

- 1 - Agenda, May 3, 2022 BOCC Regular Meeting
- 2 - Scheduling, May 3, 2022
- 3 - Minutes Approval, April 5, 2022 BOCC regular meeting
- 4 - Consent 1, CDPHE contract, Jail-based Behavioral Health Svcs\_cost reimbursement
- 4 - Consent 2, DOLA Administrative Planning Grant Application
- 4 - Consent 3, Letter of Engagement, Berg Hill Greenleaf Ruscitti\_Josh Marks
- 4 - Consent 4, BridgeCare Master Subscription, Svcs Agreement
- 4 - Consent 5, Grant App to CDOT MMOF\_CB to CB South Trail Planning
- 4 - Consent 6, Extension of Commercial Lease\_Drug Test West
- 4 - Consent 7, Extension of Commercial Lease\_Keating Wood Floors
- 4 - Consent 8, Extension of Commercial Lease\_Beleza
- 4 - Consent 9, Reassignment of Ground Lease\_Aldo Waters, Leisure Time\_Michael Hicks, Reactive Holdings
- 4 - Consent 10, Contract for legal services, Sherman\_Howard
- 5 - IGA\_Undesirable Plant Management 2022
- 6 - Resolution Further Extending Res No 2021-12 and Authorizing ATV, OHV, UTV Use on CR 3
- 7 - Community Dev, Revisions to 2022 Fee Schedule and Resolution
- 8 - Amended Lot Designation, Boundary Line Adjustment Plat, Lot 9
- 9 - Elcho Place Townhome Plat
- 10 - 882 Cascadilla Townhome Plat

**GUNNISON COUNTY BOARD OF COMMISSIONERS**  
**REGULAR MEETING AGENDA**

**DATE:** Tuesday, May 3, 2022

**Page 1 of 2**

**PLACE:** Board of County Commissioners' Meeting Room at the Gunnison County Courthouse  
(REMOTE OPTION BELOW)

**GUNNISON COUNTY BOARD OF COUNTY COMMISSIONERS REGULAR MEETING:**

- 8:30 am
- Call to Order; Agenda Review
  - Scheduling
  - Minutes Approval:
    1. April 5, 2022 Regular Meeting
  - Consent Agenda: These items will not be discussed unless requested by a Commissioner or citizen. Items removed from consent agenda for discussion may be rescheduled later in this meeting, or at a future meeting.
    1. Colorado Department of Human Services Contract; Gunnison County Sheriff's Office; for Jail-based Behavioral Health Services; 7/1/2022 – 6/30/2023; Cost reimbursement up to \$155,200
    2. Administrative Planning Grant Application, Department of Local Affairs (DOLA); Community Development; to support development of the North Gunnison area plan; \$25,000
    3. Letter of Engagement Agreement; Berg Hill Greenleaf Ruscitti, Attorney Josh Marks; Gunnison County Attorney's Office; to represent Gunnison County in District Court Case No 2021CV30017
    4. BridgeCare Master Subscription and Services Agreement; Software application for monitoring and reporting available childcare slots, as part of Colorado Department of Human Service's contract for Early Childhood Council; Effective date 4/1/2022
    5. Grant Application to Colorado Department of Transportation's Multimodal Transportation and Mitigation Options Fund (MMOF); to support the Crested Butte to Crested Butte-South Multimodal Trail Planning Project; \$125,000
    6. Extension of Commercial Lease Agreement; Gunnison-Crested Butte Regional Airport; Michael Barnes and Chris Osmundson dba Drug Test West, Inc; Lease extension request of one year, to 3/31/2023; \$4,200 annual rent, plus CPI or 3%
    7. Extension of Commercial Lease Agreement; Gunnison-Crested Butte Regional Airport; Tom Keating dba Keating Wood Floors Inc; Lease extension request of one year, to 3/31/2023; \$9,300 annual rent, plus CPI or 3%
    8. Extension of Commercial Lease Agreement; Gunnison-Crested Butte Regional Airport; Tom Anderson dba Beleza Inc; Lease extension request of one year, to 3/31/2023; \$7,200 annual rent, plus CPI or 3%
    9. Reassignment of Ground Lease Agreement; Aldo Waters, Leisure Time Properties Inc (Seller) and Michael Hicks, Reactive Holdings Inc (Buyer); under 20-year Ground Lease Agreement with Gunnison County, dated 7/10/2006
    10. Contract for legal services with Sherman & Howard LLC; related to potential equipment lease-purchase agreement
  - County Manager's Reports
    1. Gunnison Valley Health; Real Estate Transactions
  - Deputy County Manager's Reports and Project Updates
    1. Intergovernmental Agreement Regarding Undesirable Plant Management 2022
- 8:55 am
- Resolution; Further Extending Resolution No. 2021-12 and Authorizing ATV, OHV and UTV Use on a Certain Portion of County Road #3 Until \_\_\_\_\_, 2022

*NOTE: This agenda is subject to change, including the addition of items up to 24 hours in advance or the deletion of items at any time. All times are approximate. The County Manager and Deputy County Manager's reports may include administrative items not listed. Regular Meetings, Public Hearings, and Special Meetings are recorded and **ACTION MAY BE TAKEN ON ANY ITEM.** Work Sessions are not recorded and formal action cannot be taken. For further information, contact the County Administration office at 641-0248. If special accommodations are necessary per ADA, contact 641-0248 or TTY 641-3061 prior to the meeting.*

**GUNNISON COUNTY BOARD OF COMMISSIONERS**  
**REGULAR MEETING AGENDA**

**DATE:** Tuesday, May 3, 2022 **Page 2 of 2**  
**PLACE:** Board of County Commissioners' Meeting Room at the Gunnison County Courthouse  
(REMOTE OPTION BELOW)

- 9:15 am
  - Community Development; Revisions to 2022 Fee Schedule for Land Use Change, Building, and Onsite Wastewater Treatment System Permits
    1. Resolution; Adopting an Amended Schedule of Fees for the Community Development Department Permit Applications
- 9:20 am
  - Amended Lot Designation; Boundary Line Adjustment Plat; Lot 9; Whetstone Industrial Park; LUC-22-00006
- 9:25 am
  - Elcho Place Townhome Plat; Lot 9, Block 4; Crested Butte South – Second Filing; LUC-22-00008
- 9:30 am
  - 882 Cascadilla Townhome Plat; Lot 17, Block 21; Crested Butte South – Third Filing; LUC-22-00009
- 9:35 am
  - **Unscheduled Citizens:** Limit to 5 minutes per item. No formal action can be taken at this meeting.
  - **Commissioner Items:** Commissioners will discuss among themselves activities that they have recently participated in that they believe other Commissioners and/or members of the public may be interested in hearing about.
- 9:55 am
  - Possible Executive Session Pursuant to Colo. Rev. Stat. § 24-6-402(4)(b): Conference with the County Attorney, Deputy County Attorney or Assistant County Attorney to receive legal advice in relation to Lake Irwin Coalition, Inc. v. Smith, 1:19-cv-01056 (D. Colo.)
  - Possible Executive Session Pursuant to Colo. Rev. Stat. § 24-6-402(4)(b): Conference with the County Attorney or Deputy County Attorney to receive legal advice in relation to submission of ballot issues to voters in Gunnison County related to taxation and revenues under Colorado Law, including but not limited to TABOR
  - Adjourn

Please Note: Packet materials for the above discussions will be available on the Gunnison County website at <http://www.gunnisoncounty.org/meetings> prior to the meeting. (continued page 3)

**ZOOM MEETING DETAILS:**

Join Zoom Meeting: <https://us02web.zoom.us/j/82753657556?pwd=MjNDdTZHTFNRVdDemZjdC91aVBlZz09>

Meeting ID: 827 5365 7556

Passcode: 471302

One tap mobile

+12532158782,,82753657556#,,,,\*471302# US (Tacoma)

+13462487799,,82753657556#,,,,\*471302# US (Houston)

Application for Membership and Funding in Colorado Parks & Wildlife Region Partnership Initiative  
CPW Grant for Regional Partnership Initiative; Update BOCC on NFF grant submission for the CPW RPI grant

# Gunnison County Board of County Commissioners Calendar

(Two or more commissioners may be in attendance.)

May 3 – June 7, 2022

As of 4/29/2022

## Board of County Commissioners

- BOCC Regular Meeting**  
May 3, 2022, All Day @ BOCC Boardroom  
[More Details](#)
- Mayors & Managers Meeting - Hosted by Gunnison Valley Health**  
May 5, 2022, 12:00 PM - 1:30 PM  
[More Details](#)
- BOCC Work Session**  
May 10, 2022, All Day @ BOCC Boardroom  
[More Details](#)
- BOCC Regular Meeting**  
May 17, 2022, All Day @ BOCC Boardroom  
[More Details](#)
- BOCC Work Session**  
May 24, 2022, All Day @ BOCC Boardroom  
[More Details](#)
- Mayors & Managers Meeting - Hosted by Western Colorado University**  
June 2, 2022, 12:00 PM - 1:30 PM  
[More Details](#)
- BOCC Regular Meeting**  
June 7, 2022, All Day @ BOCC Boardroom  
[More Details](#)

## Gunnison County Organization

- Retirement Celebration, Deputy Co. Manager for Public Works Marlene Crosby**  
May 18, 2022, 4:00 PM - 6:00 PM @ Fred R. Field Western Heritage Center  
A celebration of Marlene Crosby's career with Gunnison County. The public is invited from 4:00 to 6:00 pm.  
[More Details](#)
- Holiday - Memorial Day - Offices Closed**  
May 30, 2022, All Day  
[More Details](#)

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

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**Agenda Item:** Minutes Approval: April 5, 2022 Regular Meeting

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**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:**

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

For your review - a draft of the 4/05/2022 BOCC regular meeting minutes

**Fiscal Impact:**

**Submitted by:** Melanie Bollig

**Submitter's Email Address:** mbollig@gunnisoncounty.org

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**Finance Review:**

Required

Not Required

Comments:

Reviewed by:

Discharge Date:

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**County Attorney Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 4/29/2022

Certificate of Insurance Required

Yes  No

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**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 4/29/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted: 2

Agenda Date: 5/3/2022

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**GUNNISON COUNTY BOARD OF COUNTY COMMISSIONERS  
REGULAR MEETING MINUTES  
April 5, 2022**

The April 5, 2022 meeting was held in the Board of County Commissioners' meeting room located at 200 E. Virginia Avenue, Gunnison, Colorado. Present, either in person or via Zoom, were:

Jonathan Houck, Chairperson  
Roland Mason, Vice-Chairperson  
Liz Smith, Commissioner

Matthew Birnie, County Manager  
Melanie Bollig, Deputy County Clerk  
Others Present as Listed in Text

**GUNNISON COUNTY BOARD OF COUNTY COMMISSIONERS REGULAR MEETING:**

**CALL TO ORDER:** Chairperson Houck called the Gunnison County Board of County Commissioners Regular Meeting to order at 8:30 am.

**AGENDA REVIEW:** There were no changes needed to the agenda schedule.

**SCHEDULING:** There were no changes needed to the calendar schedule. Commissioner Mason noted he would be out of office for the April 19<sup>th</sup> meeting, as it will be Spring Break for Crested Butte schools. Commissioner Smith reminded the Board that she would be unable to attend the April 26<sup>th</sup> work session, due to her attending a Colorado Noxious Weed Advisory Committee meeting in Boulder on the 26<sup>th</sup>.

**MINUTES APPROVAL:** Moved by Commissioner Smith, seconded by Commissioner Mason, to approve the minutes for January 18<sup>th</sup>, February 1<sup>st</sup>, February 22<sup>nd</sup>, March 1<sup>st</sup>, March 8<sup>th</sup>, and March 22<sup>nd</sup>, 2022, as presented. Motion carried unanimously.

1. January 18 2022 Regular Meeting – Smith moved to approve all as presented seconded by Mason. Motion carried unanimously.
2. February 1, 2022 Regular Meeting
3. February 22, 2022 Special Meeting
4. March 1, 2022 Regular Meeting
5. March 8, 2022 Special Meeting
6. March 22, 2022 Special Meeting

**CONSENT AGENDA:** Moved by Commissioner Mason, seconded by Commissioner Smith to approve the Consent Agenda, as presented that morning. Motion carried unanimously.

1. Professional Services Agreement; Gunnison County Sheriff's Office; Gunnison Valley Health; for Inmate Health Care at the Gunnison County Detention Center; Eff. Date 3/15/2022 -12/31/2022, yearly thereafter; up to \$10,000 per year
2. Simple Gifts Grant Award; Rocky Mountain Health Foundation; Colorado Division of Veterans Affairs, Gunnison County; one-year grant; \$10,000
3. Lease Agreement; Bishop of Pueblo; on behalf of Gunnison County Clerk and Recorder; for use of Queen of All Saints Parish Hall during 2022 Primary and General Elections; 6/23-6/25, 6/27-6/29, 11/2-11/5, and 11/7-11/09/2022; \$1,200
4. Agreement with Subrecipient of Federal Recovery Funds; Colorado Department of Public Health and Environment (CDPHE); Health and Human Services; for confirmation of adherence to Federal Provisions of the American Rescue Plan Act (ARPA) Local Support and Planning funds (Coronavirus State and Local Fiscal Recovery Funds); 7/01/2021 to 6/20/2022
5. Grant Application Approval; FY 2021-22 County Grant Program Application; Colorado Department of Health Care Policy and Financing (HCPF); Health and Human Services; to Implement new County Administration Procedures and Policies; Funding to be expended no later than June 30, 2022; \$17,782
6. Acknowledgment of County Manager's signature; Simple Gifts Grant Award; Rocky Mountain Health Foundation; Gunnison County Substance Abuse Prevention Project (GCSAPP); one-year grant; \$9,000
7. Acknowledgement of County Manager's Signature; NEOGOV Services Agreement; Human Resources; for Governmentjobs.com Recruitment Services; 3-year contract; Year 1: \$1,715.40, Year 2: \$1,963.18, Year 3: \$2,022.00
8. Department of Local Affairs IHOP Grant and Amendment #1; Community Development; for Land Use Resolution Housing Revisions; 2/25/2022 to 9/30/2023; Initial Grant \$48,750 + Amendment #1 \$101,250 = \$150,000 total grant award
9. Professional Services Agreement; Mark Weidhaas, Inspector Magic; Gunnison-Hinsdale Early Childhood Council; for Performing a Magic Show at the Annual Conference on 4/9/2022; \$1,500
10. Acknowledgement of County Manager's Signature; El Pomar Foundation Regional Merit Grant Award; Health Coalition of the Gunnison Valley; for Behavioral Health Strategic Planning; \$10,000
11. Intergovernmental Contract Amendment #1; CDHS Office of Early Childhood; Early Childhood Council; for accounting encumbrances; 4/07/2021 – 6/30/2022; \$13,127
12. Master Services and Purchasing Agreement; AXON; Gunnison County Sheriff's Office; Body Camera Program; Effective date of signing, 39-month program; \$40,515.84

