name, place and stead, it being agreed that such power is one coupled with an interest. Tenant agrees that it will from time to time upon request by Landlord execute and deliver to such persons as Landlord shall request a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have been paid, stating that Landlord is not in default hereunder (or if Tenant alleges a default stating the nature of such alleged default) and further stating such other matters as Landlord shall reasonably require.

#### **16. RESERVED**

#### **17. NOTICE**

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

*If to Landlord to:*

Town of Palisade  
Attn: Town Manager  
175 East 3<sup>rd</sup> Street, Palisade, CO 81526

*If to Tenant to:*

Region 10 LEAP, Inc.  
Attn: Michelle Haynes  
145 S. Cascade Ave.

Montrose, Colorado 81401

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

#### **18. BROKERS**

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

#### **19. WAIVER**

No waiver of any default of Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

#### **20. RECORDING OF LEASE**

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

#### **21. GENERAL PROVISIONS**

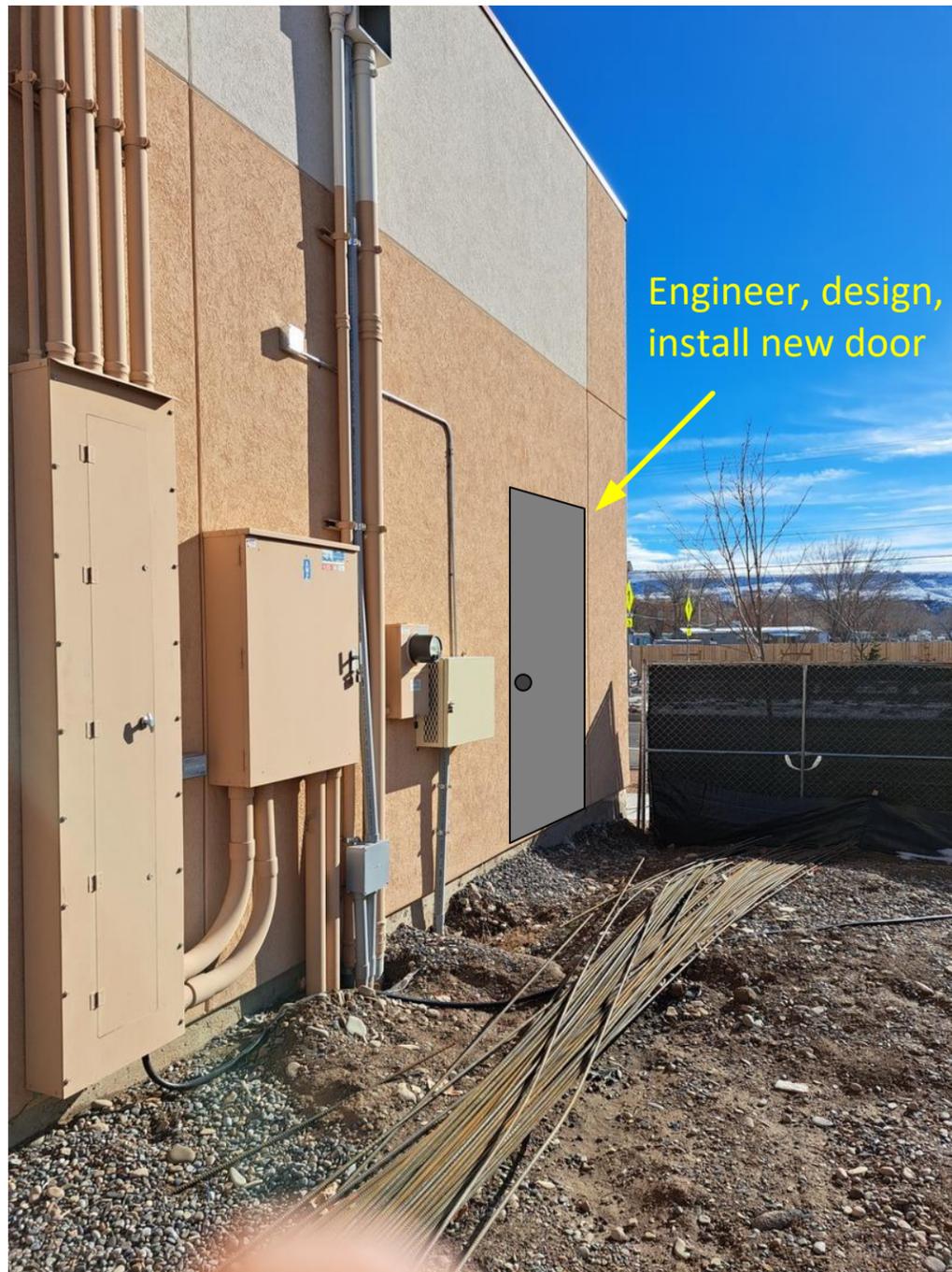
- A.** The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease. All covenants are to be construed as conditions of this Lease. This Agreement may be executed in counterparts. Time shall be of the essence of this Agreement.
- B.** The provisions of this Lease shall extend to and be binding upon Landlord and Tenant and their respective legal representatives, successors and assigns.
- C.** Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Leased Premises. Landlord shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.
- D.** This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

