AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Landscaping Improvements Agreement; John Nichols L

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: BOCC and John Nichols

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Attached please find the Landscaping Improvements Agreement for Lot 4, Riverland Industrial Park, Filing 1. We are holding sufficient cash security pursuant to the Agreement.

Fiscal Impact:

Submitted by: Office of the County Attorney **Submitter's Email Address:** rmagruder@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 6/15/2017

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 6/16/17

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 6/16/2017 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\jost Discharge Date: 6/16/2017

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 6/20/2017

Revised April 2015

LANDSCAPING IMPROVEMENTS AGREEMENT

THIS LANDSCAPING IMPROVEMENTS AGREEMENT ("Agreement") is entered into this ____ day of June 2017, by and between the Board of County Commissioners of the County of Gunnison, Colorado, whose address is 200 E. Virginia, Gunnison, Colorado 81230, ("Gunnison County"), and John Nichols, whose address is PO Box 2972, Crested Butte, Colorado 81224 ("Developer").

1. PURPOSE. The Developer has submitted to Gunnison County the Developer's application for Land Use Change Permit No. 2016-00014 regarding the construction of a 18,800 square foot, two story, multi-tenant facility as identified on the site plan titled: *Lot 4, Riverland An Industrial Park Subdivision Gunnison County, Colorado,* prepared by NCW & Associates, Inc., dated May 26, 2016 ("Project") The Project is located on Lot 4, Riverland Industrial Park, Filing No: 1 as identified on the plat titled: *plat of RIVERLAND – an industrial park filing 1*, recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on September 14, 1982, bearing Reception No: 369534 and the plat titled: *Boundary Line Adjustment Lot 4, Riverland an Industrial Park Subdivision Gunnison County, Colorado Part of Sections 7 and 18, T14S, R85W, 6th P.M. Sections 12 and 13, T14S, R86W, 6th P.M.*, recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on August 18, 2011, bearing Reception No: 607487

As valuable and sufficient consideration for this Agreement, Gunnison County and the Developer agree that approval of such application by Gunnison County is expressly conditioned on completion of the improvements described in paragraph 7, below ("Improvements") to the specifications described herein and by the times specified herein. Gunnison County and the Developer further agree that such Improvements are appropriate and necessary requirements to be required by Gunnison County, and to be performed by the Developer and which Developer shall perform. Gunnison County and Developer further agree that an agreement guaranteeing the Developer's performance secured by suitable security to protect the interests of Gunnison County, and the public in the amount set forth herein is an appropriate condition to Gunnison County's approval of such land use change permit. The parties have entered into this agreement to memorialize such understandings and agreements. The relationship of the parties to this Agreement is contractual; Developer is an independent contractor and is not an agent of Gunnison County.

2. DEVELOPER BOUND. The Developer agrees to accept and be bound by the terms and conditions of Gunnison County's issuance of its approval of the Land Use Change Permit 2016-00014 and the terms and conditions of this agreement. Developer accepts Gunnison County's review and permitting authority, process and performance of same in connection with Land Use Change No. 2016-00014 as legal and valid and waives any defect therein.

3. CONSTRUCTION.

A. The Developer agrees to complete the Improvements as identified in paragraph 7 herein not later than November 15, 2017, acts of God and any cause beyond the reasonable control of the Developer excepted, including without limitation labor disputes, laws, regulations, or orders of any governmental entity, orders of court, inability to obtain any required authorization, act of war or conditions arising out of or attributable to war, riot, civil strike, insurrection or rebellion, fire, explosion, earthquake, storm, flood or other adverse weather condition, delay or failure by suppliers or materialmen, contractors, or subcontractors, shortage of or inability to obtain labor, supplies or materials.

B. The completion deadline set forth in this paragraph 3 may be extended by Gunnison County in its sole discretion upon written request of Developer if Gunnison County determines that: (1) such extension of time will not operate to the detriment of Gunnison County, the public or the owners of property within the Project; and (2) Gunnison County's security is adequate to ensure full performance by Developer by the extended completion date; and (3) that such an extension would not be in conflict with the conditions of the approved Land Use Change Permit. Gunnison County may require Developer to provide, at Developer's cost, supplemental estimates of the costs of completion and to provide additional security as a prerequisite to its extension of any completion date. Any extended completion date granted by Gunnison County hereunder may be further extended in like manner.

