# AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

**Agenda Item:** Ratification of Cty Manager's Sign; Ground Lease (

**Action Requested:** Other Ratification of Cty Manager's Signature; Ground Lease Agreement

**Parties to the Agreement:**

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

**Summary:**

Requesting ratification of County Manager Birnie's signature on the Ground Lease Agreement with John Councilman, Inc. that was signed 5/31/19.

**Fiscal Impact:**

**Submitted by:** Liz Mense **Submitter's Email Address:** EMense@gunnisoncounty.org

**Finance Review:** (●) Required ( ) Not Required

Comments:
No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 6/11/2019

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

Comments:
ok db 6/5/19

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 6/5/2019 Certificate of Insurance Required Yes (●) No ( )

**County Manager Review:**

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 6/13/2019

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

Agenda Date: 6/18/2019

*Revised April 2015*

Copy #1

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT is made and entered into on this 31st day of May, 2019, by and between the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO, a political subdivision of the State of Colorado, whose address is 200 E. Virginia, Gunnison, Colorado 81230 ("Lessor" or "County") and John Councilman, Inc., a Colorado corporation, whose address is P.O. Box 1270, Crested Butte, Colorado 81224 ("JCI").

WHEREAS, Lessor owns the real property located at 25315 State Highway 135, Crested Butte, CO 81224 (hereinafter the "Property"); and

WHEREAS, Lessor has determined that a portion of the Property, (hereinafter the "Leased Space"), may be leased to JCI; and

WHEREAS, JCI desires to lease from Lessor the Leased Space, and Lessor desires to lease to JCI the Leased Space; and

NOW, THEREFORE, for and in consideration of the mutual covenants, terms and conditions herein contained, Lessor and JCI do hereby agree as follows:

1. GRANT OF LEASE.

Lessor hereby leases to JCI, its agents, employees, designees, officers, managers, heirs, successors and assigns, that certain portion of the Property identified in Exhibit A attached hereto.

2. TERM OF LEASE.

The term of this Lease Agreement shall commence on the date noted above and terminate on October 30, 2019, unless otherwise terminated or extended under the terms of this Lease Agreement or mutual agreement of the Lessor and JCI. A potential extension of this Agreement may include, but is not limited to, an extension in order to complete, or to modify, the Scope of Work as more fully described in Paragraph 4 of this Lease Agreement.

3. LEASE IS NONEXCLUSIVE.

Lessor expressly reserves the right to enter and use the Property, and construct improvements on it, for any and all purposes that will not substantially interfere with JCI's use. This lease is also subject to the terms and conditions of that Site Improvement Lease Agreement between Lessor and UMB Bank, N.A. entered into on February 8, 2019 and recorded on February 11, 2019 ("Site Lease"), the Lease Purchase Agreement between Lessor and UMB Bank, N.A. entered into on February 8, 2019 and recorded on February 11, 2019 ("Lease Purchase") and the Subordination Agreement between Lessor and UMB Bank, N.A. entered into on February 8, 2019 and recorded on February 11, 2019 ("Subordination Agreement"), which are incorporated by reference as if fully set forth herein. To the extent any conflicts exists between the terms of this Agreement and the Site Lease, the Lease Purchase or the Subordination Agreement, the Site Lease, the Lease Purchase or the Subordination Agreement shall control.

4. CONSIDERATION

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In full and complete consideration of the rights granted herein, and consistent with the Agreement to Amend/Extend Contract between the parties executed December 13, 2018. JCI shall complete, prior to the expiration of this Agreement, berm projects, seed, start growing grass and complete other inspections as per county guidelines to reclaim and improve the Property as more fully described in the Scope of Work attached as Exhibit B to this Agreement ("Scope of Work" or 'Work"). JCI shall complete the Work to the satisfaction of Lessor on or before the expiration of this Agreement. In the alternative, and at the Lessor's sole discretion, the parties may, prior to the expiration of this Agreement, meet and confer regarding the status of the Work, whether additional work should be added to the Scope of Work, and/or whether the term of this Agreement should be extended to complete the Work or to complete any additional work agreed to by the parties. Should the parties reach any such agreement, the parties further agree to negotiate and execute any and all appropriate amendment(s) to this Agreement pursuant to Paragraph 28 of this Lease Agreement, potentially including but not limited to an extension of the term of this Agreement through the summer of 2020 in exchange for completing the remainder of the berm along the Eastern boundary of the Property.