- E.** This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Colorado. If either party commences an action to enforce any covenant contained in this Lease, or for breach of any covenant or condition, the prevailing party shall recover reasonable attorney's fees in arbitration or litigation.
- F.** Tenant covenants and warrants that at the termination or cancellation of this Lease, Tenant shall quit and surrender said Premises in good condition, reasonable wear and tear excepted.
- G.** No representations, warranties or certifications, express or implied, shall exist as between the parties, except as specifically stated in the Lease.
- H.** Nothing herein shall represent a multi-year fiscal obligation to the County, and any expenditures of money by the County in accordance with this Lease shall be subject to the annual appropriation of funds.
- I.** The Tenant shall be responsible for collecting all sales and use tax associated with the business related to taxable sales made upon the leased premises, and submitting said tax to the County, and keeping appropriate books and records thereof, pursuant to applicable County Ordinances and Regulations. Payment of sales and use taxes to the County shall be a material provision of this Lease.
- J.** There shall be no third-party beneficiaries to this Lease with rights of enforcement. This Lease may only be enforced by the Landlord and the Tenant.
- K.** No key copies may be made by Tenant or at its direction without the express written consent of Landlord. All keys shall be obtained from Landlord, and all keys shall be returned to Landlord upon the end of the tenancy. Tenant acknowledges that copies of all keys will be retained by Landlord and Tenant agrees that the locks shall not be changed or new locks installed by Tenant, unless at Landlord's request.
- L.** Within 30 days of execution of this lease, Landlord shall make the following improvements to the leased premises: provide (2) dedicated 20 amp electric circuits in a location of the Tenant's preference, provide air conditioning unit capable of maintaining a temperature of no more than 72 degrees Fahrenheit, and in coordination with the Tenant provide electronic access control on the exterior door closest to the leased premises, allowing Tenant to permit authorized access on a full-time basis.



