



INDEFEASIBLE RIGHT OF USE AGREEMENT

THIS INDEFEASIBLE RIGHT OF USE AGREEMENT ("Agreement") is made and entered into as of the 13th day of May, 2024, by and between the City of Grand Junction, Colorado, home rule municipality with an address of 250 N. 5th Street, Grand Junction, Colorado 81501 ("Grantor") and Region-10 League for Economic Assistance and a Colorado intergovernmental entity operating through a nonprofit organization with an address of 145 S. Cascade Street, Montrose, Colorado 81401 ("Grantee") (each a "Party", and collectively, the "Parties").

RECITALS

- A. Grantor owns and operates a carrier-neutral location ("CNL") within its infrastructure, providing a centralized place for telecommunications and broadband services.
- B. Grantor possesses certain telecommunications infrastructure, including but not limited to fiber-optic cables, conduits, and related equipment ("Telecommunications Infrastructure"), which is more particularly described in the Schedule of Telecommunications Infrastructure attached hereto as Exhibit A and incorporated herein by reference.
- C. Grantee desires to obtain an indefeasible right to use a specified portion of the Telecommunications Infrastructure for its telecommunications needs.
- D. Grantor agrees to grant Grantee a non-exclusive, indefeasible right of use ("IRU") of the specified portion of the Telecommunications Infrastructure under the terms and conditions outlined in this Agreement.

AGREEMENT

- 1. **Grant of IRU**
 - 1.1 Grantor hereby grants Grantee a non-exclusive, indefeasible right to use six (6) fiber optic strands running from City Hall to the roundabout intersection at Horizon Drive and I-70 ("IRU Segment").
 - 1.2 Grantee shall have the right to use the IRU Segment for the transmission and reception of telecommunications signals for the term of this Agreement.
- 2. **Term:** The initial term of this IRU shall commence on the date first set forth above and shall continue for ten (10) years unless terminated earlier as provided herein ("Initial Term"). Upon expiration of the Initial Term, this Agreement shall automatically renew for an additional ten (10) years ("Renewal Term"), subject to the same terms and conditions, unless either Party provides written notice of non-renewal at least sixty (60) days prior to the expiration of the Initial Term.
- 3. **Maintenance and Repairs:** Grantor shall be responsible for all maintenance and repairs of the IRU Segment, except for those resulting from Grantee's negligence or misuse. Grantor agrees to respond promptly to any emergency repair requests related to the IRU Segment. Grantor shall

conduct necessary testing of the lines to ensure functionality and compliance before activating the IRU for Grantee's use.

4. **Use of Infrastructure:** Grantee shall use the IRU Segment in a manner consistent with all applicable laws, regulations, and Grantor's policies. Grantor agrees that in the case of community IRU arrangements, the remaining strands of the fiber optic cable will not be utilized for commercial purposes.
5. **Liability Limitations:** The Grantor's liability under this Agreement shall be limited to direct damages and shall not exceed the total amount paid by the Grantee under this Agreement. The Grantor shall not be liable for indirect, incidental, consequential, or punitive damages.
6. **Indemnification:** The Parties recognize that as local government entities, and in conformance with State law, neither Party shall be required to indemnify the other Party. Each Party shall be responsible for its own costs and any damages that may result from any third-party claim made related to this Agreement. If either Party assigns their rights under this Agreement to a non-governmental entity the non-governmental entity shall indemnify the other Party against any third-party claims, damages, or losses arising out of this Agreement, unless such claims, damages, or losses are caused by the negligence or intentional conduct of the indemnified Party.
7. **Force Majeure:** Neither Party shall be liable for any failure to perform its obligations under this Agreement if such failure is caused by acts of God, war, government regulation, disaster, strikes, civil disorder, or other similar causes beyond its control.
8. **Compliance with Laws:** The Grantee shall comply with all applicable federal, state, and local laws and regulations in its use of the IRU Segment.
9. **Assignment and Subletting:** The Grantee shall not assign or sublet its rights or obligations under this Agreement without the prior written consent of the Grantor, which consent shall not be unreasonably withheld or delayed. The Grantee shall not assign or transfer its rights or obligations under this Agreement without the prior written consent of the Grantor, which consent shall not be unreasonably withheld or delayed.
10. **Termination Provisions:** This Agreement may be terminated by either Party upon material breach by the other Party, subject to a thirty (30) day cure period following written notice of such breach.
11. **Dispute Resolution:** The Parties agree to negotiate in good faith to resolve any disputes. If a dispute cannot be resolved through negotiation, the Parties may mutually agree to seek resolution through mediation or submit to binding arbitration. Alternatively, either party may seek any judicial remedies available as it deems appropriate.
12. **Governing Law and Jurisdiction:** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Jurisdiction for any disputes shall be the state and federal courts located in Mesa County, Colorado.
13. **Notices:** Each Party giving or making any notice, request, demand or other communication (each, a "Notice") pursuant to this Agreement shall: (a) give the Notice in writing; (b) cause the Notice to be signed by an individual with authority to represent the Party sending the Notice;

