

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 AND AUTHORIZING THE CITY MANAGER TO EXECUTE
THE AGREEMENT**

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

COMMERCIAL LEASE AGREEMENT FOR CARRIER NEUTRAL LOCATION

THIS COMMERCIAL LEASE AGREEMENT ("Lease" or "Agreement") is made and effective this day of March 5, 2024, by and between THE CITY OF FRUITA ("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 measuring 13x19x9 feet located the at 900 Kiefer Avenue, Fruita, Co 81521, 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 2024 (which period amounts to an Initial Term of twenty (20) years). Thereafter, this Lease shall renew on a year-to-year basis, under the same conditions set forth herein, unless and until terminated 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 Fruita City Center, 325 E. Aspen Avenue, Fruita Co 81521 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 forgoing, 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 to sublease part of the Leased Premises for Internet Service Providers (ISP) or similar service providers' use. Subleases shall be for the purposes of Region 10 providing a subscription service to ISPs for colocation services of equipment at the CNLThe 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 is a tax-exempt entity. 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.
- (1)** Workers' Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Lease.
- (2)** 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.
- C.** The policy coverage as required above shall be endorsed to include the COMMUNITY, its officers, agents and employees as additional insured.
- D.** 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.
- E.** 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.

F. Nothing herein shall constitute a waiver by COMMUNITY of any provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.* (“CGIA”) as now in effect or may be amended.

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.

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. Landlord shall 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.

11. ACCESS TO ROOF

If the facility allows, following Landlord’s consent, Tenant shall have the right to place on the roof of the Premises, certain radio antenna equipment to be approved by the building official for its safe installation. Tenant shall notify and coordinate with the Landlord when access to the roof is required. Prior to installation Tenant shall ensure that antenna equipment can be installed safely and in compliance with any applicable building codes or permits.

12. 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.

13. 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 pro-rated 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.

14. 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.

15. 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.

16. 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.

17. RESERVED

18. 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:

COMMUNITY
Attn: Mike Bennett, City Manager
325 E. Aspen Avenue
Fruita, Co 81521

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.

19. 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.

20. 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.

21. 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.

22. 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 COMMUNITY, and any expenditures of money by the COMMUNITY 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 Mesa County and the City of Fruita, as applicable, and keeping appropriate books and records thereof, pursuant to applicable County Ordinances and Regulations. Payment of sales and use taxes to Mesa County and the City of Fruita 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.

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

LANDLORD:

Mike Bennett, City Manager

ATTEST:

TENANT: REGION 10 LEAP, INC.

Michelle Haynes, Executive Director

ATTEST:

EXHIBIT A
LEASED PREMISES DESCRIPTION

FLOOR PLAN DRAWING

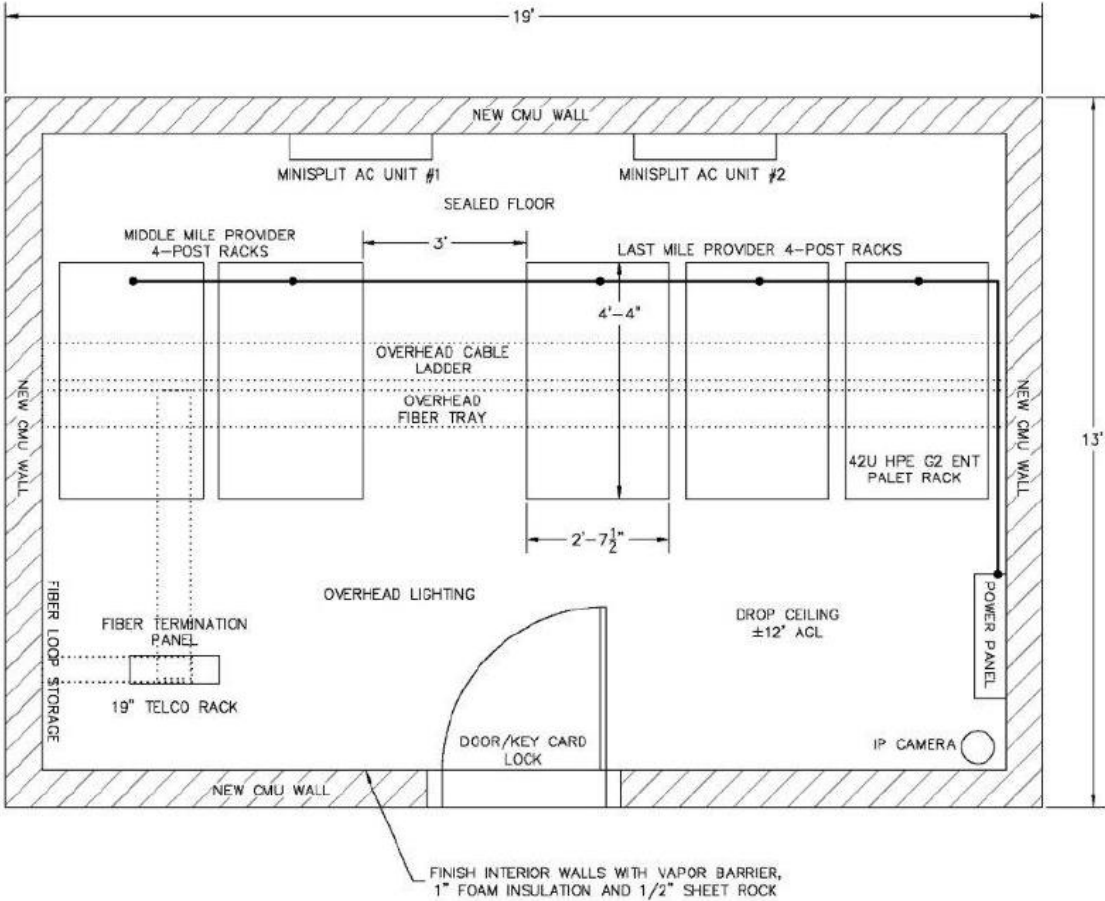


Figure A: Floor plan of the building located at 900 Kiefer Avenue, Fruita Co 81521 with leased premises and authorized access route shown.