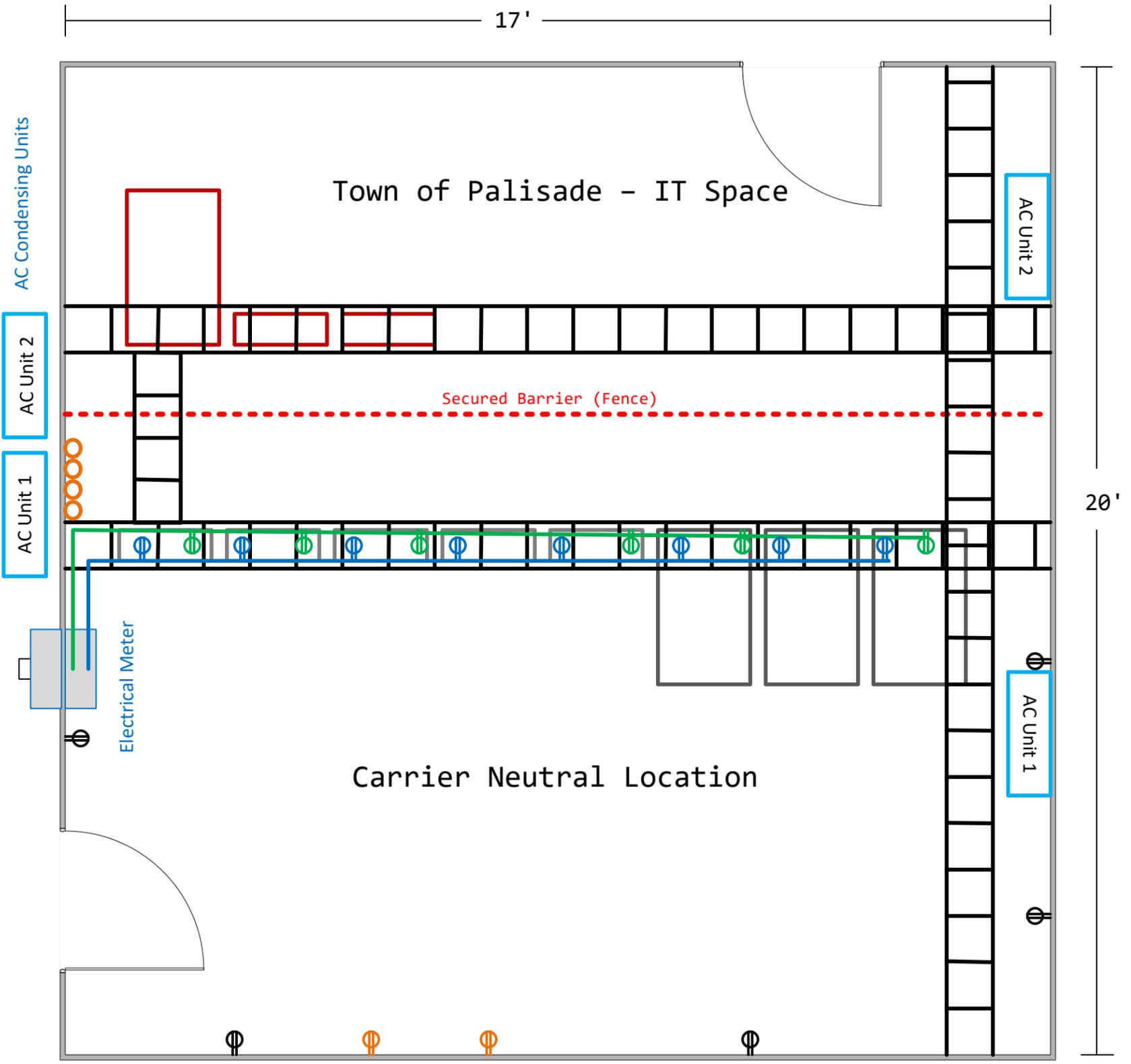
EXHIBIT A  
LEASED PREMISES DESCRIPTION

FLOOR PLAN DRAWING



Engineer, design,  
install new door

Community Hand Hole  
- Carrier Fiber Entry



General Layout - Not to Scale



Chase Krogsrud - chase@deeply-digital.com - 970.249.8848

-  Duplex Power @ 18"
-  Duplex Power @ 46"
-  Dedicated Circuit 1 - Twist Lock Plug
-  Dedicated Circuit 2 - Twist Lock Plug

## FIBER-OPTIC INDEFEASIBLE RIGHT OF USE AGREEMENT

THIS FIBER-OPTIC INDEFEASIBLE RIGHT OF USE AGREEMENT (this “*Agreement*”) is made and entered into this 12<sup>th</sup> day of December 2023 (the “*Commencement Date*”), by and between Region 10 League for Economic Assistance and Planning, a Colorado non-profit corporation, having a principal address of 145 S. Cascade Street, Montrose, Colorado, 81401 (hereinafter referred to as “*Region 10*”) and Town of Palisade, a Colorado municipal corporation whose address is 175 East 3<sup>rd</sup> Street, Palisade, CO 81526 (hereinafter referred to as the “*Town*”). The foregoing entities may sometimes be referred to generically and individually as a “*Party*” or collectively as the “*Parties*”.

### RECITALS

WHEREAS, Region 10 has developed a regional network utilizing fiber optic cables (the “*Network*”) to provide connection to participating communities in the Region 10 and surrounding areas; and

WHEREAS, the Town desires to access the Network to support improvement of access to broadband within the Town; and

WHEREAS, the Town obtained funding from the Colorado Department of Local Affairs to build a Fiber Lateral Connection (Lateral) to connect the Town to the Network; and

WHEREAS, Region 10 and the Town and desire to enter into an agreement whereby the Town will grant an indefeasible right to use 4 strands (the “*IRU Fibers*”) on the Lateral; and

WHEREAS, the Parties desire to enter into this Agreement to set forth the terms and conditions upon which Region 10 will grant to the Town an indefeasible right to use such IRU Fibers.

### AGREEMENT

NOW THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### I. GRANT OF INDEFEASIBLE RIGHT TO USE

1. Construction. Upon the Town’s completion of the construction of the Lateral as described herewith in Exhibit A, the Town shall provide access to Region 10 the agreed upon strands of fiber.

