# SUPPLEMENTAL TAX CERTIFICATE

$5,220,537.53
Gunnison County, Colorado
Revenue Refunding Bond
(Western State Colorado University Foundation Project)
Series 2012A (2015 Reissuance)

This Supplemental Tax Certificate (this "Supplemental Tax Certificate") is executed and delivered by Western State Colorado University Foundation (the "Borrower"), as borrower of the Proceeds of Gunnison County, Colorado Revenue Refunding Bond (Western State College Foundation Project), Series 2012A (the "Original Bond"), and Gunnison County, Colorado (the "Issuer"), with respect to the deemed reissuance and current refunding of the Original Bond on the Date of Reissuance as described below. Capitalized terms used in this Supplemental Tax Certificate without definition shall have the meanings given them in the Original Tax Agreement defined below.

Effective as of June 19, 2015 (the "Date of Reissuance"), the Borrower, the Issuer, and Wells Fargo Bank, National Association, as sole bondholder of the Original Bond (the "Sole Bondholder"), will make certain modifications to the Original Bond that might be deemed to result in a deemed sale or exchange of the Original Bond under Section 1.1001-3 of the Regulations. The Original Bond, as modified and deemed reissued on the Date of Reissuance, is referred to herein as the "Reissued Bond." The deemed Sale Proceeds of the Reissued Bond will be deemed to discharge, to current refund and to pay and cancel the Original Bond on the Date of Reissuance.

In connection with such deemed reissuance, the parties agree as follows:

1. The undersigned agree that unless expressly modified in this Supplemental Tax Certificate, the facts, representations, covenants, certifications, expectations and acknowledgments made or set forth in the Tax Regulatory Agreement, dated as of April 30, 2012, and the No Arbitrage Certificate, dated as of April 30, 2012, both executed in connection with the original issuance of the Original Bond (collectively, the "Original Tax Agreement") will remain in full force and effect with respect to the Original Bond and the Reissued Bond. The undersigned also agree that unless expressly modified in this Supplemental Tax Certificate any obligations or covenants of the Issuer and the Borrower under the Original Tax Agreement relating to the Original Bond will apply to the Reissued Bond and any elections made by the Issuer or the Borrower in the Original Tax Agreement will apply to the Reissued Bond as of the date hereof to the same extent as such elections applied to the Original Bond on its original issue date.

2. The Borrower represents that it has been at all times in compliance with the terms of the Original Tax Agreement.

3. The Borrower will continue to bear primary responsibility for all ongoing tax compliance matters relating to the Original Bond and the Reissued Bond and has assisted bond counsel in the preparation of a Form 8038 for the Reissued Bond.

4. The undersigned are the officers of the Issuer and Borrower duly authorized to execute documents, including this Supplemental Tax Certificate, with respect to the Reissued Bond.

5. The Borrower represents that as of the Date of Reissuance it is in compliance with the rebate requirements applicable to the Original Bond and acknowledges that the final computation date for the determination of any rebatable arbitrage for the Original Bond will occur on the date that is 60 days following the Date of Reissuance.

6. The Borrower represents, warrants and that no transfer of ownership of the Financed Facilities has occurred or will occur within 6 months of the date hereof.

7. The weighted average maturity of the Reissued Bond does not exceed 120% of the remaining reasonably expected economic life of the Financed Facilities.

8. The undersigned acknowledge the yield with respect to the Reissued Bond will now be variable.

9. The Issuer, including any entities acting on behalf of or subordinate to the Issuer, does not anticipate issuing more than $10,000,000 of tax-exempt obligations during the calendar year 2015, which is the calendar year in which the Reissued Bond is being issued. The Issuer hereby designates the Reissued Bond as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3)(b)(i) of the Code.

10. In connection with the Reissued Bond, the Issuer is requiring that the Borrower execute and comply with this Supplemental Tax Certificate and the attached Post-Issuance Compliance and Remedial Action Procedures to, *inter alia*, ensure that any nonqualified portion of the Reissued Bond is remediated in compliance with the IRS Code and that compliance with Section 148 of the IRS Code is being monitored.

[End of Supplemental Tax Certificate – Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has set its hand as of the Date of Reissuance.