13. Statement of Work; Colorado Department of Public Health and Environment (CDPHE), Office of Public Health Practice, Planning; Local Partnerships (OPHP), Health and Human Services; to strengthen public health and environment workforce
14. Acknowledgment of County Manager's approval; Town of Crested Butte Grant Application; Gunnison-Hinsdale Early Childhood Council (GHECC); for CB Early Childhood Educator Stipend Program and Tuition Assistance for Families; May 2022 - December 2022; \$22,000
15. Acknowledgment of County Manager's approval; Colorado Department of Human Services Grant Application; Gunnison-Hinsdale Early Childhood Council (GHECC); for Early Childhood Council work; July 1, 2022 – June 30, 2023; \$108,040
16. Gunnison County Deputy County Attorney Employment Agreement; Alex San Filippo-Rosser; beginning April 5, 2022
17. Employee Medical Benefits Plan, Amendment #2; Group Personal Accident (GPA) yearly compliance review/renewal; Effective date 1/01/2022
18. Master Task Order 23 FAA 00023; Health and Human Services; guidelines for how Local Public Health Agencies (LPHA) contract with each other; July 1, 2022 - June 30, 2027
19. Modification of Grant Agreement; White River National Forest; Forest Service Protection Officer, Directions for Funding Allotment
20. Sublease Amendment Agreement: Gunnison Funeral Services, LLC; Extension of Sublease Agreement dated March 23, 2021; April 1, 2022 - April 1, 2023
21. Approval of Bipartisan Infrastructure Law Grant Application AIG-3-08-0300; Federal Aviation Administration; for the Terminal Rehabilitation Construction Project; FY22 allocation; \$1,023,462
22. Acknowledgement of County Manager's Signature; Rental Agreement; Power Screening; for Rental Tree Grinder at the Landfill; Eff Date 4/01/2022, 1 month; \$39,000 + transportation costs
23. Approval for Health Resources and Services Administration (HRSA) Grant Application; Department of Juvenile Services; for Gunnison County Consortium (GCC), Behavioral Health Care Services; \$2,000,000

**COUNTY MANAGER'S REPORT AND PROJECT UPDATES:** County Manager Matthew Birnie was present for discussion and questions from the Board.

1. Whetstone Project. CM Birnie let the Board know that, currently, they were preparing this project to be ready for the land use process.
2. South 14<sup>th</sup> Housing Project. CM Birnie reported that they were working with Fading West on putting a deal together, trying to think outside the box in order to address certain efficiency factors.
3. Participated on a Congressionally-directed spending call last week. CM Birnie stated they were not yet ready to turn in what they had that week, for the Apr 8<sup>th</sup> cycle, but that they would be ready for the next cycle to bring forward Whetstone.
4. Library Project. CM Birnie highlighted that the siding is up and the roof is going on. Chairperson Houck noted that he liked the natural, clean appearance of the finishes.

**DEPUTY COUNTY MANAGER'S REPORT AND PROJECT UPDATES:** Deputy County Manager Marlene Crosby was present for discussion and questions from the Board, along with Public Works Operation Manager Sparky Casebolt.

1. Tree grinding starting at the landfill. DCM Crosby stated that it was good to start bringing this section of the landfill into compliance. When asked what the tree mulch would be used for, she informed the Board that they would use it as part of the organic material needed for their topsoil.
2. Road Maintenance Agreement; Bureau of Land Management, Gunnison Field Office; for Maintenance of BLM roads & Collection of Highway User Tax Funds (HUTF); Effective date of signing; 20-year term. DCM Crosby explained that both the BLM road agreement and the agreement for the Forest Service must be in place, in order for the County to claim gas tax funds.  
**Moved** by Commissioner Smith, seconded by Commissioner Mason to approve the Road Maintenance Agreement between the Bureau of Land Management and Gunnison County, and to authorize the chair's signature. Motion carried unanimously.
3. Cooperative Forest Road Agreement; USDA Forest Service – Grand Mesa, Uncompahgre and Gunnison (GMUG) National Forest; for Maintenance of Forest Service roads & Collection of Highway User Tax Funds (HUTF); Effective date of signing; 5-year term. DCM Crosby noted that this is same type of agreement as the BLM agreement, and is one of the agreements necessary for gas tax funds.  
**Moved** by Commissioner Smith, seconded by Commissioner Mason, to approve the Cooperative Forest Road Agreement with the USDA Forest Service. Motion carried unanimously.
4. County Technical Services Inc (CTSI) to visit Public Works on Wednesday April 6<sup>th</sup>. DCM Crosby explained that Marilyn Wagner from CTSI would be visiting the Gunnison and Crested Butte shops on the next day, to look everything over and make sure they were operating as safely as possible. DCM Crosby further noted that this had been a regular, yearly visit before the pandemic, and they were now starting the annual visits up again.
5. Resolution; Vacating a Certain Portion of Laurel Street Lying Within the Town of Tincup, County of Gunnison, State of Colorado. DCM Crosby outlined the events leading up to this resolution, reminding the Board that Sally Kuisle had requested a street vacation and lot cluster in order to put in a compliant septic system. The lot cluster had been approved, contingent upon the street vacation being signed, and the street vacation was approved, contingent upon approval of the variance by

the Environmental Health Board (EHB). The Environmental Health Board then approved the variance contingent upon a recorded easement from the neighbors. DCM Crosby noted she had included minutes for both the BOCC and EHB meetings, as well as copies of the lot cluster, and then concluded that this resolution would now finish the street vacation and tie everything together. County Attorney Matt Hoyt added that this could have been an automatic procedure, but that presenting it this way created a clean record that traces all the actions that had taken place.

With no questions from the Board, Commissioner Smith **moved** to approve Resolution 2022-17, a Resolution Vacating a Certain Portion of Laurel Street Lying Within the Town of Tincup, County of Gunnison, State of Colorado. Commissioner Mason seconded, and the motion carried unanimously.

**138 ELK VALLEY TOWNHOMES PLAT; A RE-SUBDIVISION OF LOT M1-5, BUCKHORN RANCH FILING 2B; LUC-22-00004:** Present for discussion was Community Development Administrative Services Manager Beth Baker, along with Attorney Daniel Spivey, representing the applicant. Admin Svcs Manager Beth Baker outlined that this had been reviewed by the Attorney's Office and had been found legally sufficient; the taxes were current, with certificates of occupancy obtained; the HOA had approved it; and the lender had signed it as well.

With no questions from the Board, it was **moved** by Commissioner Mason, seconded by Commissioner Smith, to approve the signature of the chair on the 138 Elk Valley Townhomes plat, a re-subdivision of Lot M1-5, Buckhorn Ranch Filing 2B, LUC-22-00004. Motion carried unanimously.

**MEMORANDUM OF UNDERSTANDING (MOU); TOWN OF CRESTED BUTTE AND GUNNISON COUNTY; FOR AN ASSESSMENT OF TOWN WATER AND SANITARY SEWER INFRASTRUCTURES CAPABILITIES, WHETSTONE WORKFORCE HOUSING DEVELOPMENT:** Chairperson Houck noted that both the Town of CB and the Commissioners had gone over this MOU together, and the version before them was already signed by the Town of Crested Butte.

After a brief discussion confirming part of the wording in the MOU, Commissioner Smith **moved** to approve the signature of the full board on the MOU for an Assessment of Town Water and Sanitary Sewer Infrastructures Capabilities to serve Whetstone, between the Town of Crested Butte and Gunnison County. Commissioner Mason seconded. Motion carried unanimously.

**RESOLUTION; AMENDING RESOLUTION NO. 2018-30 GOVERNING THE CONTROL AND LICENSING OF DOGS IN UNINCORPORATED GUNNISON COUNTY, COLORADO TO CLARIFY PENALTIES FOR CERTAIN VIOLATIONS:** County Attorney Matthew Hoyt introduced the resolution by explaining briefly that this resolution was a result of statutory change at the state level. It would be the first of several ordinances up for review and possible changes by his staff. He further noted that the penalties concerning dog ordinances must now all be under a petty offense – no longer a misdemeanor – but the fines remained the same. The resolution before them helped to bring County law into line with the statutory changes.

With this explanation, Commissioner Mason **moved** to approve Resolution 2022-18, Amending Resolution No. 2018-30 Governing the Control and Licensing of Dogs in Unincorporated Gunnison County, Colorado, to Clarify Penalties for Certain Violations. Commissioner Smith seconded. Motion carried unanimously.

**REVISION APPROVAL; GUNNISON BASIN SAGE-GROUSE STRATEGIC COMMITTEE ORGANIZATION GUIDELINES:** Commissioner Liz Smith shared that the revised guidelines reflected the Board's discussion at a previous work session, and noted that the amended guidelines now included a Recreation and Education At-Large position. Commissioner Smith also outlined other amendments – administrative revisions and updates which helped bring the guidelines current. Chairperson Houck noted that, with 14 members now on the committee, there would be a potential for a tie vote. He added that this would be very unlikely, but to keep it in mind for consideration on how to deal with the possibility.

Commissioner Mason **moved** to approve the revision of the Gunnison Basin Sage-grouse Strategic Committee Organization Guidelines, as presented. Commissioner Smith seconded. Motion carried unanimously.

**CHANGE OF AGENDA:** Chairperson Houck elected to start Commissioner Items, as the meeting was a little ahead of schedule for Unscheduled Citizens at 9:20 am.

#### **COMMISSIONER ITEMS:**

##### **Commissioner Mason**

1. Future of Gunnison Valley Regional Housing Authority (GVRHA) discussion. Commissioner Mason reported that they had hosted a half-day stakeholders meeting to look at the strengths and weaknesses of the Housing Authority, and to discuss how to incorporate identified areas into their search for a new director. He felt it was a good conversation and stated that he would be taking these recommendations to the Housing Authority Board to use as they begin their search. Also, he noted that they would be engaging a recruiter soon, and noted issues surrounding what a competitive salary would look like now, as well as how to address housing for someone hired from outside of the area.

2. Last day to get your elk draw tag. Commissioner Mason reminded everyone present that this was the last day to be able to put in for the draw, stating that he had many years where he missed the deadline, and so wanted to remind everyone there who might be interested in hunting.
3. Two-day work session in Marble coming up. Commissioner Mason explained that this would be the second work session for the stakeholder group, and noted that they would be really working to hash out what the main issues would be for consideration. Commissioner Mason observed that there might also need to be a facilitator meeting to review final recommendations; he stated that he was not sure of the timeline for this, and could not predict yet if they were going to make the resolution deadline which was set for May 3<sup>rd</sup>. He stated that he would report back to the Board with the timeline as soon as he knew, adding that he felt the Marble area residents were very glad the commissioners were spending the time to work through the issues. The Board then discussed some of the topics of concern, i.e., noise ordinances in the Town of Marble, parking around the lake, and also whether the parking of trailers in town would be allowed. Commissioner Mason also noted that the County had recently lost one of the two Sheriff deputies placed in Marble, and they would need to coordinate with the Sheriff on this enforcement challenge for the next summer.
4. Attended a Region 10 meeting two weeks earlier. Commissioner Mason went over two highlights of the meeting, which were: 1) a new scam targeting seniors – the scam uses a Social Security Cost-of-Living Adjustment (COLA) website page that looks identical to the official administration page, asking for social security numbers and other confidential information, and 2) Gunnison Rural Transportation Authority (RTA) has \$6.2 million available in multi-modal funding. Commissioner Mason noted that he had an idea to approach the RTA Board with a few “out-of-the-box” ideas for funding, such as help in planning a trail system between Crested Butte and CB South, as well as establishing a fleet of electric bikes to encourage people to get out of their cars.

**UNSCHEDULED CITIZENS:** At 9:20 am, Chairperson Houck noted that there were no Unscheduled Citizens present for discussion. He then asked Commissioner Smith to continue with Commissioner Items.

#### **COMMISSIONER ITEMS (cont'd):**

##### **Commissioner Smith**

1. Southwest Colorado Opioid Regional Council. Commissioner Smith informed the Board that she had attended the retreat in Montrose during Spring Break, and would be attending a regular meeting this week. Overall, she felt the council was making good progress in working out the details of what their two-year plan would look like for the region.
2. Testified at a Department of Revenue, Division of Taxation public hearing. Commissioner Smith informed the Board that, some time ago, she had testified at a public hearing concerning an upcoming proposal which would reclassify campgrounds in a manner that insulated them from lodging tax or local marketing district taxation. She stated that she believed this was already the case on national forest campgrounds, but the proposal would be for private campgrounds and other types like Airbnb campsites. She then observed that this proposal had not moved forward so far. The Board discussed for several minutes the implications for sustaining resources without the tax funds, and noted issues surrounding fire restrictions, education and outreach which would become a problem with this possible change in classification.
3. Presented at the Sage-grouse Summit Meeting held at Western Colorado University. Commissioner Smith informed the Board that Monday, April 4<sup>th</sup>, she had presented on the Gunnison Basin Sage-grouse Strategic Committee’s recent cheatgrass mitigation and stakeholder collaboration efforts. She also reported that a sub-group for the technical committee also met a week or so earlier to hash out what a coordinator position for the Cheatgrass mitigation would look like. They had agreed that this would be a contracted position coordinated with the County’s assistance for human resources and financial facilitation; County Attorney Hoyt was presently working on the intergovernmental contract to bring all these resources together.
4. Early Childhood Council holding their annual conference at Western Colorado University on Saturday, April 9<sup>th</sup>. Commissioner Smith reported that she would be looking forward to attending this conference next Saturday – to gain valuable community input and insight into how to strengthen the childcare infrastructure in the valley.