2. Fiber Optic Cable to Region 10. Town shall grant to Region 10 an indefeasible right to use, and Region 10 shall accept use of at least 4 strands of fiber-optic cable on the Network as depicted on Exhibit A attached hereto and incorporated by this reference. Town may not utilize any remaining strands for access by commercial providers.

3. Term of Agreement. Region 10's use of the IRU Fibers shall commence on the date the IRU Fibers are granted to Region 10 as set forth in Section 2 above and continue until the parties mutually agree the IRU Fibers should be decommissioned due to inability to function as designed or unless terminated earlier as provided herein. In the event this Agreement is terminated, Region 10's right to use the IRU Fibers shall be immediately revoked.

4. Title to IRU Fibers. Legal title to the Town's facilities, including the fiber-optic communications system, including 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 the Town. Neither anything contained in this Agreement, nor any use, however extended, of the IRU Fibers, nor any placement of Region 10's facilities on or in the Town's private network shall create or vest (or be construed as creating or vesting) in Region 10 any right, title or interest in or to any real or personal property owned by Town other than the indefeasible right of use for the IRU Fibers.

5. Free from Liens and Encumbrances. Region 10 shall keep the Town's facilities and other property subject to this Agreement free from any liens, rights or claims of any third party attributable to Region 10 that adversely affects or impairs Town's exclusive ownership and use of its facilities or other property.

6. Maintenance:

a. Town shall be responsible for management of the maintenance of the Middle-mile from I-70 to the Palisade CNL. The Town shall give the Region 10 advance written notice of its intent to perform maintenance or repair on the cable.

b. Prior to Region 10 assuming operation of the Network, the Town shall test the IRU Fibers to verify that the IRU Fibers meet industry standards for single-mode dark fiber ("Fiber Testing"). Town shall provide a copy of any report generated as a result of Fiber Testing to Region 10.

c. Region 10 will respond to any interruption of service or failure of the Network as it does to its own fiber-optics in the same lateral. Fiber-optic maintenance and repair is subject to Town priorities; no guarantee of services is represented.

d. Region 10 will pay the Town its reasonable costs for any additional/special work or maintenance requested by Region 10 in writing and furnished by the Town on or related to the Lateral. Costs shall include labor, contractor costs, reasonable overhead costs, material, and any other expenses directly associated with Region 10-requested work done on the Lateral.

7. Access. Town will provide Region 10 with access to the IRU Fibers at points to be agreed upon by the Parties following completion of construction. Region 10 will provide Town with prior notice if it intends to access the IRU Fibers.

8. Use of Facilities. Region 10 may use the IRU Fibers for any lawful purpose.

9. Connection. If Region 10 desires to connect other fiber-optic cables to the IRU Fibers, the Town agrees to cooperate with Region 10, and for Region 10 to acquire access at the

locations listed in Section 7 above; however, such cooperation shall not be construed as requiring Town to create connections.

## II. GENERAL PROVISIONS

1. Assignment. Region 10 may not assign or transfer rights granted under this Agreement or any portion thereof without the prior written consent of Town. The Town may assign this Agreement without prior consent from Region 10.

2. Comprehension and Authority to Sign. The Parties agree that they understand the terms and conditions of this Agreement. All Parties acknowledge that the undersigned have authority to sign for and bind their respective entities.

3. Further Assurances. Each Party hereto agrees 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 transactions contemplated hereby. Each Party agrees to cooperate in the execution of subsequent addenda, or to re-execute an amended version of this Agreement, in the event that a Party discovers: (1) a clerical error; (2) a misinterpretation of law except if the misinterpretation of the law would materially alter or defeat the essential business purpose of this Agreement; or (3) an error as to form; when such error(s) obviate or hinder the consideration, performance or enforcement of this Agreement.

4. 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; 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, cities, 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.

5. Default. Each and every term and condition shall be deemed to be a material element of this Agreement. In the event either Party should fail or refuse to perform according to the terms of this Agreement, such Party may be declared in default thereof.

6. Termination. The Parties may terminate this Agreement by mutual consent, made in writing, at any time for their convenience. Upon any default, as defined herein, either Party may terminate this Agreement if such default remains uncured after one hundred and eighty (180) days written notice thereof, given as specified below.