**WESTERN STATE COLORADO UNIVERSITY FOUNDATION**

By: _____
Title: _____

**GUNNISON COUNTY, COLORADO**

By: _____
Title: _____

[Execution page of Supplemental Tax Certificate]

# EXHIBIT A

## POST-ISSUANCE COMPLIANCE AND REMEDIAL ACTION PROCEDURES

Adopted June 19, 2015

WESTERN STATE COLORADO UNIVERSITY FOUNDATION (the "Borrower") hereby adopts the procedures described herein (the "Procedures") as its written procedures for post-issuance compliance and remedial action applicable to tax-advantaged bonds, notes, leases, certificates of participation or similar (collectively, "Obligations") heretofore and hereafter issued or executed and delivered by it or on its behalf. These Procedures are intended to supplement any previous post-issuance compliance and remedial action procedures that may have been adopted by the Borrower and any procedures evidenced in writing by any tax document for any Obligations heretofore or hereafter issued, entered into or executed and delivered by it or on its behalf, the related information returns filed in connection with any Obligations and the instructions to such information returns.

1. **Responsible Person**. The Borrower has assigned to Thomas F. Burggraf as Executive Director of the Borrower (the "Responsible Person") the responsibility for ensuring post-issuance and remedial action compliance with the requirements of any tax and financing documents for Obligations. This responsibility is included in the job description for the Responsible Person, and such person has or will review any prior post-issuance compliance and remedial action procedures, these Procedures, any tax documents for any Obligations heretofore or hereafter issued, entered into or executed and delivered by it or on its behalf, the related information returns, if any, filed in connection with any Obligations (such as IRS Forms 8038 or 8038-G) and the instructions to such information returns, and consult with bond counsel and other professionals as needed.

2. **Succession Planning**. The Borrower will ensure that, when the current Responsible Person leaves such person's current position at the Borrower, the responsibility for financing and tax covenant compliance will be explained in detail to his or her successor, such successor will be provided compliance training (as further described in the following section), and notice of any succession will be given in writing to any applicable issuer of any obligations then outstanding.

3. **Training**. Compliance training for the Responsible Person should include, among other things, meetings with bond counsel to discuss monitoring compliance with applicable tax laws and attendance at post-issuance compliance trainings organized by bond counsel, the Internal Revenue Service or applicable associations.

4. **Procedures for Timely Expenditure of Proceeds**. The Borrower understands that at least 85% of the net sale proceeds of new money Obligations must be spent to carry out the projects financed with the proceeds of the Obligations within three years of the date such Obligations are originally issued, entered into or executed and delivered. The Borrower will treat as "sale proceeds" any amounts actually or constructively received by the Borrower from issuance

or execution and delivery of the Obligations, including amounts used to pay accrued interest other than pre-issuance accrued interest. "Net sale proceeds" means the sale proceeds less any amounts deposited into reasonably required reserve or replacement or base rental reserve funds. The Borrower has established or will establish reasonable accounting procedures for tracking and reporting to the Responsible Person the expenditure of net sale proceeds.

5. **Compliance with Arbitrage Yield Restriction and Rebate Requirements**. The Responsible Person will create a system to ensure that, not less than six months prior to each five-year anniversary of the closing date for Obligations, the Borrower will retain an arbitrage rebate consultant to prepare a report determining the yield of the Obligations under the Internal Revenue Code of 1986, as amended (the "Code"), and whether there is any amount owed to the Internal Revenue Service under Section 148 of the Code.

6. **Procedures to Comply with Remediation Requirements**. The Responsible Person will establish and maintain a system for tracking and monitoring the use of the facilities financed or refinanced with the proceeds of Obligations to ensure that the use of all of such facilities will not violate the private business tests or the private loan financing test under Section 141 of the Code. If, after the issuance or execution and delivery of Obligations, the use of the facilities financed or refinanced with the proceeds of Obligations changes so that the private business tests or the private loan financing test would be met, or if another violation of these procedures occurs which requires correction, the Borrower will, in connection with consulting bond counsel, undertake a closing agreement through the Voluntary Closing Agreement Program of the Internal Revenue Service or take one of the actions permitted by the Code and associated regulations, which are described generally on Attachment I hereto.