##### **Commissioner Houck**

1. County rep for the Gunnison Basin Roundtable. Commissioner Houck briefly mentioned his role in working with the Roundtable regarding issues concerning the Upper Gunnison Basin water resources, and noted he would be giving a report on this soon.
2. Attended a Saguache County Board of County Commissioners meeting last week, for the Gunnison Public Lands Initiative. Commissioner Houck explained that the Initiative was working on a piece concerning wildlife protection around the Sawtooth area which straddled county lines. He further had realized during the meeting that a group representing Saguache, Gunnison and Chaffee Counties had not met since before the pandemic. He was currently working on putting together a joint meeting of these three counties, who represented three different economic development and CDOT transportation regions.
3. Attended a Wildfire meeting with Community Development, various fire management agencies, and Commissioners Smith and Mason. From the meeting, Commissioner Houck highlighted that there

were several legislative opportunities for funding and resources regarding wildfire management and forest health. He was looking at more funding opportunities and working to make sure that these opportunities were distributed fairly throughout the State.

4. Attended the latest Sustainable Tourism and Outdoor Recreation (STOR) Committee meeting. Commissioner Houck stated that it was a productive meeting – they had appointed new members to the Board, and had looked at continued stewardship opportunities and what trail pieces would be coming on board for the summer season – for both resource protection and habitat restoration.
5. Traveling to Denver for Colorado Counties Inc (CCI) legislative meetings later this week. Commissioner Houck reminded the Board that he would be going to Denver for these meetings on Wednesday.
6. Put in a call to American Whitewater. Commissioner Houck outlined that he had called American Whitewater to touch base with them and to talk over issues such as drought, climate change, municipal and ag water supplies, and also recreational water usage. He mentioned the Wild & Scenic designation possibility in the Upper Crystal River and the importance of engaging with that constituency during the planning process. Commissioner Mason mentioned that the Wild & Scenic Committee he was now on would be meeting again at the end of the month.
7. Met with the Leadership Council. Commissioner Houck noted that they had gone over continued planning for COVID recovery, and had discussed the need to make sure their efforts in planning for childcare, housing, access to healthcare, and outdoor recreation did not lose sight of the insights gained during the pandemic.
8. Viewed film “High Country” as part of the Community Compass outreach in Crested Butte. Commissioner Houck let the Board know that the film was very good, and he highly recommended that they go see it if they had the opportunity.
9. Colorado Counties Inc (CCI), Counties & Commissioner Acting Together (CCAT), and Club 20 legislative season set to be done in about a month. Commissioner Houck reminded the commissioners that the legislative season was about over; they would have to really watch as bills flew through near the end.
10. Contractor Kick-off meeting at 7:00 am Wednesday, April 6<sup>th</sup>. Commissioner Houck explained that this has been sponsored by Community Development for several years now and was an excellent way to engage with the contractor community, ensuring they were aware of and understood policy and any changes made to it.

**CHANGE OF AGENDA:** Chairperson Houck elected to not go into executive session regarding House Bill 22-1117, but instead to openly discuss what would legally be needed in order to add items to the ballot.

Chairperson Houck briefly outlined that House Bill 1117 had been signed by the Governor last Thursday and it created the opportunity for new communities – if they did not already have a lodging tax or local marketing district (LMD) – to be able to put the option on the ballot for voters to approve this expansion. For communities that already had an LMD in place, it meant that they would have to go back to the voters with these new expanded areas in order to authorize the use of the LMD in them. Chairperson Houck felt that Gunnison County needed to go back to its voters next November, asking them to approve LMD expansion.

Up to this point, the LMD had been limited to three areas – marketing, advertising, and economic development. The expansion would allow for any uses the community might deem necessary, such as adding amenities like bathrooms and boat ramps to already existing recreational infrastructure. The County would like the ability to do this, as well as to expand into its ability to better support the workforce. Commissioner Smith also reminded everyone present that 10% of funds collected would still need to be applied towards marketing.

The Board then spent several minutes discussing types of marketing already done in Gunnison County, and what opportunities they would like to see expanded upon. Commissioner Smith asked CA Hoyt how specific they needed to be with the expansion areas. CA Hoyt then noted that this could be up to their discretion, keeping in mind the language that needed to follow the guidelines of HB 1117. He added that the voters could also pick and choose which areas they wanted to expand into, as long as at least 10% of funds went toward marketing and advertisement. The Board also discussed the bill’s term, “enhancing visitor experience” and how that can be interpreted in identifying which areas to choose for expansion, expressing caution in not spreading funds too far and diminishing effectiveness.

At the end of this discussion, Chairperson Houck summarized that the Board wished to put something on the ballot, and that they would need to talk more about the specifics at a later time. He then requested CA Hoyt to go over the statutory timeline and requirements for the development of ballot language.

CA Hoyt outlined that, under the Colorado Election Code and under this new legislation, the Board would need to pass a resolution authorizing a change of the lodging tax to go before the voters in the next general election. The deadline to pass this resolution and then begin coordination with the County Clerk would be July 29, 2022. The County would then have to enter into a governmental agreement with the County Clerk for running that election in August, with funding by the LMD. Chairperson Houck then noted that in the future meetings, they would need to convene as the Local Marketing District in order to take any action needed.

In conclusion, Chairperson Houck stated that there did not need to be official action at that time, but the discussion’s purpose had been to get a general direction. He felt, moreover, that the commissioners had been working hard for this funding expansion. Commissioner Mason remembered that, when he first

came on as a commissioner, there was discussion but no support for the expansion at the State level. He noted that this would now allow counties to work on their housing and workforce support, and added that this last summer was the first time he had seen businesses say, "Stop marketing." Chairperson expressed his hopes that this would create the flexibility to meet changes in far more nimble ways.

**CHANGE OF AGENDA:** Houck elected to move to the last agenda item, "November 8, 2022 Coordinated Election" at this point, and hold the final executive session after that.

**NOVEMBER 8, 2022 COORDINATED ELECTION:** After a moment discussing whether the Board needed to convene as the LMD in order to give direction, they heard from CA Hoyt that it was appropriate to remain convened as the Board of County Commissioners. The Board then gave direction for working with the Clerk's Office to develop resolution language for putting this item on the November 8, 2022 coordinated election ballot.

**RECESS:** Chairperson Houck recessed the regular meeting at 10:17 am, in order to go into the executive session.

**POSSIBLE EXECUTIVE SESSION PURSUANT TO C.R.S. 24-6-402(4)(B): CONFERENCE WITH COUNTY ATTORNEY OR ASSISTANT COUNTY ATTORNEY; ATTORNEY-CLIENT PRIVILEGED COMMUNICATION, DISCUSSION AND LEGAL ADVICE REGARDING: (A) EX PARTE COMMUNICATIONS IN QUASI-JUDICIAL PROCEEDINGS; (B) COLORADO OPEN MEETING LAW; AND (C) CONFLICTS OF INTEREST:** Chairperson Houck moved to go into Executive Session, pursuant to C.R.S. § 24-6-402 (4) (b), for conferences with the County Attorney or Assistant County Attorney for Attorney-Client privileged communication, discussion and legal advice regarding: (A) Ex Parte communications in quasi-judicial proceedings; (B) Colorado Open Meeting Law; and (C) conflicts of interest. The participants within the Executive Session would be Commissioner Houck, Commissioner Mason, Commissioner Smith, County Manager Matthew Birnie, and County Attorney Matthew Hoyt. Because this was to be Attorney-Client privileged communication, no contemporaneous record of the meeting would be kept. Any decision as a result of this meeting would then be made outside of the meeting and within the public eye. Commissioner Smith seconded the motion, and the motion carried unanimously.

**BREAK:** Chairperson Houck called for a short break from 10:19 am to 10:23 am, directly before they started the executive session.

The Board went into executive session at 10:23 am. The executive session was held in the BOCC Boardroom, and no contemporaneous records were kept. *Executive sessions of the Board of County Commissioners are conducted as per C.R.S, §24-6-402(4). This specific session was conducted as per §24-6-402 (4) (b).*

Attorney Statement Regarding Executive Session

Pursuant to C.R.S. 24-6-402(4), I attest that I am the Gunnison County Attorney, that I represent the Gunnison County Board of County Commissioners, that I attended all of the above referenced executive session, that all of the executive session was confined to the topic authorized for discussion pursuant to C.R.S. § 24-6-402(4)(b) and that, because in my opinion all of the discussion during the executive session constituted a privileged attorney-client communication, no record of the executive session was required to be kept and no such record was kept.

Date: \_\_\_\_\_

\_\_\_\_\_  
Matthew Hoyt  
Gunnison County Attorney

Chairperson Statement Regarding Executive Session

Pursuant to C.R.S. 24-6-402(4), I attest that I am the Chairperson of the Gunnison County Board of Commissioners, that I attended all of the above referenced executive session, and that all of that executive session was confined to the topic authorized for discussion pursuant to C.R.S. § 24-6-402(4)(b).

Date: \_\_\_\_\_

\_\_\_\_\_  
Jonathan Houck, Chairperson  
Gunnison County Board of Commissioners

At 11:41 am, it was moved by Chairperson Houck to come out of executive session, affirming that the participants in the executive session remained consistent with those read into the record, and that they did stay on topic. Commissioner Smith seconded the motion. Motion carried unanimously.

Chairperson Houck then thanked CA Hoyt for the advice given during the meeting, and let those present know that there would be no direction or decision needed from the Board of County Commissioners at that time.

**ADJOURN:** Chairperson Houck adjourned the regular meeting of the Gunnison County Board of County Commissioners at 11:42 am.

\_\_\_\_\_  
Jonathan Houck, Chairperson

\_\_\_\_\_  
Roland Mason, Vice-Chairperson

\_\_\_\_\_  
Liz Smith, Commissioner

Minutes Prepared By:

\_\_\_\_\_  
Melanie Bollig, Deputy County Clerk

Attest:

\_\_\_\_\_  
Kathy Simillion, County Clerk

**GUNNISON COUNTY BOARD OF COMMISSIONERS TEXT INCLUSION INTO MINUTES**

**BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO  
RESOLUTION NO: 2022-17**

A RESOLUTION VACATING A CERTAIN PORTION OF LAUREL STREET LYING  
WITHIN THE TOWN OF TINCUP, COUNTY OF GUNNISON, STATE OF COLORADO

WHEREAS, the Board of County Commissioners of the County of Gunnison, Colorado ("Board"), by virtue of Colorado law, has authority and is the owner of certain roads and alleys lying within the County of Gunnison; and

WHEREAS, the Board has determined that not all platted roads and alleys are necessary for public access to privately owned property; and

WHEREAS, the Board has received a request to vacate a certain portion of Laurel Street lying within the Town of Tincup, County of Gunnison, State of Colorado described as follows:

That portion of Laurel Street adjacent to Lots 18-24, Block 14 and Lots 1-7, Block 13, Town of Tincup, County of Gunnison County, State of Colorado; and

WHEREAS, the vacation of the above described portion of Laurel Street lying within the Town of Tincup, will not hinder any property owners of any lands from having access to their respective land nor disrupt existing travel modes or anticipated conditions in traffic or development patterns; and

WHEREAS, there will be no adverse impact to the natural environment, community needs or public health, safety and welfare from the vacation of the above described portion of Laurel Street lying within the Town of Tincup; and

WHEREAS, the notices required by Colorado law for such vacation have been given and the Board conducted a public hearing on November 2, 2021 on such vacation pursuant to the County's Road and Bridge Standards; and

WHEREAS, the Board approved the vacation of the above-referenced portion of Laurel Street contingent upon its approval of both a Lot Cluster Agreement and Declaration, LUC-21-00049 for Sally S. Kuisle Revocable Trust at Lots 18-24, Block 14, Town of Tincup and approval by the Gunnison County Environmental Health Board from the County's Onsite Wastewater Treatment System (OWTS) standards for an OWTS on a parcel less than one-acre at 132 Laurel Street in Tincup; and

WHEREAS, the Lot Cluster Agreement and Declaration, LUC-21-00049 for Sally S. Kuisle Revocable Trust at Lots 18-24, Block 14, Town of Tincup, was approved by the Board November 2, 2021, contingent upon approval by the Gunnison County Environmental Health Board from the County's OWTS standards for an OWTS on a parcel less than one-acre at 132 Laurel Street in Tincup; and

WHEREAS, on February 3, 2022, the Gunnison County Environmental Health Board approved the application for Sally Kuisle (OWTS-21-00325) for a variance from the County's OWTS standards for an OWTS on a parcel less than one-acre at 132 Laurel Street in Tincup with the condition of a platted easement, with said Easement Agreement having been recorded March 25, 2022, Reception #683771; and

WHEREAS, the contingencies imposed by the Board with regard to both the street vacation and lot cluster referenced above have been satisfied; and

WHEREAS, in order to provide a clean record and to formally acknowledge and find as a matter of fact the satisfaction of these contingencies, the Board has deemed it prudent to adopt this Resolution;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of the County of Gunnison, Colorado that the certain portion of Laurel Street lying within the Town of Tincup, County of Gunnison, State of Colorado described as follows shall be and hereby is vacated:

That portion of Laurel Street adjacent to Lots 18-24, Block 14 and Lots 1-7, Block 13, Town of Tincup, County of Gunnison County, State of Colorado; and

It is the specific intent of the Board that the vacation of the above described portion of Laurel Street lying within the Town of Tincup shall accrue to and vest in the record owner(s) of adjacent real property pursuant to the provisions of C.R.S. § 43-2-302.

FURTHERMORE, this Resolution is contingent upon and shall not become effective until the recording in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado of this Resolution.

INTRODUCED by Commissioner Smith, seconded by Commissioner Mason, and adopted this 5th day of April 2022.