and (c) use one of the following methods of delivery, each of which for purposes of this Agreement is in writing: personal delivery, or Registered or Certified Mail, in each case, return receipt requested and postage prepaid. Each Party giving a Notice shall address the Notice to the appropriate person at the receiving Party (the "Addressee") provided in 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 paragraph and if the Addressee has received the Notice. Notices shall be sent to the following address for each Party:

To Grantor: City of Grand Junction
ATTN: Legal Department
250 N. 5th Street
Grand Junction, Colorado 81501

To Grantee Region 10 League for Economic Assistance and Planning
ATTN: Michelle Haynes
145 S. Cascade Street
Montrose, Colorado 81401

14. **Amendments:** Any amendments or modifications to this Agreement are valid only if in writing and signed by both Parties. No oral modifications shall be considered valid.
15. **Entire Agreement:** This Agreement constitutes the entire agreement between the Parties and supersedes all prior communications, understandings, and agreements.
16. **Confidentiality:** The Parties agree to maintain the confidentiality of any proprietary or confidential information disclosed during the term of this Agreement. Notwithstanding the foregoing, the parties understand and agree that both parties are subject to the Colorado Open Records Act, C.R.S. §§ 24-72-200, *et seq.*, and that this Agreement is subject to public disclosure. If any parts of this Agreement are deemed confidential or proprietary by a party, that party shall identify such information in a written notification to the other party.
17. **Access Rights:** The Grantor shall have the right to access the IRU Segment for inspection, maintenance, or emergency purposes, subject to reasonable notice to the Grantee.
18. **Severability:** If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.
19. **Third Parties:** There are no intended third-party beneficiaries to this Agreement.
20. **Governmental Immunity:** Nothing in this Agreement or in any action taken by either Party pursuant to this Agreement shall be construed to be a waiver, in whole or in part, of any right, privilege or protection of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

PAYMENT TERMS

1. **Payment Due Upfront**

- 1.1 Grantee agrees to pay Grantor a one-time fee of One Hundred Twenty Five Thousand Dollars (\$ 125,000).
- 1.2 Payment is due in full upon execution of this Agreement.

DEFAULT AND REMEDIES

1. **Events of Default:** An "Event of Default" occurs if Grantee fails to make any payment when due or violates other terms of this Agreement.
2. **Remedies:** Upon an Event of Default, Grantor may terminate this Agreement or pursue other legal remedies.
3. **No Waiver:** Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the either Party shall not constitute a wavier of any of the other terms or obligations of this Agreement.

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

CITY OF GRAND JUNCTION, COLORADO

By: 

Name: Andrea Phillips

Title: Interim City Manager

REGION-10 LEAGUE FOR ECONOMIC ASSISTANCE AND PLANNING, INC.

By: 

Name: Michelle Hayes

Title: Executive Director