7. **Ongoing Procedures**. The Responsible Person will review any prior procedures, these Procedures, tax and financing documents relating to Obligations, information returns for obligations and related instructions to such information returns, and the status and use of the obligation-financed or refinanced facilities *on at least an annual basis and at the following intervals*: (a) six months prior to each five-year anniversary of the issue or execution and delivery date of the Obligations; (b) within 30 days of the date the Obligations are finally retired, defeased, refunded or terminated; (c) when any rebate payment is made; (d) when a facility financed or refinanced with proceeds of Obligations is placed in service; (e) if the Borrower determines that a facility planned to be financed or refinanced with proceeds of Obligations will not be completed; and (f) if any of the representations, statements, circumstances or expectations of the Borrower that are set forth in the tax or financing documents for Obligations are no longer true, have changed or have not come to pass as described in such documents. This review will be made for the purposes of identifying any possible violation of federal tax requirements related to Obligations and to ensure the timely correction of those violations pursuant to the remedial action provisions outlined above or through the Voluntary Closing Agreement Program. If any possible violation is identified, the Responsible Person will notify the Borrower and the Borrower's counsel so that any existing or expected violation can be corrected.

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8. **Recordkeeping**. The Responsible Person will develop and implement a system for maintaining records relating to these Procedures. Such records must be kept and maintained for the life of the related Obligations, and any Obligations that refund or refinance such obligations, plus at least four years (or such longer period as may be required in related tax documents for such obligations). These records may be maintained on paper, by electronic media or by any combination thereof.

**WESTERN STATE COLORADO UNIVERSITY FOUNDATION**

By: _____
Title: _____

## ATTACHMENT I TO

## POST-ISSUANCE COMPLIANCE AND REMEDIAL ACTION PROCEDURES

## REMEDIAL ACTION PROCEDURES

Capitalized terms used herein but not defined have the meaning assigned thereto in Section 5 below and in the Post-Issuance Compliance and Remedial Action Procedures to which these Remedial Action Procedures are attached. This attachment describes written procedures that may be required to be taken by, or on behalf of, an issuer of Obligations.

1. **Background**. The maintenance of the tax status of the Obligations (e.g., as tax-exempt obligations under federal tax law) depends upon the compliance with the requirements set forth in the Internal Revenue Code of 1986, as amended (the "Code"). *The purpose of this attachment is to set forth written procedures to be used in the event that any deliberate actions are taken that are not in compliance with the tax requirements of the Code (each, a "Deliberate Action") with respect to the Obligations, the proceeds thereof or the facilities financed or refinanced by the Obligations (the "Facilities").*

2. **Consultation with Bond Counsel**. If Deliberate Action is taken with respect to the Obligations and the Facilities subsequent to the issuance or execution and delivery of the Obligations, then the Borrower (and, if applicable, the conduit issuer) must consult with Kutak Rock LLP or other nationally recognized bond counsel ("Bond Counsel") regarding permissible Remedial Actions that may be taken to remediate the effect of any such Deliberate Action upon the federal tax status of the Obligations. Note that remedial actions or corrective actions other than those described in this attachment may be available with respect to the Obligations and the Facilities, including remedial actions or corrective actions that may be permitted by the Commissioner through the voluntary closing agreement programs (VCAP) provided by the Internal Revenue Service from time to time.

3. **Conditions to Availability of Remedial Actions**. None of the Remedial Actions described in this attachment are available to remediate the effect of any Deliberate Action with respect to the Obligations and the Facilities unless the following conditions have been satisfied and unless Bond Counsel advises otherwise:

(a) The issuer of the Obligations reasonably expected on the date the Obligations were originally issued or executed and delivered that the Obligations would meet neither the Private Business Tests nor the Private Loan Financing Test of Section 141 of the Code and the Treasury Regulations thereunder for the entire term of the Obligations (such expectations may be based on the representations and expectations of the applicable conduit borrower, if there is one);

(b) The average weighted maturity of the Obligations did not, as of such date, exceed 120% of the Average Economic Life of the Facilities;

(c) Unless otherwise excepted under the Treasury Regulations, the Borrower (or, if applicable, a conduit issuer) delivers a certificate, instrument or other written records satisfactory to Bond Counsel demonstrating that the terms of the arrangement pursuant to which the Deliberate Action is taken is bona fide and arm's-length, and that the non-exempt person using either the Facilities or the proceeds of the Obligations as a result of the relevant Deliberate Action will pay fair market value for the use thereof;

(d) Any disposition must be made at fair market value and any Disposition Proceeds actually or constructively received by the Borrower (or, if applicable, by a conduit issuer) as a result of the Deliberate Action must be treated as gross proceeds of the Obligations and may not be invested in obligations bearing a yield in excess of the yield on the Obligations subsequent to the date of the Deliberate Action; and

(e) Proceeds of the Obligations affected by the Remedial Action must have been allocated to expenditures for the Facilities or other allowable governmental purposes before the date on which the Deliberate Action occurs (except to the extent that redemption or defeasance, if permitted, is undertaken, as further described in Section 4(A) below).