BOARD OF COUNTY COMMISSIONERS  
GUNNISON COUNTY

Houck – yes, Mason – yes, Smith – yes

**BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO  
RESOLUTION NO: 2022-18**

**A RESOLUTION AMENDING RESOLUTION NO. 2018-30 GOVERNING THE  
CONTROL AND LICENSING OF DOGS IN UNINCORPORATED GUNNISON COUNTY, COLORADO  
TO CLARIFY PENALTIES FOR CERTAIN VIOLATIONS**

WHEREAS, the Board of County Commissioners of the County of Gunnison, Colorado ("Board") adopted Resolution No. 2018-30, A Resolution Repealing and Rescinding Prior Resolutions and Ordinances Governing the Control and Licensing of Dogs, and Adopting New Rules and Regulations Governing the Control and Licensing of Dogs in Unincorporated Gunnison County, Colorado;

WHEREAS, Colo. Rev. Stat. §30-15-101, et seq. authorizes the Board to adopt a resolution providing for control and licensing of dogs in the unincorporated area of Gunnison County;

WHEREAS, the Board continues to find that the control and licensing of dogs is a community wide concern;

WHEREAS, Colo. Rev. Stat. §30-15-102 identifies penalties for any violation of any provision of a county resolution adopted pursuant to Colo. Rev. Stat. §30-15-101 et seq.;

WHEREAS, during the 2021 legislative session, the Colorado Legislature passed Senate Bill 21-271, which changed penalties associated with violation of county ordinances related to vicious dogs, effective March 1, 2022; and

WHEREAS, because of this change in the law, the Gunnison County Board of County Commissioners has decided to amend Ordinance No. 5 to clarify the penalties for vicious dogs with the changes to C.R.S. § 30-15-102 made as a result of Senate Bill 21- 271;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of the County of Gunnison, Colorado that Article VII, Section 1(A) shall be amended as follows:

1. Violations, Penalties. In addition to each and all of the enforcement provisions provided for herein, the following penalties shall apply:
  - A. The Board hereby adopts the penalty assessment procedure provided in Colo. Rev. Stat. § 30-15-102(1) as it may be amended for any violation of any provision of this Resolution, not involving bodily injury to any Person with the following graduated fine schedule:
    1. First offense: \$ 100.00;
    2. Second offense: \$ 250.00;
    3. Third offense: \$ 500.00;
    4. Each subsequent offense: \$1,000.00.

These penalties shall be imposed with regard to the violator and not the subject Dog. Any violation of this Resolution not involving bodily injury to any person is a petty offense.

All other provisions of Resolution No. 2018-30 shall remain the same as if fully set forth in this Resolution, unless Resolution No. 2018-30 or this Resolution is further amended or repealed by the Board by subsequent Resolution.

INTRODUCED by Commissioner Smith, seconded by Commissioner Mason, and adopted this 5th day of April 2022.

BOARD OF COUNTY COMMISSIONERS  
GUNNISON COUNTY

Houck – yes, Mason – yes, Smith – yes

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

**Agenda Item:** Colorado Department of Human Services Contract; Gu

**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:** Colorado department of Human Services and Gunnison County Sheriff's Office

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

**Summary:**

State Office of Behavioral Health reimburses Gunnison County for Jail Based Behavioral Health Services provided within the jail by Gunnison Vallev Health who we have contracted for services with.

**Fiscal Impact:** \$155,000.00

**Submitted by:** Adam W. Murdie

**Submitter's Email Address:** amurdie@gunnisoncounty.org

**Finance Review:**  Required  Not Required

Comments:

Reviewed by: GUNCOUNTY1\jguerra

Discharge Date: 4/25/2022

**County Attorney Review:**  Required  Not Required

Comments:  
Appears legally sufficient. ASFR 4.27.22.

Reveiwed by: GUNCOUNTY1\asanfilippo-rosser

Discharge Date: 4/27/2022

Certificate of Insurance Required

Yes  No

**County Manager Review:**

Comments:

Reveiwed by: GUNCOUNTY1\mbirmie

Discharge Date: 4/27/2022

Consent Agenda  Regular Agenda  Worksession

Time Allotted: \_\_\_\_\_

Agenda Date: 5/3/2022



## STATE OF COLORADO DEPARTMENT OF HUMAN SERVICES CONTRACT

### SIGNATURE AND COVER PAGES

<b>CMS #:</b> 23 IBEH 174456	<b>eClearance#:</b> 2203731
<b>State Agency</b> Colorado Department of Human Services  Office of Behavioral Health Community Behavioral Health	<b>Contractor</b> Gunnison County Colorado for the use and benefit of Gunnison County Sheriff's Department  Contractor's State of Incorporation: <b>Colorado</b>
<b>Contract Maximum Amount</b> Initial Term State Fiscal Year 2023                      \$155,200.00 Extension Terms None         Maximum Amount for All Fiscal Years    \$155,200.00	<b>Contract Performance Beginning Date</b> The later of the Effective Date or July 1, 2022  <b>Initial Contract Expiration Date</b> June 30, 2023  Except as stated in <b>§2D</b> , the total duration of this Contract, including the exercise of any options to extend, shall not exceed 5 Years from its Performance Beginning Date.
<b>Pricing/Funding</b>  Price Structure: Cost Reimbursement Contractor shall invoice: Monthly Fund Source: State General Fund	<b>Options</b>  The State shall have the following options if indicated with "Yes," as further described in §2.C and §5.B.v: Option to Extend Term per §2.C: Yes Option to Increase or Decrease Maximum Amount per §5.B.v: Yes



<p><b>Insurance</b>          Contractor shall maintain the following insurance if indicated with “Yes,” as further described in §10:</p> <p>Worker’s Compensation: Yes          General Liability: Yes          Automobile Liability: <b>Yes</b>          Protected Information: <b>Yes</b>          Professional Liability Insurance: <b>Yes</b>          Cyber/Net. Security-Privacy Liability Insurance: <b>No</b>          Crime Insurance: <b>No</b></p>	<p><b>Miscellaneous</b>          Authority to enter into this Contract exists in: C.R.S. § 27-80-106.          Law-Specified Vendor Statute (if any): NA          Procurement Method: Exempt          Solicitation Number (if any): NA</p>
<p><b>State Representative</b></p> <p>Summer Gathercole          Office of Behavioral Health          3824 West Princeton Circle          Denver, CO 80236          303-866-2354 / summer.gathercole@state.co.us</p>	<p><b>Contractor Representative</b></p> <p>Adam Murdie, Under Sheriff          Gunnison County Sheriff          9200 E. Virginia Ave.          Gunnison, CO 81230          970-641-7657 / amurdie@gunnisoncounty.org</p>

<p><b>Exhibits</b>          The following Exhibits are attached and incorporated into this Contract:</p> <p>Exhibit A - Statement of Work          Exhibit B - Budget          Exhibit C - Miscellaneous Provisions          Exhibit D - HIPAA BAA/QSOA</p>
<p><b>Contract Purpose</b>          In accordance with the provisions of this Contract and its exhibits and attachments, the Contractor shall provide substance abuse and mental health treatment in the Gunnison County jail.</p>

**Signature Page Begins On Next Page**

**THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK**



**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

Each person signing this Contract represents and warrants that he or she is duly authorized to execute this Contract and to bind the Party authorizing his or her signature.

<p align="center"><b>CONTRACTOR</b></p> <p align="center">Gunnison County Colorado for the use and benefit of Gunnison County Sheriff's Office</p> <hr/> <p>By: Johnathan Houck, County Commissioner</p> <p>Date: _____</p>	<p align="center"><b>STATE OF COLORADO</b></p> <p align="center">Jared S. Polis, Governor Department of Human Services Michelle Barnes, Executive Director</p> <hr/> <p>By: _____</p> <p>Date: _____</p>
<p>2nd State or Contractor Signature if Needed</p> <hr/> <p>By: Name &amp; Title of Person Signing for Signatory</p> <p>Date: _____</p>	<p align="center"><b>LEGAL REVIEW</b></p> <p align="center">Philip J. Weiser, Attorney General</p> <hr/> <p>By: _____ Assistant Attorney General</p> <p>Date: _____</p>
<p align="center">In accordance with §24-30-202 C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p align="center"><b>STATE CONTROLLER</b> <b>Robert Jaros, CPA, MBA, JD</b></p> <p align="center">By: _____ Andrea Eurich / Janet Miks/Toni Williamson</p> <p align="center">Effective Date: _____</p>	

-- Signature and Cover Pages End --

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### 1. PARTIES

This Contract is entered into by and between Contractor named on the Signature and Cover Pages for this Contract (the “Contractor”), and the STATE OF COLORADO acting by and through the Department of Human Services (the “State” or “CDHS”). Contractor and the State agree to the terms and conditions in this Contract.

### 2. TERM AND EFFECTIVE DATE

#### A. Effective Date

This Contract shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Contract before the Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract.

#### B. Initial Term

The Parties’ respective performances under this Contract shall commence on the Contract Performance Beginning Date shown on the Signature and Cover Pages for this Contract and shall terminate on the Initial Contract Expiration Date shown on the Signature and Cover Pages for

this Contract (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Contract.

C. Extension Terms - State’s Option

If the Signature and Cover Pages for this Contract shows that the State has the Option to Extend Term, then the State, at its discretion, shall have the option to extend the performance under this Contract beyond the Initial Term for a period, or for successive periods, at the same rates and under the same terms specified in the Contract (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to §21 “Sample Option Letter.” The State may include and incorporate a revised budget with the option letter, as long as the revised budget does not unilaterally change rates or terms specified in the Contract. Except as stated in §2.D, the total duration of this Contract, including the exercise of any options to extend, shall not exceed 5 years from its Performance Beginning Date, or the number of years specified on the Signature and Cover Pages if such number is less than 5 years, absent prior approval from the Chief Procurement Officer in accordance with the Colorado Procurement Code.

D. End of Term Extension

If this Contract approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor as provided in §15, may unilaterally extend such Initial Term or Extension Term for a period not to exceed 2 months (an “End of Term Extension” or “Holdover”), regardless of whether additional Extension Terms are available or not. Any such extension shall be under the same terms and conditions of the operative Contract including, but not limited to, prices, rates, and service delivery requirements. The provisions of this Contract in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of the Contract.

E. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in whole or in part. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Contract by the State for breach by Contractor, which shall be governed by §12.A.i.

i. Method and Content

The State shall notify Contractor of such termination in accordance with §15. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in §12.A.i.a.

iii. Payments

If the State terminates this Contract in the public interest, the State shall pay Contractor an amount equal to the percentage of the total reimbursement payable under this Contract that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Contract is less than 60% completed, as determined by the State, the State may reimburse Contractor for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Contract, incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

### 3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

A. "Breach of Contract" means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.

B. "Business Day" means any day other than Saturday, Sunday, or a Legal Holiday as listed in §24-11-101(1) C.R.S.

C. "Chief Procurement Officer" means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202(6), C.R.S. to procure or supervise the procurement of all supplies and services needed by the state.

D. “CJI” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under 24-72-302 C.R.S.

E. “Contract” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto. For purposes of clarification and the removal of any doubt, subject to any future modifications thereto, the Signature and Cover Pages and Sections 1 through 21, as identified in the Table of Contents herein above, shall constitute the “main body” of this Contract exclusively.

F. “Contract Funds” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.

G. “CORA” means the Colorado Open Records Act, §§24-72-200.1 et. seq., C.R.S.

H. “End of Term Extension” means the time period defined in §2.D.

I. “Effective Date” means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Contract. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature and Cover Page for this Contract.

J. “Exhibits” means the exhibits and attachments included with this Contract as shown on the Signature and Cover Pages for this Contract..

K. “Extension Term” means the time period defined in §2.C.

L. “Goods” means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.

M. “Incident” means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, et. seq., C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes

to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.

- N. “Initial Term” means the time period defined in §2.B.
- O. “Party” means the State or Contractor, and “Parties” means both the State and Contractor.
- P. “PCI” means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- Q. “PII” means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 and 24-73-101, C.R.S.
- R. “PHI” means any individually identifiable health information, transmitted or maintained in electronic or any form or medium, including but not limited to demographic information,, (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- S. “Services” means the services to be performed by Contractor as set forth in this Contract, and shall include any services to be rendered by Contractor in connection with the Goods.
- T. “State Confidential Information” means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, Educational Records, Substance Use Disorder Information, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State;

(iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.

U. “State Fiscal Rules” means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.

V. “State Fiscal Year” means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.

W. “State Records” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.

X. “Subcontractor” means third-parties, if any, engaged by Contractor to aid in performance of the Work.

Y. “Tax Information” means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.

Z. “Work” means the Goods delivered and Services performed pursuant to this Contract.

AA. “Work Product” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Contract that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

#### **4. STATEMENT OF WORK**

Contractor shall complete the Work as described in this Contract and in accordance with the provisions of the Exhibits. The State shall have no liability to compensate Contractor for the delivery of any goods or the performance of any services that are not specifically set forth in this Contract.

## 5. PAYMENTS TO CONTRACTOR

### A. Maximum Amount

Payments to Contractor are limited to the unpaid, obligated balance of the Contract Funds. The State shall not pay Contractor any amount under this Contract that exceeds the Contract Maximum for that term shown on the Signature and Cover Pages for this Contract.

### B. Payment Procedures

#### i. Invoices and Payment

a. The State shall pay Contractor in the amounts and in accordance with the Exhibits.

b. Contractor shall initiate payment requests by invoice to the State, in a form and manner approved by the State. Invoicing is a material component of Contract performance and corresponding Deliverables. Invoices shall be due to the State within 45 days of work performed by the Contractor, unless otherwise stated in the Exhibits hereto. Invoicing shall be done accurately and per any specifications set forth in the Exhibits hereto. Time is of the essence in this regard. If Contractor fails to timely and/or properly invoice the State, the State may not be obligated to pay the bill resulting from said invoice. Failure to timely and/or properly invoice the State is a material breach of this Contract which would be cause for the State to refuse payment and/or terminate the contract on these grounds in whole or in part, at the State's discretion.

c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Contractor and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Contractor shall make all changes necessary to correct that invoice.

d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Contract.

#### ii. Interest

Amounts not paid by the State within 45 days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Contractor shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Payment Disputes

If Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the State in writing of its dispute within 30 days following the earlier to occur of Contractor's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Contractor and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Contractor beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Contract Funds the State's obligation to pay Contractor shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Contract shall be made only from Contract Funds, and the State's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may, upon written notice, terminate this Contract, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Contract were terminated in the public interest as described in §2.E.

v. Option to Increase Maximum Amount

If the Signature and Cover Pages for this Contract show that the State has the Option to Increase or Decrease Maximum Amount, then the State, at its discretion, shall have the option to increase or decrease the statewide quantity of Goods and Services based upon the rates established in this Contract, and increase or decrease the maximum amount payable accordingly. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to §21 "Sample Option Letter." Delivery of Goods and performance of Services shall continue at the same rates and terms as described in this Contract. The State may include and incorporate a revised budget with the option letter, as long as the revised budget does not unilaterally change rates or terms specified in the Contract.

## **6. REPORTING - NOTIFICATION**

### **A. Quarterly Reports.**

In addition to any reports required pursuant to §17 or pursuant to any other Exhibit, for any contract having a term longer than 3 months, Contractor shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Contract. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State at the time or times specified by the State in this Contract, or, if no time is specified in this Contract, not later than 5 Business Days following the end of each calendar quarter.