4. ESTIMATED COST. The total cost of the Improvements to be completed by the Developer is estimated currently to be One Thousand Nine Hundred Eleven and No/ U.S. Dollars ($1,911.00) as identified in the cost estimate attached hereto and incorporated herein by reference as Appendix "A".

5. SECURITY. In order to secure all obligations of the Developer herein, the Developer and Gunnison County agree that the Developer shall, at Developer's sole cost, and before starting work on any phase of the Project, and before conveying any portion of the Project, obtain and provide to Gunnison County a bond, an irrevocable letter of credit or other performance guarantee in a form and content satisfactory to Gunnison County to the benefit of Gunnison County in the amount of be Two Thousand Three Hundred Eighty Eight and 75/100 U.S. Dollars ($2,388.75) which is 125 percent of the currently estimated cost of the Improvements. If said security is in the form of cash, it will be placed by Gunnison County in an interest bearing account; the interest shall accrue to Developer at 1% less than received by Gunnison County.

Pending full performance of all of the terms and conditions hereof by the Developer, Gunnison County shall retain said security and shall remain the beneficiary of such security. In the event of any uncured default hereunder Gunnison County in its sole

discretion, and without any other authority required, may draw upon said security up to its full amount upon presentation by Gunnison County to the Developer of a written statement by Gunnison County that such uncured default exists. Upon timely performance of all terms and conditions hereof, said security shall be tendered by Gunnison County to the Developer.

6. CERTIFICATION.

A. Not later than November 30, 2017, the Riverland Industrial Park Homeowners' Association shall certify to Gunnison County whether the Developer's obligations regarding Improvements under this agreement have been fully and faithfully performed. Upon receipt of such certification, Gunnison County shall review the same and shall make an independent judgment whether to accept the same in the sole discretion of Gunnison County.

B. Not later than November 30, 2017, Developer shall provide to Gunnison County Attorney a sworn affidavit, signed by the Developer's authorized representative, that the Improvements completed have been paid for, in full, by the Developer. The Developer shall be responsible for the information so provided. Said written certification will be reviewed by Gunnison County, but Gunnison County shall have no responsibility or liability to any party regarding the veracity of the information so provided.

7. SCOPE OF WORK.

A. The scope of work to be done by the Developer shall be to acquire, plant and maintain three six-foot evergreens and six 1.5" caliper aspens as part of the Project and pursuant to Land Use Change Permit No: 2016-00014.

B. The conditions of this agreement and Land Use Change Permit No: 2016-00014 are such that if the obligations hereunder of the Developer are well, truly, faithfully and timely performed by Developer, inspected and certified to by the Riverland Industrial Park Homeowner's Association, and such performance is accepted by Gunnison County in Gunnison County's sole discretion, the Developer's obligations to Gunnison County under this agreement except as set forth in 7.C below shall be at an end; otherwise such conditions and obligations shall remain in full force and effect.

C. For a period of one year from and after the acceptance by Gunnison County of all of the work described in paragraph 7A, above, Developer shall, at its own expense, make all needed replacements to such work as shall, in Gunnison County's reasonable opinion, become necessary. Gunnison County shall have the right to retain the full amount of security for up to two years following the

acceptance of all of the work described in paragraph 7A above, as security to ensure such replacement.

8. DEVELOPERS' DEFAULT. In the event of any default hereunder by the Developer, Gunnison County shall give notice to the Developer specifying the nature of such default, which notice shall be given by facsimile transmission or by certified mail with return receipt requested addressed to the Developer at: PO Box 2972, Crested Butte, Colorado 81224. In the event the Developer does not remedy such default to the satisfaction of Gunnison County within 14 days following such notice, Gunnison County may elect, in its discretion:

8.1 To specifically enforce the terms and conditions of this Agreement;

8.2 To draw upon or otherwise obtain the benefit of the security;

8.3 To exercise any other rights and obtain any other remedies provided by law;

8.4 To obtain from the Developer either an extension of Gunnison County's security hereunder to guarantee the completion of the Improvements only on the conditions (1) that suitable additional security is provided to Gunnison County to guarantee the construction of said Improvements within the new time period determined by Gunnison County, and (2) that Gunnison County determines that it would not be detrimental to the interest of Gunnison County, the public or the owners of property within the Project to allow such extension (3) that Gunnison County determines that it would not be in conflict with the conditions of the approved Land Use Change Permit.