Should JCI fail to complete the Work by the expiration of this Agreement, JCI shall, in lieu of said Work, pay Lessor $10,000 as rental for the Property. The Lessor may waive this term in its sole discretion.

5. UTILITIES.

Access to the Leased Space will be provided from JCI's existing access off of State Highway 135. JCI shall be responsible for any and all other costs not identified herein, including snow removal and weed management, that may be associated with JCI's use and enjoyment of the Leased Space or its obligations under the Scope of Work.

6. USE OF PROPERTY.

JCI agrees to conduct its uses and enjoyment of the Leased Space in an orderly and good workmanlike manner. JCI, its agents, and employees, will not discriminate against any person or class of person by reason of race, age, religion, gender, creed, sexual preference or national origin in providing any use of the Leased Space.

JCI shall be responsible for ensuring the proper use of the Leased Space, as indicated in this contract, by any person it permits to access and use the Property pursuant to this Agreement. Further, JCI shall be responsible for monitoring the established boundaries and enforcing compliance to ensure that no trespassing onto adjacent land occurs by JCI patrons.

7. FURTHER ORDERS RULES AND REGULATIONS.

Lessor and JCI agree that, during the term of this Lease Agreement, in addition to or notwithstanding any terms of this Lease Agreement, Lessor may adopt and enforce such orders, rules or regulations as in the discretion of the Lessor which is reasonably necessary for the administration, protection, use, enjoyment or maintenance of the Property and Leased Space.

8. OPERATIONS

JCI agrees to secure all necessary licenses, permits and other approval(s) required by Gunnison County, the State of Colorado, the United States of America or any other government or regulatory body that may be necessary or associated with the Scope of Work or JCI's use and enjoyment of the Leased Space.

9. MAINTENANCE REPAIRS AND IMPROVEMENTS.

During the term of this Lease Agreement, JCI shall provide for any necessary maintenance and repairs, such as snow removal and weed management, to the Property and Leased Space associated in any way with the Scope of Work or JCI's use and enjoyment of the Property, including any use or enjoyment JCI affords to others pursuant to this Agreement.

JCI shall not modify, alter or reconstruct the Property or Leased Space without the prior and express written consent of Lessor.

10. DAMAGE TO OR DESTRUCTION OF PROPERTY.

During the term of this Lease Agreement notwithstanding anything herein to the contrary, in the event the Property or any portion of it or any improvements to it are damaged or destroyed, partially or wholly, by fire or otherwise, Lessor shall be under no obligation whatsoever to repair, replace or rebuild the same or to provide substitute Leased Space or improvements. Nor shall such damage or destruction relieve JCI of its obligations under this Agreement, unless expressly agreed to in writing by Lessor.

11. STRATEGIC RESULT.

Execution of this Agreement will assist the County with its Promote Prosperous, Collaborative and Healthy Communities strategy, as outlined in the Gunnison County Strategic Plan.

12. INSURANCE.

JCI agrees that at all times during the Term of this Agreement that JCI shall carry and maintain, in full force and effect and at its sole cost and expense, the following insurance policies. Within thirty (30) days of the execution of this Agreement, JCI will provide insurance certificates to the County, listing the County as an additional named insured, for the coverage's required herein which shall state that such policies shall not be materially changed or cancelled without thirty (30) days prior notice to the County.

a. Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by JCI during the term of this Agreement to accomplish the Scope of Work.

b. Comprehensive General Liability Insurance or the equivalent for any injury to one person in any single occurrence, Three Hundred Eighty-Seven Thousand and No/100 U.S. Dollars ($387,000.00); and for an injury to two or more persons in any single occurrence, the sum of One Million Ninety-Three Thousand and No/100 U.S. Dollars ($1,093,000.00).

c. Comprehensive automobile liability insurance on all vehicles used in the relation to the Scope of Work, in an amount no less than Three Hundred Eighty-Seven Thousand and No/100 U.S. Dollars ($387,000.00) for any injury to one person in any single occurrence and in an amount no less than One Million Ninety-Three Thousand and No/100 U.S. Dollars ($1,093,000.00) for any injury to two or more persons in any single occurrence.