### **B. Litigation Reporting**

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Contract or may affect Contractor's ability to perform its obligations under this Contract, Contractor shall, within 5 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified on the Signature and Cover Pages as provided in §15.

### **C. Performance Outside the State of Colorado or the United States, §24-102-206 C.R.S.**

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State, in accordance with §15 and in a form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Contract. This section shall not apply if the Contract Funds include any federal funds.

## **7. CONTRACTOR RECORDS**

### **A. Maintenance**

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper

performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: (i) the date 3 years after the date this Contract expires or is terminated, (ii) final payment under this Contract is made, (iii) the resolution of any pending Contract matters, or (iv) if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the “Record Retention Period”).

#### B. Inspection

Contractor shall permit the State, the federal government, and any duly authorized agent of a governmental entity, to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor’s office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 2 Business Days’ notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

#### C. Monitoring

The State, in its discretion, may monitor Contractor’s performance of its obligations under this Contract using procedures as determined by the State. The State shall monitor Contractor’s performance in a manner that does not unduly interfere with Contractor’s performance of the Work.

#### D. Final Audit Report

Contractor shall promptly submit to the State a copy of any final audit report of an audit performed on Contractor’s records that relates to or affects this Contract or the Work, whether the audit is conducted by Contractor or a third party.

### **8. CONFIDENTIAL INFORMATION-STATE RECORDS**

#### A. Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Contract, permitted by law, or approved in writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: (i) the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this

Contract as an Exhibit, if applicable, (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJ, (iv) the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Contract, if applicable. Contractor shall immediately forward any request or demand for State Records to the State's principal representative, and (v) the federal 42 Part2 for all substance use disorder information and the HIPAA Business Associate\Qualified Service Organization Agreement attached to this Contract, if applicable. Contractor shall immediately forward any request or demand for State Records to the State's principal representative.

#### B. Other Entity Access and Nondisclosure Agreements

Contractor may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

#### C. Use, Security, and Retention

Contractor shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Contractor shall provide the State with access, subject to Contractor's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Contract, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

#### D. Incident Notice and Remediation

If Contractor becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that none of Contractor or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident,

Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State, at no additional cost to the State. The State may, in its sole discretion and at Contractor's sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with the results of such audit and evidence of Contractor's planned remediation in response to any negative findings.

**E. Data Protection and Handling**

Contractor shall ensure that all State Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

**F. Safeguarding PII**

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Contractor shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 et seq., C.R.S.

**9. CONFLICTS OF INTEREST**

**A. Actual Conflicts of Interest**

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Contractor under this Contract. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Contract.

**B. Apparent Conflicts of Interest**

Contractor acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Contract.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Contract.

D. Contractor shall maintain a written conflict of interest policy. Contractor shall provide the written conflict of interest policy to the State upon request.

## 10. INSURANCE

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Contract to the extent that such insurance policies are required as shown on the Signature and Cover Page for this Contract. All insurance policies required by this Contract shall be issued by insurance companies as approved by the State. These insurance requirements shall not be construed as caps or limitations on liability.

A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any 1 fire.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

#### D. Protected Information

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJJ, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

i. \$1,000,000 each occurrence; and

ii. \$2,000,000 general aggregate.

iii. Notwithstanding sections D(i) and (ii) above, if Contractor has State Confidential Information for 10 or fewer individuals or revenues of \$250,000 or less, Contractor shall maintain limits of not less than \$50,000.

iv. Notwithstanding sections D(i) and (ii) above, if Contractor has State Confidential Information for 25 or fewer individuals or revenues of \$500,000 or less, Contractor shall maintain limits of not less than \$100,000.

#### E. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

i. \$1,000,000 each occurrence; and

ii. \$1,000,000 general aggregate.

#### F. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

i. \$1,000,000 each occurrence; and

ii. \$1,000,000 general aggregate.

#### G. Cyber/Network Security and Privacy Liability

Liability insurance covering civil, regulatory, and statutory damages, contractual damages, data breach management exposure, and any loss of income or extra expense as a result of actual or alleged breach, violation or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

i. \$1,000,000 each occurrence; and

ii. \$2,000,000 general aggregate.

H. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor and Subcontractors.

I. Primacy of Coverage

Coverage required of Contractor and each Subcontractor shall be primary and noncontributory over any insurance or self-insurance program carried by Contractor or the State.

J. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §15 within 7 days of Contractor's receipt of such notice.

K. Subrogation Waiver

All insurance policies secured or maintained by Contractor or its Subcontractors in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

L. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S. (the "GIA"), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor maintain at all times during the terms of this Contract, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

M. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within 7 Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within 7 Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the

State certificates showing Subcontractor insurance coverage required under this Contract within 7 Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

## **11. BREACH OF CONTRACT**

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in the Contract in order to protect the public interest of the State; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

## **12. REMEDIES**

### **A. State's Remedies**

If Contractor is in breach under any provision of this Contract and fails to cure such breach, the State, following the notice and cure period set forth in §11, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Contract or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

#### **i. Termination for Breach**

In the event of Contractor's uncured breach, the State may terminate this entire Contract or any part of this Contract. Contractor shall continue performance of this Contract to the extent not terminated, if any.

#### **a. Obligations and Rights**

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Contract's terms. At the request of the State,

Contractor shall assign to the State all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor but in which the State has an interest. At the State's request, Contractor shall return materials owned by the State in Contractor's possession at the time of any termination. Contractor shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Contractor for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Contract had been terminated in the public interest under §2.E.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor, and the State may withhold payment to Contractor for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Contractor is determined. The State may withhold any amount that may be due Contractor as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Contractor after the suspension of performance.

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Contractor's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, as approved by the State, (i) secure that right to use such Work for the State and Contractor; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the State.

B. Contractor's Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in §11 and the dispute resolution process in §14, shall have all remedies available at law and equity.

### 13. STATE'S RIGHT OF REMOVAL

The State retains the right to demand, at any time, regardless of whether Contractor is in breach, the immediate removal of any of Contractor's employees, agents, or subcontractors from the work whom the State, in its sole discretion, deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Contract is deemed by the State to be contrary to the public interest or the State's best interest.

### 14. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

B. Resolution of Controversies

If the initial resolution described in §14.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of CDHS as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109 and 24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the

Procurement Official, Contractor's challenge shall be an appeal to the Executive Director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

## **15. NOTICES AND REPRESENTATIVES**

Each individual identified on the Signature and Cover Pages shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's principal representative at the address set forth on the Signature and Cover Pages for this Contract or (C) as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Signature and Cover Pages for this Contract. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this section without a formal amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

## **16. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION**

### **A. Work Product**

Contractor assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Contractor is under contract with the State at the time, Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of "works made for hire" under 17 U.S.C.S. §101, the Parties intend the Work Product to be a work made for hire.

#### **i. Copyrights**

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Contractor hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon,

derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Contractor cannot make any of the assignments required by this section, Contractor hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

## ii. Patents

In addition, Contractor grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Contractor that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

### B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Contract, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor's obligations in this Contract without the prior written consent of the State. Upon termination of this Contract for any reason, Contractor shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

### C. Exclusive Property of Contractor

Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Contractor Property"). Contractor Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: (i) entered into as exhibits to this Contract; (ii) obtained by the State from the applicable third-party vendor; or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

## **17. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller Policies.

## **18. GENERAL PROVISIONS**

### **A. Assignment**

Contractor's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of this Contract

### **B. Subcontracts**

Unless other restrictions are required elsewhere in this Contract, Contractor shall not enter into any subcontract in connection with its obligations under this Contract without providing notice to the State. The State may reject any such subcontract, and Contractor shall terminate any subcontract that is rejected by the State and shall not allow any Subcontractor to perform any Work after that Subcontractor's subcontract has been rejected by the State. Contractor shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.

### **C. Binding Effect**

Except as otherwise provided in §18.A., all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

### **D. Authority**

Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations have been duly authorized.

### **E. Captions and References**

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

#### F. Counterparts

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

#### G. Entire Understanding

This Contract represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.

#### H. Digital Signatures

If any signatory signs this Contract using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

#### I. Modification

Except as otherwise provided in this Contract, any modification to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

#### J. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Contract to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.

#### K. Order of Precedence

In the event of a conflict or inconsistency between this Contract and any Exhibits or attachments such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- i. Federal Provisions (if any).
- ii. Colorado Special Provisions in §19 of the main body of this Contract.
- iii. HIPAA Business Associate Agreement (if any).
- iv. Information Technology Provisions Exhibit (if any).
- v. The provisions of the other sections of the main body of this Contract.
- vi. Any other Exhibit(s) shall take precedence in alphabetical order.

#### L. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Contract.

#### M. Severability

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with the intent of the Contract.

#### N. Survival of Certain Contract Terms

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of the Contract shall survive the termination or expiration of the Contract and shall be enforceable by the other Party.

#### O. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), et seq. C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Contractor. Contractor shall be solely responsible for any

exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Contract.

**P. Third Party Beneficiaries**

Except for the Parties' respective successors and assigns described in §18.A., this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

**Q. Waiver**

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

**R. CORA Disclosure**

To the extent not prohibited by federal law, this Contract and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

**S. Standard and Manner of Performance**

Contractor shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

**T. Licenses, Permits, and Other Authorizations.**

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Contract, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all licenses, certifications, permits and other authorizations required to perform their obligations in relation to this Contract.

**U. Indemnification**

**i. Applicability**

This entire §18.U does not apply to Contractor if Contractor is a "public entity" within the meaning of the GIA.

ii. General Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the “Indemnified Parties”), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys’ fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Contract.

iii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §8 may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys’ fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §8.

iv. Intellectual Property Indemnification

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys’ fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

V. Other

i. Compliance with State and Federal Law, Regulations, & Executive Orders

Contractor shall comply with all State and, if Federal funding is involved, Federal law, regulations, executive orders, State and Federal Awarding Agency policies, procedures, directives, and reporting requirements at all times during the term of this Contract.

ii. Accessibility

Contractor shall comply with and adhere to Section 508 of the U.S. Rehabilitation Act of 1973, as amended, and §§24-85-101, et seq., C.R.S. Contractor shall comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards and available at <https://www.w3.org/TR/WCAG21/>.

**19. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)**

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.



This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

**B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.**

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

**C. GOVERNMENTAL IMMUNITY.**

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

**D. INDEPENDENT CONTRACTOR.**

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

**E. COMPLIANCE WITH LAW.**

Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

**F. CHOICE OF LAW, JURISDICTION, AND VENUE.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

**G. PROHIBITED TERMS.**

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109, C.R.S.

**H. SOFTWARE PIRACY PROHIBITION.**

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

**J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.**

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, et seq.,

C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

**K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, et seq., C.R.S.**

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and CDHS within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to CDHS a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101 et seq., C.R.S., CDHS may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, et seq., C.R.S.

Contractor, if a natural person 18 years of age or older, hereby swears and affirms under penalty of perjury that Contractor (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §§24-76.5-101 et seq., C.R.S., and (iii) has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

**20. DEPARTMENT OF HUMAN SERVICES PROVISIONS**

A. Exclusion, Debarment and/or Suspension

Contractor represents and warrants that Contractor, its employees, agents, assigns, or Subcontractors, are not presently excluded from participation, debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or otherwise ineligible to participate in a “federal health care program” as defined in 42 U.S.C. § 1320a-7b(f) or in any other government payment program by any federal or State of Colorado department or agency. If Contractor, its employees, agents, assigns, or Subcontractors, are excluded from participation, or becomes otherwise ineligible to participate in any such program during the term of this Contract, Contractor shall notify the State in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to Contractor, the State may immediately terminate this Contract.

B. Emergency Planning

If Contractor provides Work that is an extension of State work performed as part of the State of Colorado Emergency Operations Plan or for a publicly funded safety net program, as defined by C.R.S. § 24-33.5-701 et seq., Contractor shall perform the Work in accordance with the State’s Emergency Operations Plan or continuity of operations plan in the event of an emergency. If requested, Contractor shall provide a plan and reporting information to ensure compliance with the State’s Emergency Operations Plan and C.R.S. § 24-33.5-701 et seq.

C. Restrictions on Public Benefits

If applicable, Contractor shall comply with C.R.S. §§ 24-76.5-101 – 103 exactly as the State is required to comply with C.R.S. §§ 24-76.5-101 – 103.

D. Discrimination

Contractor shall not:

i. discriminate against any person on the basis of race, color, national origin, age, sex, religion or handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS related conditions.

ii. exclude from participation in, or deny benefits to any qualified individual with a disability, by reason of such disability.

Any person who thinks he/she has been discriminated against as related to the performance of this Contract has the right to assert a claim, Colorado Civil Rights Division, C.R.S. §24-34-301, et seq.

E. Criminal Background Check

Pursuant to C.R.S. §27-90-111 and CDHS Policy VI-2.4, any independent contractor, and its agent(s), who is designated by the Executive Director or the Executive Director's designee to be a contracting employee under C.R.S. §27-90-111, who has direct contact with vulnerable persons in a state-operated facility, or who provides state-funded services that involve direct contact with vulnerable persons in the vulnerable person's home or residence, shall:

- i. submit to and successfully pass a criminal background check, and
- ii. report any arrests, charges, or summonses for any disqualifying offense as specified by C.R.S. §27-90-111 to the State.

Any Contractor or its agent(s), who does not comply with C.R.S. §27-90-111 and CDHS Policy VI-2.4, may, at the sole discretion of the State, be suspended or terminated.

F. Fraud Policy

Contractor shall comply with the current CDHS Fraud Policy.

G. C-Stat - Performance Based Program Analysis and Management Strategy (C-Stat Strategy)

Without any additional cost to the State, Contractor shall collect and maintain Contract performance data, as determined solely by the State. Upon request, Contractor shall provide the Contract performance data to the State. This provision does not allow the State to impose unilateral changes to performance requirements.

H. COVID-19 Pandemic

CDHS operates many facilities across the State and with regard to the COVID-19 Pandemic, Contractor may be subject to local or state public health orders, Department policy, individual facility policy, or any other requirement that could impose additional requirements on the Contractor. If so, Contractor shall promptly comply upon notice.