4. **Types of Remedial Action**. Subject to the conditions described above, and only if the Borrower (or, if applicable, a conduit issuer) obtains an opinion of Bond Counsel prior to taking <u>any of the actions below</u> to the effect that such actions will not affect the federal tax status of the Obligations, the following types of Remedial Actions may be available to remediate a Deliberate Action subsequent to the issuance of the Obligations:

(a) <u>Redemption or Defeasance of Obligations</u>.

(i) If the Deliberate Action causing either the Private Business Use Test or the Private Loan Financing Test to be satisfied consists of a fair market value disposition of any portion of the Facilities exclusively for cash, then the Borrower may allocate the Disposition Proceeds to the redemption of Nonqualified Obligations pro rata across all of the then-outstanding maturities of the Obligations at the earliest call date of such maturities of the Obligations after the taking of the Deliberate Action. If any of the maturities of the Obligations outstanding at the time of the taking of the Deliberate Action are not callable within 90 days of the date of the Deliberate Action, the Borrower may (subject generally to the limitations described in (iii) below) allocate the Disposition Proceeds to the establishment of a Defeasance Escrow for any such maturities of the Obligations within 90 days of the taking of such Deliberate Action.

(ii) If the Deliberate Action consists of a fair market value disposition of any portion of the Facilities for other than exclusively cash, then the Borrower (or, if applicable, a conduit issuer) may use any funds (other than proceeds of the Obligations or proceeds of any obligation the interest on which is excludable from the gross income of the registered owners thereof for federal income tax purposes) for the redemption of all Nonqualified Obligations within 90 days of the date that such Deliberate Action was taken. In the event that insufficient maturities of the Obligations are callable by the date which is within 90 days after the date of the

Deliberate Action, then such funds may be used for the establishment of a Defeasance Escrow within 90 days of the date of the Deliberate Action for all of the maturities of the Nonqualified Obligations not callable within 90 days of the date of the Deliberate Action.

(iii) If a Defeasance Escrow is established for any maturities of Nonqualified Obligations that are not callable within 90 days of the date of the Deliberate Action, written notice must be provided to the Commissioner of Internal Revenue Service at the times and places as may be specified by applicable regulations, rulings or other guidance issued by the Department of the Treasury or the Internal Revenue Service. Note that the ability to create a Defeasance Escrow applies only if the Obligations to be defeased and redeemed all mature or are callable within ten and one-half (10.5) years of the date the Obligations are originally issued or executed and delivered. If the Obligations are not callable within ten and one-half years, and none of the other remedial actions described below are applicable, the remainder of this attachment is for general information only, and Bond Counsel must be contacted to discuss other available options.

(b) Alternative Use of Disposition Proceeds. Use of any Disposition Proceeds in accordance with the following requirements may be treated as a Remedial Action with respect to the Obligations:

(i) the Deliberate Action consists of a disposition of all or any portion of the Facilities for not less than the fair market value thereof for cash;

(ii) the Borrower (or, if applicable, a conduit issuer) reasonably expects to expend the Disposition Proceeds resulting from the Deliberate Action within two years of the date of the Deliberate Action;

(iii) the Disposition Proceeds are treated as Proceeds of the Obligations for purposes of Section 141 of the Code and the Regulations thereunder, and the use of the Disposition Proceeds in the manner in which such Disposition Proceeds are in fact so used would not cause the Disposition Proceeds to satisfy the Private Activity Bond Tests;

(iv) no action is taken after the date of the Deliberate Action to cause the Private Activity Bond Tests to be satisfied with respect to the Obligations, the Facilities or the Disposition Proceeds (other than any such use that may be permitted in accordance with the Treasury Regulations);

(v) Disposition Proceeds used in a manner that satisfies the Private Activity Bond Tests or which are not expended within two years of the date of the Deliberate Action must be used to redeem or defease Nonqualified Obligations in accordance with the requirements set forth in Section 4(a) hereof; and