13. GOVERNMENTAL IMMUNITY.

Nothing in this Lease Agreement, including but not limited to the required insurance or the existence of the insurance required hereunder, is or shall be construed to be a waiver, in whole or in part, by the Lessor of any defense or claim of governmental immunity, or a waiver of any other provision of law relating to the liability of governmental units or the limits thereof, provided by the Colorado Governmental Immunity Act or otherwise.

14. INDEMNIFICATION.

During the term of this Lease Agreement, JCI shall indemnify, hold harmless and defend Lessor, its Board of County Commissioners, its officers, agents and employees, against any claim for injury or damage caused by any act or omission of JCI or any other person arising from the use, occupancy, or enjoyment of the Leased Space or the Scope of Work. This provision shall survive any termination or expiration of this Agreement with respect to any liability, injury or damage occurring prior to such termination or expiration.

15. INDEPENDENT CONTRACTOR.

In carrying out its obligations and activities under this Agreement, JCI is acting as an independent contractor and not as an agent, partner, joint venture or employee of the County. JCI does not have any authority to bind the County in any manner whatsoever.

**JCI ACKNOWLEDGES AND AGREES THAT JCI IS NOT ENTITLED TO: (I) UNEMPLOYMENT INSURANCE BENEFITS; OR (II) WORKERS COMPENSATION COVERAGE FROM GUNNISON COUNTY.** Further, JCI is obligated to pay federal and state income tax on any moneys paid it related to the services performed pursuant to the Scope of Work.

16. DISCRIMINATION.

JCI agrees not to discriminate against any person or class of persons by reason of age, race, color, sex, creed, religion, disability, national origin, sexual orientation or political affiliation in providing any services pursuant to the Scope of Work or in the use of any facilities provided for the public in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. JCI, in relation to its obligations under this Agreement, shall

further comply with the letter and spirit of the Colorado Anti-Discrimination Act of 1957, as amended, and any other laws and regulations respecting discrimination in unfair employment practices. Additionally, JCI shall comply with such enforcement procedures as any governmental authority might demand that the County take for the purpose of complying with any such laws and regulations.

17. IMMIGRATION COMPLIANCE CERTIFICATION.

a. JCI certifies that JCI does not and will not knowingly contract with or employ illegal aliens to work under this Agreement.

b. JCI certifies that JCI has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work under this Agreement.

c. JCI certifies that it has attempted to verify the eligibility of its employees and subcontractors to work through the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security.

d. JCI agrees to comply with all reasonable requests made in the course of an investigation under C.R.S. 8-17.5-102 by the Colorado Department of Labor and Employment.

e. JCI agrees to comply with the provisions of C.R.S. 8-17.5-101 *et seq.*

18. ADA COMPLIANCE.

JCI represents and warrants that at all times during the performance of this Agreement no qualified individual with a disability shall, by reason of such disability, be exclude from participation in, or denied benefits of the service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor upon which assurance Gunnison County relies.

19. WARRANTIES.

Lessor makes no warranties, either express or implied, as to any matter whatsoever, including but not limited to, the condition of the Property.

20. OWNERSHIP.

Subject to the other agreements and leases described in Paragraph 3 above, and any agreements related to those agreements and leases, the Property is, and shall at all times be and remain, the sole and exclusive property of Lessor, and JCI shall have no right, title, or interest therein or thereto.

21. DEFAULT.

JCI shall be considered to be in default of this Lease Agreement upon failing to keep, perform and observe each and every other covenant, term or condition set forth in this Lease Agreement which failure continues for a period of more than 30 days after written notice from the Lessor of such breach or default.

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No waiver of default by either party of any of the terms or conditions herein to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms or conditions herein contained to be performed, kept and observed by the other party.

22. TERMINATION

Any party shall have the right to terminate this Lease Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other. If this Lease Agreement is terminated, it is agreed that Lessor may retake possession of the premises upon thirty (30) days written notice to JCI and that JCI shall surrender and return the Leased Space to Lessor in good condition, normal wear and tear excepted.

