

ORDINANCE 2024-09

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO
APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF FRUITA AND
REGION 10 FOR THE USE AND MANAGEMENT OF THE FRUITA CARRIER
NEUTRAL LOCATION.**

WHEREAS, the City of Fruita, along with many local and regional partners, has been working on a middle-mile broadband project to encourage private development and investment in internet infrastructure in Fruita, and

WHEREAS, this project has involved constructing a lateral connection to fiber internet and building a Carrier Neutral Location to host the connection in Fruita, and

WHEREAS, the construction of the Carrier Neutral Location has been complete, and in order for private businesses to use the space and connection, it is necessary to enter into an agreement for use and management of the space, and

WHEREAS, the City of Fruita has been working with Region 10, the Council of Governments for Southwest Colorado, on this project, and

WHEREAS, staff members from Region 10 are funded through the State of Colorado to specifically aid local communities in broadband projects due to their expertise, and

WHEREAS, Region 10 has the expertise and experience to manage the Carrier Neutral Location, and has the ability to sublease with internet service providers who want to use the space, and

WHEREAS, staff from the City of Fruita and Region 10 have created an agreement (hereinafter “the agreement”) for the Carrier Neutral Location, and

WHEREAS, the City Council finds it necessary to enter into an agreement with Region 10 for the use and management of the Carrier Neutral Location,

WHEREAS, the City Council has determined that entering into the Agreement is in the best interest of the City and desires to enter into said agreement.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO:

Section 1: Approval of Agreement. The City Council hereby approves of the Agreement and, subject to annual appropriation, payment required thereunder, and hereby authorizes the City Manager execute the Agreement and take all other steps necessary to effectuate its implementation.

Section 2. 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 City 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 City

Section 3. Effective Date. This Ordinance shall take effect thirty days after the date of final passage in accordance with Section 6.4 of the Fruita Home Rule Charter.

Section 4. Safety Clause. The City Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the City of Fruita, 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 City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 5. 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 6. Publication. The City Clerk is ordered to publish this Ordinance in accordance with Article 2.13 of the Fruita City Charter.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL
THIS 5th DAY OF MARCH, 2024.**

ATTEST:

CITY OF FRUITA

City Clerk

Mayor Joel Kincaid