REST OF PAGE INTENTIONALLY LEFT BLANK



**SAMPLE OPTION LETTER (IF APPLICABLE)**

<b>State Agency</b> Insert Department's or IHE's Full Legal Name	<b>Option Letter Number</b> Insert the Option Number (e.g. "1" for the first option)
<b>Contractor</b> Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc...	<b>Original Contract Number</b> Insert CMS number or Other Contract Number of the Original Contract
<b>Current Contract Maximum Amount</b>	<b>Option Contract Number</b> Insert CMS number or Other Contract Number of this Option
Initial Term	<b>Contract Performance Beginning Date</b> Month Day, Year
State Fiscal Year 20xx \$0.00	
Extension Terms	<b>Current Contract Expiration Date</b> Month Day, Year
State Fiscal Year 20xx \$0.00	
State Fiscal Year 20xx \$0.00	
State Fiscal Year 20xx \$0.00	
Total for All State Fiscal Years \$0.00	

**1. OPTIONS:**

- A. Option to extend for an Extension Term
- B. Option to change the quantity of Goods under the Contract
- C. Option to change the quantity of Services under the Contract
- D. Option to modify Contract rates
- E. Option to initiate next phase of the Contract

**2. REQUIRED PROVISIONS:**

**A. For use with Option 1(A):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.

**B. For use with Options 1(B and C):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to Increase/Decrease the quantity of the Goods/Services or both at the rates stated in the Original Contract, as amended.

**C. For use with Option 1(D):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to modify the Contract rates specified in Exhibit/Section Number/Letter. The Contract rates attached to this Option Letter replace the rates in the Original Contract as of the Option Effective Date of this Option Letter.

**D. For use with Option 1(E):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc, which shall begin on Insert start date and end on Insert ending date at the cost/price specified in Section Number.

**E. For use with all Options that modify the Contract Maximum Amount:** The Contract Maximum Amount table on the Contract's Signature and Cover Page is hereby deleted and replaced with the Current Contract Maximum Amount table shown above.

**3. Option Effective Date:**

The effective date of this Option Letter is upon approval of the State Controller or \_\_\_\_\_, whichever is later.

<p style="text-align: center;"><b>STATE OF COLORADO</b></p> <p style="text-align: center;">INSERT-Name of Agency or IHE</p> <p style="text-align: center;">INSERT-Name &amp; Title of Head of Agency or IHE</p> <p style="text-align: center;"><u>SAMPLE ONLY – DO NOT SIGN</u></p> <p>By: Name &amp; Title of Person Signing for Agency or IHE</p> <p style="text-align: center;">Date: <u>SAMPLE ONLY – DO NOT SIGN</u></p>	<p>In accordance with §24-30-202 C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p style="text-align: center;"><b>STATE CONTROLLER</b></p> <p style="text-align: center;"><u>SAMPLE ONLY – DO NOT SIGN</u></p> <p style="text-align: center;">Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval</p> <p style="text-align: center;">Option Effective Date: <u>SAMPLE ONLY – DO NOT SIGN</u></p>
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## Exhibit A - Statement of Work

### Jail Based Behavioral Health Services

#### Definitions and Acronyms

**Definitions and Acronyms.** The following list of terms shall be applied to this contract and Statement of Work, based on the services that are provided at each respective jail:

**“Behavioral Health Administration (BHA) designated inpatient restoration facility”** means the facilities that are contracted with BHA to provide inpatient restoration services to individuals.

**“Bridges Program/Court Liaison”** means an individual employed or contracted with the State Court Administrator’s Office (SCAO) to implement and administer a program that identifies and dedicates local behavioral health professionals as court liaisons in each judicial district. These individuals are responsible for facilitating communication and collaboration between judicial and behavioral health systems.

<https://www.courts.state.co.us/Administration/Unit.cfm?Unit=bridgesThese>

**“Case Manager”** assists in the planning, coordination, monitoring, and evaluation of services for a client with emphasis on quality of care, continuity of services, and cost-effectiveness

**“Certified Addiction Specialist” - CAS (Formerly CAC II & III)** requires a bachelor’s degree in a Behavioral Health specialty (Psychology, Social Work, Human Services). This does not include Criminal Justice, Sociology or Nursing. These individuals are approved to provide Clinical Supervision and consultation to individuals working towards CAT or CAS. 2,000 clinically supervised hours (1,000 direct clinical hours beyond the Technician). Must pass the NCAC II exam and Jurisprudence exam.

**“Certified Addition Technician” - CAT (Formerly CAC I)** requires 1000 hours of clinically supervised work hours (does not require DORA registration prior to the 1000 hours). Once these hours are met, the individual is not able to perform duties until the CAT is officially approved), in addition to passing the NCAC I Exam and passing the Jurisprudence Exam.

**“Competency Enhancement Program - CEP”** means the program funded through SB 19-223 to provide jail-based mental health services to those awaiting an inpatient competency restoration bed.

**“Competency Evaluator”** is a licensed physician who is a psychiatrist or licensed psychologist, each of whom is trained in forensic competency assessments, or a psychiatrist training and practicing under the supervision of a psychiatrist with expertise in forensic psychiatry, or a

psychologist who is in forensic training and is practicing under the supervision of a licensed psychologist with experience in forensic psychology.

**“Court-Ordered Competency Evaluation”** means a court-ordered examination of an individual before, during, or after trial, directed to developing information relevant to a determination of the individual’s competency to proceed at a particular stage of the criminal proceedings, that is performed by a Competency Evaluator and includes evaluations concerning restoration to Competency.

**“Critical Incidents”** means a critical incident is any significant event or condition that must be reported to the Department that is of public concern and/or has jeopardized the health, safety and/or welfare of individuals or staff.

**“Forensic Navigator”** means social workers working within the CDHS that provide proper care and coordination of pretrial individuals, which involves working with the courts, court liaisons, service providers, and conducting periodic case management evaluations across the 22 judicial districts.

**“Forensic Support Team”** means a group of individuals working within the CDHS who provide evaluation and competency restoration education services, case management, and assertive community treatment services to individuals awaiting competency restoration services.

**“High Risk for Transfer”** means an individual who has been ordered to receive inpatient restorative treatment; for whom an evaluator has determined either that the individual appears to have a mental health disorder and as a result of the mental health disorder, appears to be an imminent danger to others or to himself and/or appears to be gravely disabled.

**“LAC”**, or Licensed Addiction Counselor, is a behavioral health clinician who can provide co-occurring services. Master's degree or higher in Substance Use Disorders/Addiction and/or related counseling subjects (social work, mental health counseling, marriage & family, psychology, medical doctor) from a regionally accredited institution of higher learning. 3,000 clinically supervised hours (2,000 direct clinical hours). Must pass the MAC and jurisprudence exam. Designated providers of Clinical Supervision for all levels of certification and licensure, in the addiction’s profession.

**“LCSW”**, or Licensed Clinical Social Worker, is a social worker trained in psychotherapy who helps individuals deal with a variety of mental health and daily living problems to improve overall functioning.

**“LMFT”**, or Licensed Marriage and Family Therapist help couples and family members manage problems within their relationships.

“**LPC**”, or Licensed Professional Counselor, is a person engaged in the practice of counseling who holds a license as a licensed professional counselor issued under the provisions of the state of Colorado.

“**Long Acting Injectable (LAI)**” is an injectable medication that allows for the slow release of medicine into the blood. An LAI can last anywhere from 2-12 weeks, which helps to control symptoms of mental illness and / or substance use.

“**Low Risk for Transfer**” means an individual who has been ordered to receive inpatient restorative treatment services and is assessed to need mental health services but does not need a referral to a Behavioral Health Administration (BHA) designated inpatient facility.

“**Moderate Risk for Transfer**” means an individual who has been ordered to receive inpatient restorative treatment, for whom an evaluator has determined either that the individual appears to have a mental health disorder or appears to be gravely disabled and does not appear to be an imminent danger to others or to himself at that point in time.

“**Memorandum of Understanding**” means a type of agreement between two or more parties. It expresses a convergence of will between the parties, indicating an intended common line of action.

“**Program Level of Care Type**” means the level of care a person receives while in jail awaiting a bed for inpatient restorative treatment.

“**Regional Accountable Entity**” is responsible for building networks of providers, monitoring data and coordinating members’ physical and behavioral health care. RAEs replace and consolidate the administrative functions of Regional Care Collaborative Organizations (RCCOs) and Behavioral Health Organizations (BHOs).

“**Screening Tools**” are brief questionnaires or procedures that examine risk factors, mental health/trauma symptoms, or both to determine whether further, more in-depth assessment is needed on a specific area of concern, such as mental health, trauma, or substance use.

## Exhibits

**A: Statement of Work** - the narrative description of a project's work requirement. It defines project-specific activities, deliverables and timelines for the Contractor providing services.

**B: Budget** - outline of the projected cost/expenses of the project.

**C: Miscellaneous Provisions** - general contract provisions and requirements including standard conditions in contracts like payment procedures, audit thresholds, and recommended measures against contract violation.

**D: HIPAA Business Associate Agreement /Qualified Service Organization Addendum** - terms detailing required compliance with HIPAA and 42 C.F.R. Part 2 privacy regulations.

## **PART ONE - GENERAL PROVISIONS**

### **Article 1 General Administration**

**1.1 Participation / Catchments.** County Sheriffs may develop programs either individually, or as multiple Sheriff's Departments (otherwise known as a catchment), submitting a combined work plan. If services are provided to a catchment, the fiscal agent county (the county holding this primary Contract with BHA shall enter into subcontracts with its catchment county Sheriff's Departments. BHA reserves the right to change the fiscal agent as necessary. Subcontracts entered into under this provision shall adhere to the requirements of **Exhibit C**, Miscellaneous Provisions, Section II.

**1.2 Program Administrator.** The Contractor shall select a JBBS Program Administrator, identify the positions' roles, responsibilities and authority, and develop a management plan that supports the JBBS Program Coordination Group. Any changes to the Program Administrator's contact information shall be communicated via email to the Behavioral Health Administration within one business day of change to [cdhs\\_jbbs@state.co.us](mailto:cdhs_jbbs@state.co.us)

**a.** BHA prefers that a staff person from the Sheriff's Department assume the role of Program Administrator. The Program Administrator shall be well versed in the JBBS Program, including contractual requirements. The Program Administrator shall also participate in the JBBS Quarterly Meetings and shall oversee the JBBS Program and its operations. The Sheriff's Department is encouraged to account for this administrative position in their budget.

**1.3 JBBS Program Coordination Group.** The Contractor shall develop a process for implementing a Program Coordination Group within the facility, to guide and support the JBBS program. The Program Coordination Group shall meet on a regular and continual basis to ensure project implementation and goals are progressing. In addition to monthly check-ins, the JBBS Program Manager(s) will be available to attend periodic Program Coordination Group meetings for technical assistance, contract management, and support based on agency need. BHA reserves the right to record JBBS meetings as necessary. The Program Coordination Group shall:

- a.** Oversee program implementation.
- b.** Make training recommendations.
- c.** Measure the program's progress toward achieving stated goals, using data provided by BHA program manager(s) to guide work.
- d.** Resolve ongoing challenges to program effectiveness.
- e.** Inform agency leaders and other policymakers of program costs, developments, and progress.
- f.** Develop policies and protocols to ensure clinical staff have the resources and support required for service provision.

**g.** For JBBS Programs serving a catchment of counties, a sheriff's department representative from each county is required to participate in the JBBS Program Coordination Group.

**h.** Ensure the needs of all the jails in the catchment are being met by the resources and subcontracted service providers.

**1.4 Subcontractors.** The JBBS Program requires a subcontract, or an MOU be in place for any and all subcontractors. See **Exhibit C**, Miscellaneous Provisions, Section II for requirements regarding the use of subcontractors.

**1.5 Audits.** As a participant in the JBBS program, participation in regular audits will be required. Clinical and financial documentation shall be made available for onsite or virtual review by the Behavioral Health Administration, in addition the location(s) where treatment services are being provided.

**1.6** The Contractor may serve individuals who are awaiting Medicaid approval or other funds to pay for initial treatment services.

**1.6** The Contractor shall provide services in a manner that respects and protects individual rights. This requirement includes providing the subcontractor with the required space to offer individual and group treatment services described in this Contract.

**1.7 Recovery Support Services.** SAMHSA (Substance Abuse and Mental Health Services Administration) encourages those involved in substance abuse and / or mental health treatment, to address their emotional, spiritual, intellectual, physical, environmental, financial, occupational, and social needs. JBBS programs may provide recovery support services for wraparound resources including, but not limited to, clothes, transportation, food, emergency housing/motel vouchers, or basic hygiene purchases that will assist in stabilizing the individual in the community.

**1.8** The Contractor shall maintain support relationships with all points in the criminal justice system, i.e., probation, parole, diversion, Department of Corrections, etc. to ensure continuity of care.

**1.9 Cultural Competency.** The Contractor shall provide culturally competent and appropriate services, per National Standards for Culturally and Linguistically Appropriate Services (CLAS Standards), available at <https://thinkculturalhealth.hhs.gov/clas/standards>

**1.10** The Contractor shall make reasonable accommodations to meet the needs of individuals who are physically challenged, deaf or hearing impaired, or blind.

**1.11 Medication Consistency (C.R.S. 27-70-103)**

- a.** For the sole purpose of ensuring medication consistency for persons with mental health disorders involved in the criminal justice system, for individuals participating in the JBBS

- program, Contractor shall share patient-specific mental health and treatment information with all subcontractors, clinicians, and providers involved in the individual's plan of care.
- b. All such information sharing must comply with confidentiality requirements, including any necessary memorandums of understanding between providers, set for in the federal "Health Insurance Portability and Accountability Act of 1996", 45 CFR Parts 2, 160, 162, and 164.
  - c. Contractor is encouraged, though not required, to participate in the Minnesota Multistate Contracting Alliance for Pharmacy Cooperative Purchasing Agreement to purchase medication and to utilize the Medication Consistency formulary developed by CDHS and HCPF.
  - d. If Contractor does not utilize the Medication Consistency formulary developed by CDHS and HCPF, Contractor shall provide a copy of the medication formulary available at Contractor's jail. A copy of the CDHS and HCPF formulary is available on the CDHS Website.
  - e. Contractor shall not bill inmates for appointments or medications otherwise covered by JBBS. See **Exhibit B**, Budget and Rate Schedule for a list of covered meds

## **Article 2**

### **Confidentiality and HIPAA / 42 CFR Part Two**

#### **2.1 HIPAA Business Associate Addendum / Qualified Service Organization Addendum.**

The Contractor shall agree to comply with the terms of the HIPAA Business Associate Addendum / Qualified Service Organization Addendum, **Exhibit D** of this Contract.