23. NOTICES

Service of all notices under this Lease Agreement shall be sufficient if sent via certified mail return receipt requested to the following address:

Lessor: Board of County Commissioners
Of the County of Gunnison, Colorado
c/o County Manager's Office
200 East Virginia Ave
Gunnison, CO 81230

JCI: JCI
P.O. Box 1270
Crested Butte, CO 81224

24. PROHIBITION UPON ASSIGNMENT.

Without the prior written consent of Lessor, JCI shall not (a) assign, transfer, pledge, or hypothecate this Lease Agreement, or any part thereof, or any interest therein, or (b) convey, sublet or lend the Property or Leased Space or any part thereof.

25. NON-WAVER.

The failure of either party to insist in any one or more instances upon compliance with any of the covenants, terms or conditions agreed upon and herein contained, or the failure of either party to exercise any option, privilege or right agreed upon and herein contained shall not be construed as constituting a waiver of such right, option or the right to demand compliance with such covenant, term or conditions.

26. SEVERABILITY

In the event any term, condition or provision contained in this Lease Agreement is held by any court of competent jurisdiction to be invalid, the invalidity of such terms condition or

provision shall in no way affect any other covenant, condition or provision herein contained. Provided, however, that if the invalidity of such term, condition or provision causes material prejudice to either party hereto with respect to its respective rights and obligations contained in the remaining valid portions of this Lease Agreement, then at the option of such party, this Lease Agreement may be declared to be terminated.

27. GOVERNING LAW JURISDICTION AND VENUE

This Lease Agreement is entered into in the County of Gunnison, State of Colorado, and it is agreed that the proper jurisdiction and venue of any legal action regarding the interpretation and/or enforcement of this Lease Agreement, or any document related hereto, shall be the County or District Court of the County of Gunnison, State of Colorado and this Lease Agreement shall be deemed to have been made in and be construed in accordance with the laws of the State of Colorado and be binding upon the parties hereto, their successors and assigns.

28. ENTIRE AGREEMENT

Lessor and JCI agree that the provisions contained herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications, unless expressly reserved herein, shall be valid unless executed by an instrument in writing by Lessor and JCI with the same formality as this Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first set forth above.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Matthew Birnie, County Manager

ATTEST:

_____
Deputy County Clerk

GUNNISON COUNTY SEAL COLORADO

JOHN COUNCILMAN, INC.

By: _____
President

**Exhibit A**

**Property Description**

A TRACT OF LAND SITUATED IN THE NW ¼ SE ¼ OF SECTION 12, TOWNSHIP 14 SOUTH, RANGE 86 WEST, 6TH P.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE SE ¼ SE ¼ OF SAID SECTION 12;
THENCE NORTH $89^0$ 12’09" WEST 923.20 FEET ALONG THE NORTH LINE OF THE SW ¼ SE ¼ TO THE POINT OF BEGINNING;
THENCE NORTH $42^0$ 14’00" EAST 880.11 FEET TO THE WEST RIGHT OF WAY OF HIGHWAY NO. 135;
THENCE NORTH $47^0$ 46'00" WEST 643.60 FEET ALONG THE WEST RIGHT OF WAY;
THENCE SOUTH $42^0$ 14’00" WEST 629.73 FEET TO THE EAST LINE OF BOOK 374 AT PAGE 65;
THENCE SOUTH $00^0$ 51'17" EAST 613.88 FEET ALONG THE EAST LINE OF BOOK 374 AT PAGE 65 TO THE NORTH LINE OF THE SW ¼ SE ¼ OF SAID SECTION 12;
THENCE SOUTH $89^0$ 12'09" EAST 299.10 FEET ALONG THE NORTH LINE OF THE SW ¼ SE ¼ TO THE TRUE POINT OF BEGINNING,

COUNTY OF GUNNISON
STATE OF COLORADO

## Exhibit B

## Scope of Work

During the term of this lease, JCI will complete the berm along the Property boundary with the adjacent John Murphy property on the South and East sides of the Property. This berm will be completed to the general specifications of the berms already completed on the Property, including reseeding and compliance with the existing reclamation permit.