9. NOTICE. All notices and other communications required or permitted under this Agreement shall be in writing and shall be, as determined by the person giving such notice, either hand delivered, mailed by registered or certified mail, return receipt requested to the required party at the following addresses:

GUNNISON COUNTY:	Board of County Commissioners of the County of Gunnison, Colorado c/o County Attorney's Office 200 East Virginia Gunnison, CO 81230
DEVELOPER:	John Nichols PO Box 2972 Crested Butte, CO 81224

10. RECORDING OF AGREEMENT. Upon its execution, this Agreement shall be recorded by the Developer and shall be a covenant running with the property herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

11. RETENTION OF POLICE POWERS. Gunnison County retains the power and right to impose additional requirements upon Developer with regard to the Project if the failure to do so would place the public or owners of property within the Project in a perilous condition, or in the event of substantially changed conditions; that is, nothing in this Agreement is or shall be construed to be a bargaining away of Gunnison County's police power.

12. TRANSFER OR ASSIGNMENT. No transfer or assignment of any of the rights or obligations of the Developer under this Agreement shall be permitted without prior written approval of Gunnison County which approval shall not unreasonably be withheld.

13. TITLE AND AUTHORITY. The Developer expressly warrants and represents to Gunnison County that it is the record owner of the real property constituting the Project, and further represents and warrants, together with the undersigned individual, that the undersigned individual has full power and authority to enter into this Agreement. The Developer and the undersigned individual understand that Gunnison County is relying on such representations and warranties in entering into this Agreement.

14. LITIGATION. Nothing contained herein shall prevent either party from obtaining a judicial determination of the violation of its rights hereunder; provided however, that written notice to the other party advising the other party of the alleged violation, and advising that in the event the matter is not resolved by the parties within 14 days thereafter, shall be a condition precedent to the commencement of any litigation.

15. TIME OF ESSENCE. It is mutually agreed that time of performance is an essential part of this agreement and that all terms, covenants and conditions herein shall extend to and become obligatory upon the successors and assigns of the respective parties hereto.

16. VENUE AND CHOICE OF LAW. This agreement is entered into in Gunnison County, Colorado and it is agreed that the exclusive jurisdiction and venue of any action pertaining to the interpretation or enforcement of this agreement shall be in the District Court of Gunnison County, Colorado. The exclusive choice of law pertaining to this transaction shall be that of the State of Colorado without giving effect to Colorado choice of law principles.

17. SEVERABILITY. If any term or provision of this agreement shall be invalid or unenforceable, the remainder of this agreement and the terms and provisions thereof

shall not be affected thereby and all other terms and provisions of this agreement shall be valid and enforceable to the full extent permitted by law.

18. ATTORNEYS' FEES. If any action is brought in a court of law by either party to this agreement as to the enforcement, interpretation or construction of this agreement or any document provided for herein, the prevailing party in such action shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action.

19. HOLD HARMLESS CLAUSE. The Developer shall indemnify, defend and hold harmless Gunnison County, its officials, employees and agents from and against liability for damages, injury or death which may arise from the direct or indirect operations of the owner, Developer, contractors or subcontractors, which relate to the Project.

20. BINDING AGREEMENT. This agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto.

21. ENTIRE AGREEMENT. This agreement contains the entire and only agreement between the parties regarding Landscaping improvements, and no oral statements or representations not contained in this agreement shall be of any force and effect between the parties. This agreement shall not be modified or amended in any manner except by written instrument executed by the parties.

IN WITNESS WHEREOF the parties have executed this agreement the date first above written.

BOARD OF COUNTYCOMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By _____
Phil Chamberland, Chairperson

ATTEST:

_____
Deputy County Clerk

DEVELOPER:

By: _____
John Nichols

STATE OF COLORADO)
)ss
COUNTY OF GUNNISON)

The foregoing instrument was acknowledged before me this 12 TH day of June, 2017 by John Nichols, Developer herein.

Witness my hand and official seal.
My commission expires: 12-09-2019.

RODRIGO ABISA MARQUEZ SANTANA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20154047400
MY COMMISSION EXPIRES DECEMBER 9, 2019

_____
Notary Public
Address: PO BOX 1670
CRESTED BUTTE CO 81224

APPENDIX "A"

HOMEWORKS FPM INC.
86 MULLIGAN DR.
CRESTED BUTTE CO. 81224

6- 1.5" CALIPER ASPEN TREES @ $145 per		$870
3- 6' COLORADO BLUE SPRUCE TREES @ $147 per		$441
PLANTING CHARGE		$300
SOIL TREATMENT (OPTIONAL)		$100
TRANSPORT TO CB		$200
TOTAL BID	$1,911	