#### **2.2 Third Parties and Business Associate Addendum / Qualified Service Organization Addendum.**

- a. The Contractor shall require that any third parties, including subcontractors or other partner agencies, that it involves for work to be done pursuant to this Contract agree to the most recent CDHS version of the HIPAA Business Associate Addendum / Qualified Service Organization Addendum, found in **Exhibit D** of this Contract.
- b. A HIPAA Business Associate Addendum / Qualified Service Organization Addendum is required between subcontracted treatment provider agencies for any program that has more than one treatment subcontractor agency rendering services in the jail in order to share assessments and screenings between subcontracted treatment provider agencies.

#### **2.3 Additional Measures.** The Contractor shall agree to the following additional privacy measures:

- a. **Safeguards.** The Contractor shall take appropriate administrative, technical and physical safeguards to protect the data from any unauthorized use or disclosure not provided for in this agreement.
- b. **Confidentiality.** The Contractor shall protect data and information according to acceptable standards and no less rigorously than they protect their own confidential information. The Contractor shall ensure that individual level identifiable data or

Protected Health Information (PHI) shall not be reported or made public. The Contractor shall ensure that all persons (e.g., interns, subcontractors, staff, and consultants) who have access to confidential information sign a confidentiality agreement.

### **Article 3 Financial Provisions**

**3.1 Cost Reimbursement / Allowable Expenses.** This contract is paid by cost reimbursement. See **Exhibit B**, Budget and Rate Schedule, for a list of reimbursable expenses. The Rate Schedule is non-exhaustive; other items expensed to this Contract must be reasonable toward completion of the contract terms, are reviewable by BHA, and shall not exceed any detail in the budget in this regard.

**3.2 Staff Time Tracking and Invoicing.** The Contractor shall ensure expenses and staff are tracked and invoiced separately for each program or funding stream. Any other funding sources or in-kind contributions supporting the JBBS Program shall be disclosed in the invoice submission. Invoices will be submitted to [cdhs\\_bhpayment@state.co.us](mailto:cdhs_bhpayment@state.co.us) by the 20th of the following month.

**3.3 General Accounting Encumbrances (GAE).** Some Parts under this Statement of Work may utilize general accounting encumbrances. Detailed information regarding the general accounting encumbrances can be found in those Parts.

**3.4 Procurement Card.** BHA recommends, although does not require, counties to consider the use of a procurement card to be used for expenses related to the JBBS program. Contractor shall follow its county's internal guidance and policies for use of procurement cards.

**3.5 Proportional Reduction of Funds.** The Behavioral Health Administration has the unilateral authority to proportionately reduce the contract budget amount to match current spending rates. If the Sheriff's Department has not spent 40% of the contract budgeted amount by November 30th, the Behavioral Health Administration may proportionately reduce the contract budget amount to match current spending rates. If the Sheriff's Department has not spent 65% of the contract budgeted amount by February 28th, the Behavioral Health Administration may again proportionately reduce the contract budget amount to match current spending rates.

**3.6 Fiscal Agent County Responsibilities.** Where a county is acting as a fiscal agent for other counties, the fiscal agent county shall pay invoices received by the catchment counties within 45 days of receipt.

**3.7 Other Financial Provisions,** including invoicing instructions can be found in **Exhibit C**, Miscellaneous Provisions.

## **Article 4**

### **Advance Payment for Jails with Financial Need**

**4.1. Purpose.** Some county jails are not financially able to support the traditional cost reimbursement structure of this Contract. To increase accessibility to JBBS funding, BHA has established the following advance payment structure for JBBS services, available to jails that demonstrate financial need and agree to the additional financial monitoring provisions included in this section.

**4.2 Participation.** Contractor's participation in this program will be noted in Exhibit B - Budget.

#### **4.3 Application.**

- a. Contractors requesting an advance payment model must submit an application to BHA by February 15<sup>1</sup>, to [cdhs\\_jbbs@state.co.us](mailto:cdhs_jbbs@state.co.us). The application must include:
  - i. Statement of Financial Need (template provided by BHA), signed by its financial representative.
  - ii. Written plan for compliance with the Advance Payment Fund Controls described in this Article 4; and
  - iii. Projected cost reimbursement budget for the upcoming year on the template provided by BHA.
- b. Contractors that were previously approved for an advance payment model will reapply using the BHA Advance Payment Reapplication template letter, available from BHA Program Managers, due to [cdhs\\_jbbs@state.co.us](mailto:cdhs_jbbs@state.co.us) by February 15 annually.
- c. BHA will notify Contractor of BHA's final decision to grant or deny the request for the advance payment model by March 15.<sup>2</sup>
- d. Approved Jails will be paid under the advance payment model upon execution of Contractor's contract for the following state fiscal year, provided that the contract is renewed.

#### **4.4 Advance Payment Fund Controls**

- a. Contractor shall maintain a separate fund or account for the funds from this Contract, which is not commingled with other accounts or funds.
  - i. Contractor shall describe the type of account, purpose, authorized balance, custodian, and the fund in which the cash is reported within five business days of the opening or designation of this account.
  - ii. No receipts may be deposited to the fund other than approved replenishments and increases to the authorized balance as described above.
- b. Contractor shall submit its balance sheet and ongoing cash report against the advance payment to BHA at [cdhs\\_bhpayment@state.co.us](mailto:cdhs_bhpayment@state.co.us) after the initial 2-month payment on July 1 and as a submission for its quarterly reconciliation.

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<sup>1</sup> Note: applications for Fiscal Year 2022 may be approved on a different timeline.

<sup>2</sup> Note: applications for Fiscal Year 2022 may be approved on a different timeline.

- c. Advance Funds are public funds and shall never be used for personal cash advances; check cashing services to anyone, including to employees; loans; or unrelated expenditures.

#### **4.5 Payment Procedure.**

- a. BHA shall prepare an initial invoice in the amount of two months of contract services in the amount of 2/12ths of the approved budget submitted by Contractor as part of its application and submit to Contractor for signature by June 15 annually.
  - i. BHA will make this initial payment to Contractor by July 7 annually.
- b. Beginning with July's expenses, Contractor shall submit regular cost reimbursement invoices based on actual spending in accordance with the Payment Terms in Exhibit C, Section V.C.
- c. The revolving account balance may be adjusted based upon the results of quarterly reconciliations.
- d. Medication Assisted Treatment services described in Part IV Article I will not be paid in advance. MAT services will be paid from the established General Accounting Encumbrance according to the terms of Part IV Article III.

#### **4.6 Reconciliation**

- a. Process
  - i. Jail submits required documentation from the county accounting system, due to [cdhs\\_ibbs@state.co.us](mailto:cdhs_ibbs@state.co.us) by the 20th of the month following the end of the quarter:
    - 1. Revenues and expenses for this program.
    - 2. Cash reconciliation for this specific cash account, including Deposits and disbursements. Actual bank statements may be an appropriate attachment for confirmation of expenses.
  - ii. BHA performs reconciliation to actual expenses as indicated
  - iii. Payment adjustments may be made based on the reconciliation.
  - iv. Invoiced amounts for the last quarter of the year should be applied against the remaining balance in the cash fund, to prevent the need for repayment of funds to BHA.
  - v. Any funds remaining in the cash fund in excess of the actual invoiced amount for the full year must be returned to BHA by September 10th for the prior fiscal year.
- b. Schedule
  - i. In the first month of Quarter 2 (October), reconcile BHA payments from July 1 through September 30 to actual expenses utilizing the Jail's detailed expenditures from July 1 through September 30, while maintaining up to two month's projected expenses for services in the upcoming months.
  - ii. In the first month of Quarter 3 (January), reconcile BHA payments from October 1 through December 31 to actual expenses utilizing the Jail's detailed expenditures from October 1 through December 31, while maintaining up to two month's projected expenses for services in the upcoming months.
  - iii. In the first month of Quarter 4 (April), reconcile BHA payments from January 1 through March 30 to actual expenses utilizing the Jail's detailed expenditures

from January 1 through March 30, while maintaining up to two month's projected expenses for services in the upcoming months.

- iv. A final fiscal year end reconciliation of BHA payments from April 1 - June 30 will occur in July, at which time funds may be payable to the State. A new revolving fund balance for the new fiscal year will be established to meet jail cash flow needs.

## **PART TWO - SUBSTANCE USE DISORDER (SUD) TREATMENT SERVICES**

### **Article 1**

#### **Purpose and Target Population**

**1.1 Purpose.** As used in this Statement of Work exhibit, the State and the Contractor together are referred to as the "Parties". The Parties understand and agree that the goal of the Jail Based Behavioral Health Services (JBBS) Program is to support county Sheriff's in providing screening, assessment and treatment for offenders with substance use disorders (SUD) and co-occurring substance use and mental health disorders, as well as transition case management services. Through funds authorized by the Colorado General Assembly (SB 12-163), the Behavioral Health Administration (BHA) intends to continue funding the Jail Based Behavioral Health Services Programs as set forth in this Contract.

**1.2 Target Population.** Adults 18 years of age and older that are residing in the county jail with substance use disorder or co-occurring substance use and mental health disorders. In this regard, the Contractor, in accordance with the terms and conditions of this Contract, shall develop, maintain, and provide behavioral health services in the county jails for individuals highlighted in section 1.2. The Contractor, in providing required services hereunder, shall utilize and maintain a partnership with community provider(s)/individuals that are licensed (LAC, LPC, LCSW, CAS), who are in good standing with the Department of Regulatory Agencies (DORA), have the ability to provide services within the jail or through televideo options, and have the capacity to provide free or low-cost services in the community to inmates upon release.

### **Article 2**

#### **Activities and Services**

##### **2.1. Licensed Substance Use Disorder Treatment Requirements.**

- a. Eligible individuals must have a substance use disorder and/or a co-occurring mental health disorder (determined by SUD and MH screening) to be eligible to receive services under the JBBS program.
- b. Individual treatment providers must hold a Substance Use Disorder Provider license and be in good standing with the Colorado Department of Regulatory Agencies (DORA).
- c. Contractor shall implement policies and procedures on how subcontracted treatment provider(s) will manage and maintain clinical records for the individuals served at the outpatient community location. The providers must follow the same protocols and policies for record management for services offered in the jail.

- d. Contractor shall provide appropriate screening(s), assessment(a), brief intervention and linkage to care in the community, based on an individualized treatment and/or transition plan.
  - i. Contractor shall utilize evidence-based screening processes and tools (see page 11; Article 2, 2.1), subject to approval by BHA, to screen for mental health disorders, substance use disorders, trauma, traumatic brain injuries and suicidality.
- e. Each individual's treatment / transition plan shall incorporate:
  - i. Summary of the continuum of services offered to individuals based on evidence-based curricula.
  - ii. Frequency and duration of services offered.
  - iii. If an individual's treatment will be provided by more than one treatment provider, describe how services are distributed between providers.
  - iv. Incorporation of criminogenic risk factors in service and transitional case planning as determined from the Level of Supervision Inventory (LSI).
  - v. The individual's natural communities, family support, and pro-social support.
  - vi. A plan to transition individuals from jail-based services to appropriate behavioral health and other needed community services upon release from incarceration.
  - vii. Contractor shall provide treatment to individuals in need of services in accordance with the treatment and transition plan described above.

### **Article 3 Standards & Requirements**

**3.1 Authorizing Legislation and Description of Services.** The Jail Based Behavioral Health Services (JBBS) Program is funded through the Correctional Treatment Cash Fund legislated in the passage of Senate Bill 12-163. Section 18-19-103 (c), C.R.S. directs the judicial department, the Department of Corrections, the state board of parole, the Division of Criminal Justice of the Department of Public Safety, and the Department of Human Services to cooperate in the development and implementation of the following:

- a. Alcohol and drug screening, assessment, and evaluation.
- b. Alcohol and drug testing.
- c. Treatment for assessed substance abuse and co-occurring disorders.
- d. Recovery support services.

The Correctional Treatment Fund Board has determined the Jail Based Behavioral Health Services (JBBS) Program meets the requirements set forth in SB 12-163.

**3.2 Level of program care.** Services offered by the Contractor hereunder shall meet ASAM Level 1 or 2.1 level of care.

### **Article 4 Data Reporting**

**4.1** Contractor is required to report information in the BHA Jail Based Behavioral Health Services (JBBS) CiviCore Database or another database as prescribed by BHA.

Data must reflect current individual enrollment and services provided by the 15th day of each calendar month to allow BHA staff to utilize current data. The following data elements will be captured in the CiviCore JBBS database or another database as prescribed by BHA:

- a.** A record for each individual who screened “positive” for a mental health disorder or substance use disorder; other screenings completed and results thereof.
- b.** Basic demographic and working diagnosis information (including veteran status and pregnancy status, if applicable).
- c.** For individuals in jail more than 30 days and who are admitted to the JBBS program, it is recommended that a Level of Supervision Inventory (LSI/LSI-R) risk assessment be completed.
- d.** The type and dosage of medications provided for Medication Assisted Treatment (MAT). Please see **Exhibit B** for allowable medications.
- e.** Number of individuals who successfully transition to community-based services upon release.
- f.** Program discharge outcomes and treatment status in the community after discharge.

**4.2** The Contractor agrees to respond to BHA’s inquiries about data submissions within two (2) business days and work with BHA to quickly resolve any data issues.

**4.3** Contractor is required to notify BHA of any staffing changes within 48 hours, as this individual's Database access will need to be removed.

## **Article 5 Performance Measures**

### **5.1 Performance Measures:**

- a. Transition Tracking Outcomes.** The goal of the JBBS program is to identify treatment service needs and assist with engagement in community-based treatment services upon release. Contractor shall make reasonable efforts to contact all JBBS individuals who are successfully discharged from the program and released to the community at one, two, six and 12 months post release. The individual’s treatment status shall be recorded in the CiviCore JBBS database, or another data system as prescribed by BHA. If a client remains engaged in treatment post-release, JBBS may continue to provide support through the Contractor’s Recovery Support Services section of their budget, for up to 12 months. The following are the treatment status options:
  - i. Deceased – In the event of death of the individual post-release.
  - ii. In Treatment – Individual is engaged in community-based treatment services as recommended in the transition plan.
  - iii. New Crime/Regressed - Individual returned to jail for violations or committed a new crime.