(c) Alternative Use of Facilities. The Borrower (and, if applicable, a conduit issuer) may be considered to have taken sufficient Remedial Actions to cause the

Obligations to continue their applicable treatment under federal tax law if, subsequent to taking any Deliberate Action with respect to all or any portion of the Facilities:

(i) the portion of the Facilities subject to the Deliberate Action is used for a purpose that would be permitted for qualified tax-exempt obligations;

(ii) the disposition of the portion of the Facilities subject to the Deliberate Action is not financed by a person acquiring the Facilities with proceeds of any obligation the interest on which is exempt from the gross income of the registered owners thereof under Section 103 of the Code for purposes of federal income taxation; and

(iii) any Disposition Proceeds other than those arising from an agreement to provide services (including Disposition Proceeds arising from an installment sale) resulting from the Deliberate Action are used to pay the debt service on the Obligations on the next available payment date or, within 90 days of receipt thereof, are deposited into an escrow that is restricted as to the investment thereof to the yield on the Obligations to pay debt service on the Obligations on the next available payment date;

Absent an opinion of Bond Counsel, no Remedial Actions are available to remediate the satisfaction of the Private Security or Payment Test regarding the same with respect to the Obligations. Nothing herein is intended to prohibit Remedial Actions not described herein that may become available subsequent to the date the Obligations are originally issued or executed and delivered to remediate the effect of a Deliberate Action taken with respect to the Obligations, the proceeds thereof or the Facilities.

5. **Additional Defined Terms**. For purposes of this attachment, the following terms have the following meanings:

"*Commissioner*" means the Commissioner of Internal Revenue, including any successor person or body.

"*Defeasance Escrow*" means an irrevocable escrow established to redeem obligations on their earliest call date in an amount that, together with investment earnings thereon, is sufficient to pay all the principal of, and interest and call premium on, obligations from the date the escrow is established to the earliest call date. A Defeasance Escrow may not be invested in higher yielding investments or in any investment under which the obligor is a user of the proceeds of the obligations.

"*Deliberate Action*" means any action, occurrence or omission by the Borrower (or, if applicable, by a conduit issuer) that is within the control of the Borrower (or, if applicable, by such conduit issuer) which causes either (1) the Private Business Use Test to be satisfied with respect to the Obligations or the Facilities (without regard to the Private Security or Payment Test); or (2) the Private Loan Financing Test to be satisfied with respect to the Obligations or the proceeds thereof. An action, occurrence or omission is not a Deliberate Action if (1) the action, occurrence or omission would be treated as an involuntary or compulsory conversion under Section 1033 of

the Code; or (2) the action, occurrence or omission is in response to a regulatory directive made by the government of the United States.

"*Disposition Proceeds*" means any amounts (including property, such as an agreement to provide services) derived from the sale, exchange or other disposition of property (other than Investments) financed with the proceeds of the Obligations.

"*Nonqualified Obligations*" means that portion of the Obligations outstanding at the time of a Deliberate Action in an amount that, if the outstanding Obligations were issued or executed and delivered on the date on which the Deliberate Action occurs, the outstanding Obligations would not satisfy the Private Business Use Test or the Private Loan Financing Test, as applicable. For this purpose, the amount of private business use is the greatest percentage of private business use in any one-year period commencing with the Deliberate Action.

"*Private Activity Bond Test*s" means, collectively, the Private Business Use Test, the Private Security or Payment Test and the Private Loan Financing Test.

"*Private Business Tests*" means the Private Business Use Test and the Private Security or Payment Test.

"*Private Business Use Test*" has the meaning set forth in Section 141(b)(1) of the Code.

"*Private Loan Financing Test*" has the meaning set forth in Section 141(c) of the Code.

"*Private Security*" or "*Payment Test*" has the meaning set forth in Section 141(b)(2) of the Code.

"*Remedial Action*" means any of the applicable actions described in Section 4 hereof, or such other actions as may be prescribed from time to time by the Department of the Treasury or the Internal Revenue Service, which generally have the effect of rectifying noncompliance by the Borrower with certain provisions of Section 141 of the Code and the Regulations thereunder and are undertaken by the Borrower to maintain the federal tax status of the Obligations.

6. **Change in Law**. This attachment is based on law in effect as of this date. Statutory or regulatory changes, including but not limited to clarifying Treasury Regulations, may affect the matters set forth in this attachment.