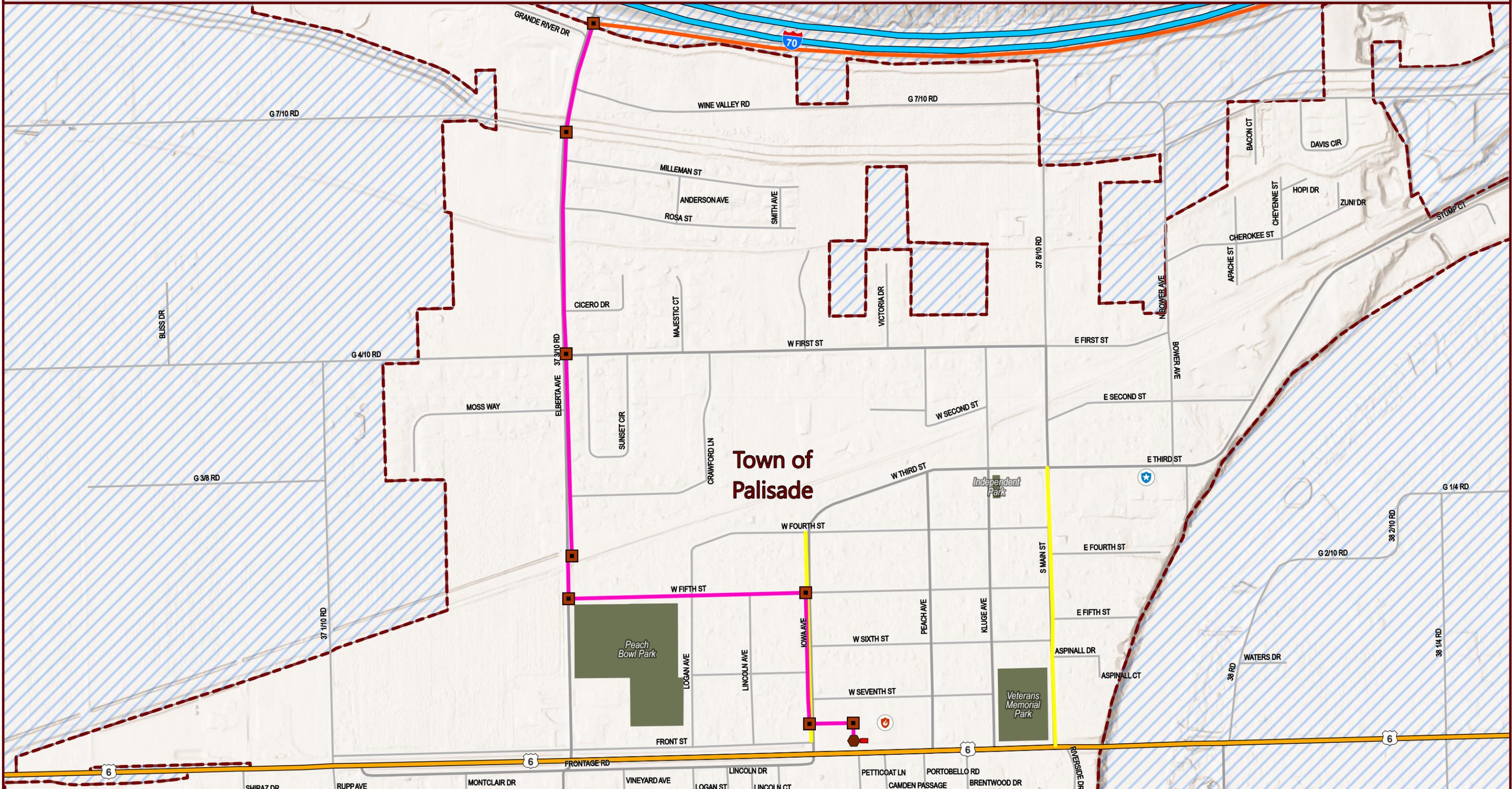
7. Notice. Each Party giving or making any notice, request, demand or other communication (each, a "**Notice**") pursuant to this Agreement shall (i) give the Notice in writing; (ii) cause the Notice to be signed by an individual with authority to represent the Party sending the



Exhibit A

The Network shall be from \_\_\_\_\_ to \_\_\_\_\_ as depicted on the attached map a

# Mesa County & Town of Palisade - Broadband Middle Mile Project



Town of Palisade

Peach Bowl Park

Veterans Memorial Park

Independent Park



**Facilities**

- CNL (10x20)
- Fire
- Police
- Large Handhole
- Extra Large Handhole

**Broadband**

- I-70 Broadband
- Future
- Existing Conduit

**District**

- Mesa County
- Town of Palisade