- iv. Not Applicable - Individual sentenced to Department of Corrections, Probation, Community Corrections, or treatment status not applicable at month two, six, or 12 due to prior tracking status of Deceased, New Crime/Regressed, or Treatment Completed.
  - v. Not in Treatment – Individual is reported by the community-based treatment provider as not in treatment or the individual reports to not be in treatment services as recommended on the transition plan.
  - vi. Status Unknown – Individual cannot be located.
  - vii. Treatment Completed – Individual has completed treatment as recommended in the transition plan.
- b. Recidivism.** JBBS aims to decrease the rate of reincarceration of former JBBS participants. This approach should result in greater treatment engagement in the community and decreased recidivism through better identification and treatment of behavioral health needs.
- c. BHA may conduct an annual analysis of recidivism. The following will apply to this analysis:**
- i. JBBS participants who have received treatment services or groups will be included in the recidivism analysis.
  - ii. “Recidivism” is the analysis that will be defined as re-arrest and reincarceration for a new crime or a technical violation related to the individual's original charge.
  - iii. Recidivism Target. Programs will ensure that data in the JBBS Database pertaining to the most recent complete fiscal year (July 1 - June 30) is verified and correct by the 15th of July following the fiscal year so that the recidivism analysis may be completed by BHA.

**Article 6  
Deliverables**

6.1 For Deliverables under this section, please see Part 7 - JBBS Program Deliverables

**PART THREE - MENTAL HEALTH TREATMENT (SB 18-250)**

**Article 1  
Purpose & Target Population**

**1.1 Purpose.** The Behavioral Health Administration (BHA) is committed to efforts to provide resources to support County Sheriffs in providing screening, assessment and treatment for mental health and substance use disorders or co-occurring disorders; as well as transition case management services to people who need such services while they are in jail. The Jail Based Behavioral Health Services (JBBS) Program has been operational since October 2011 with funding from the Correctional Treatment Cash Fund pursuant to Section 18-19-103 (5)(c)(V).

The goal of the JBBS Program is to provide appropriate behavioral health services to inmates while supporting continuity of care within the community after release from incarceration. This approach should result in greater treatment engagement in the community and decreased recidivism through better identification and treatment of behavioral health needs.

In October 2012, the Correctional Treatment Board voted to fund additional Jail Based Behavioral Health Services Programs to additional counties across the State. As of February 2022, there are JBBS programs in 47 county jails across the State of Colorado.

In May 2018 the Colorado General Assembly passed Senate Bill 18-250, which mandated the JBBS Program under Colorado Revised Statutes 27-60-106. Additional mental health funding was allocated to the JBBS program to address gaps in services for mental health disorder screening, assessment, diagnosis and treatment. Additionally, these funds may support psychiatric prescription services and purchase of medications. Sheriff's Departments that currently operate JBBS programs, as well as new applicants, are eligible to request these funds. Sheriff's Departments may submit an individual application, or they may submit a combined application if they would like to apply in conjunction with other County Sheriff's Departments.

To carry out the JBBS program, Sheriff's Departments may partner with local community provider(s) who can demonstrate the ability to provide services within the jail, and the capacity to provide or link individuals released from jail to free or low-cost services in the community.

**1.2 Target Population.** Adults 18 years of age and older that are residing in the county jail with substance use disorder or co-occurring substance use and mental health disorders. In this regard, the Contractor, in accordance with the terms and conditions of this Contract, shall develop, maintain, and provide behavioral health services in the county jails for individuals highlighted in section 1.2. The Contractor, in providing required services hereunder, shall utilize and maintain a partnership with community provider(s)/individuals that are licensed (LAC, LPC, LCSW or LMFT), who are in good standing with the Department of Regulatory Agencies (DORA), have the ability to provide services within the jail or through televideo options, and have the capacity to provide free or low-cost services in the community to inmates upon release.

## **Article 2 Activities & Services**

**2.1 Services.** It is best practice that all jails should be utilizing evidence-based screening tool(s) and practices to screen for any potential mental health and/or substance use disorders and withdrawal, as well as suicide risk.

The Contractor shall:

- a. Provide adequate staff to complete behavioral health screenings, prescribe psychiatric medications as necessary; and provide mental health counseling, substance use disorder treatment and transitional care coordination.

- b. Upon identification of an individual who may be a candidate for JBBS services, a referral by jail staff should be made to a JBBS clinician within 48 hours, or, when the individual is medically cleared to be screened, via the appropriate channels (e.g. inmate kite, email).
- c. Assess all individuals booked into the jail facility for psychiatric medication needs by requesting and reviewing medical and prescription history.
- d. Have access to psychiatric medications, as defined by the medication formulary established pursuant to section 27-70-103 or by their contracted medical provider.
- e. Coordinate services with local community behavioral health providers prior to the release of an inmate to ensure continuity of care following his or her release from the jail.

**2.2 Training and Meetings.** The Contractor shall provide training to improve correctional staff responses to people with mental illness. The Contractor shall determine the amount of training necessary to ensure, at a minimum, a group of trained staff is able to cover all time shifts. The training should provide sufficient opportunities for hands-on experiential learning, such as role play and group problem solving exercises. Cross-training opportunities shall be provided to behavioral health personnel and other stakeholders to help improve cross-system understanding. BHA is able to provide assistance with training the Medical Team staff regarding the MAT services and resources across the state.

- a. Program Orientation: The Contractor shall attend a mandatory orientation session with the BHA Program Manager and Fiscal Staff, to be organized by BHA as soon as it is practicable execution of the contract.
- b. Program Meetings and Required Training: Program meetings and other required training will be scheduled throughout the term of the JBBS Program contract. This includes the JBBS Learning Community, JBBS Round Table, and the JBBS Quarterly Workgroup.

**2.3 Evidence-Based Practices.** The Contractor shall use evidence-based and promising practices within the screening and service delivery structure to support effective outcomes. The use of a risk/need/responsivity (RNR) model is encouraged to assess various factors such as substance use disorders, mental illness, cognitive or physical impairments, financial issues, family dynamics, housing instability, developmental disabilities, low literacy levels, and lack of reliable transportation, all of which may need to be addressed to support success.

**2.4 Individualized Service Provision.** The Contractor shall link individuals referred to the program to community based behavioral health supports and services, as appropriate based on the specific needs of the individual to ensure wraparound services are in place to reduce the risk of the individual returning into the justice system.

### **Article 3 Standards and Requirements**

**3.1 Mental Health Treatment Provider.** The subcontracted mental health treatment provider/individual must be licensed and in good standing with the Department of Regulatory

Agencies (DORA). The subcontracted mental health treatment provider(s) must adhere to all rules and regulations set forth by their license and are prohibited from practicing outside their scope of training.

#### **Article 4 Deliverables**

4.1 For Deliverables under this section, please see Part 7 - JBBS Program Deliverables

### **PART FOUR - JAIL MEDICATION ASSISTED TREATMENT (SB 19-008)**

#### **Article 1 Purpose & Target Population**

**1.1 Purpose.** Senate Bill 19-008 concerns treatment of individuals with substance use disorders who come into contact with the criminal justice system. Section 6 of the bill requires jails that receive funding through the jail-based behavioral health services program to allow medication-assisted treatment to be provided to individuals in the jail. The jail may enter into agreements with community agencies and organizations to assist in the development and administration of medication-assisted treatment. "Medication-assisted treatment" or "MAT" means a combination of behavioral therapy and medications approved by the Federal Food and Drug Administration to treat SUD disorders.

**1.2 Target Population.** 18 years of age and older, residing in county jail(s), SB 19-008 enacts policies related to the involvement of persons with substance use disorders in the criminal justice system.

#### **Article 2 Activities & Services**

**2.1 Provision of Medication-Assisted Treatment.** Contractors engaging 19-008 funding shall expand access to care for persons who are incarcerated with substance use disorder (SUD) through the following activities:

- a. Have a policy in place for the provision of Medication-Assisted Treatment (MAT) and how it will be implemented. A copy of this policy will be provided to BHA before MAT services are provided. If a policy is not provided and MAT services are not offered, an explanation as to why will be provided to BHA prior to any BHA JBBS funds being issued. See Part Seven, Article 1.5 for more details on how this needs to be submitted.
- b. Identify program appropriate individuals via screening.
- c. Link persons with SUD with a community based clinical care provider.
- d. Initiate MAT for SUD and retain in MAT/optimize retention to MAT while in jail.
- e. Provide patient education surrounding SUD and the types of treatment available in their community.
- f. Develop and routinely review individualized treatment plans.

**2.2 Allowable Expenses.** The following are allowable expenses in the provision of the services above specific to this Part, reimbursable in accordance with the BHA-approved rate schedule.

- a. Fee for service agreements with contractors for treatment, medical staff, and medications.
- b. Required medications, handled subject to Controlled Substance / Medication Assisted Treatment licensing requirements, including medications for overdose reversal such as Naloxone.
- c. Jail payroll expenses for interventions, medical staff, and medications.
- d. Facility and equipment upgrades related to MAT.
- e. Training and staff development for MAT Invoice requests are due to BHA as expenses are incurred. Only one month's expenses are allowed per invoice.

### **Article 3 Standards and Requirements**

**3.1 General Accounting Encumbrance.** This program will be funded by a General Accounting Encumbrance (GAE). Payment to Contractor is made from available funds encumbered and shared across multiple contractors. The State may increase or decrease the total funds encumbered at its sole discretion and without formal notice to the Contractor. The liability of the State for such payments is limited to the encumbered amount remaining of such funds.

#### **3.2 Program Policies and Plans.**

- a. Contractor shall adhere to the policy or plan for its jail submitted to satisfy the deliverable described in Part Seven, Article 1.5.
- b. A Sheriff who is the custodian of a county jail or city and county jail may enter into agreements with community agencies, behavioral health organizations, and substance use disorder treatment organizations to assist in the development and administration of medication-assisted treatment in the jail.

#### **3.3 License Requirements.**

- a. Providers licensed as an opioid medication assisted treatment (OMAT) program shall adhere to 2 CCR 502-1 Behavioral Health Rules regarding 21.320: Opioid Medication Assisted Treatment (OMAT).
- b. Providers handling controlled substances shall adhere to 2 CCR 502-1 Behavioral Health Rules regarding 21.300: Controlled Substance License Requirements, which includes direction on the safe storage and handling of controlled substances.

**3.4 Level of Program/Care.** OMAT provider facilities shall meet ASAM Level 1 Outpatient Treatment or 2.1 Intensive Outpatient level of care.

#### **3.5 Tiered MAT Funding.**

- a. Contractors will be provided with funding for MAT services based on the following tiered system created by BHA:

TIER 1. This is the base tier, a starting point for jails that may have high barriers and/or resource shortage. It is primarily for jails that only offer Vivitrol and Buprenorphine continuations for pregnant individuals. If Contractor at this tier anticipates spending over \$5,000 in a year, it must provide a budget to BHA for pre-approval.

TIER 2. This is the middle tier for established programs, but these programs may have some barriers and are not offering a full FDA MAT medication list yet. This is primarily for jails that offer continuations for inmates for Buprenorphine products as well as Vivitrol. An additional \$10,000 may be offered if Methadone is offered as a continuation for inmates. If Contractor at this tier anticipates spending over \$35,000 in a year, it must provide a budget to BHA for pre-approval.

TIER 3. This is the top tier for established programs. It should include full induction and continuation of all FDA approved medications. Jails in this group would submit a budget (could be \$150,000 or more) for their MAT program, submit a work plan outlining how they will screen, refer, provide medications while incarcerated, and transfer care of those individuals to community MAT providers upon release.

**b.** MAT funding based on Tiers will be based on Program Manager's discussion with the contracted jail. If a program chooses to prove eligibility for a higher tier, this will be taken into consideration for the following contract year. A jail will stay within one tier for an entire contract year but can move up or down depending on proved eligibility and need.

#### **Article 4 Deliverables**

**4.1** For Deliverables under this section, please see Part 7 - JBBS Program Deliverables

### **PART FIVE - JBBS PROGRAM DELIVERABLES**

#### **Article 1**

##### **1.1 Deliverables for All JBBS Programs**

**a. JBBS Work Plan.** Using the JBBS Statement of Work, the Contractor is required to design a work plan based on the five criteria listed below. The Annual Work Plan should specify the following information for each service in which the Contractor will participate in. See JBBS Work Plan Template at the end of this document.

**b. Annual Report.** The Contractor shall submit to the State the previous year's Annual Report by EOB July 31, utilizing the JBBS Reporting Template provided by BHA. The Contractor shall submit this report via email to [cdhs\\_jbbs@state.co.us](mailto:cdhs_jbbs@state.co.us)

**c. JBBS Database Reporting.**

i. The Contractor or designated subcontractor shall complete all applicable data fields in the JBBS (Civicore) Database using the following URL:

<https://fw.civicore.com/jbbhs> or another data system as prescribed by BHA. All data entry shall be updated on an ongoing basis and must reflect current individual enrollment and services provided by the 15th of each month following the month when the service was provided.

ii. Data Entry shall include:

- a. Basic individual demographic and working diagnosis information.
- b. Booking date (date that the individual was booked into jail).
- c. Screening date and results (Mental Health, Substance Use, Traumatic Brain Injury, Trauma, and Suicidality) for all individuals who screen “positive” for a mental health disorder or substance use disorder.
- d. Admission date (date that individual began receiving JBBS services).
- e. If applicable, results of Level of Supervision Inventory (LSI/LSI-R) risk assessment (recommended for individuals admitted to the JBBS program who are in jail more than 30 days).
- f. Individual-level services provided (date of service, type of service, duration of service, and any additional applicable information), including any Medication Assisted Treatment services provided (date of service, duration of service, type of MAT service, specific MAT medication, and any other applicable information, including frequency of dosage).
- g. Date, duration, and participants who attended for treatment or case management group sessions.
- h. Discharge date and type (unsuccessful discharge or successful discharge, depending on whether the individual is actively participating in the JBBS program at the time of discharge). BHA utilizes discharge and admission dates to approximate sentence length and measure progress toward shortening sentence lengths.
- i. Date tracked and treatment status in the community, tracked at month 1, month 2, month 6, and month 12 after discharge.

iii. The Contractor or Contractor’s designated subcontractor shall complete Drug Alcohol Coordinated Data System (DACODS), Colorado Client Assessment Records (CCAR), and Encounters - or other BHA prescribed data system records, according to the following schedule:

- a. Encounters are due by the last business day of each month for all services provided during the previous month.
- b. CCARs are due by the last business day of the month following the admission, annual update, or discharge of a client.
- c. DACODS are due by the 15th of the following month for admissions into, and discharges from, JBBS services.

See the latest version of the Finance & Data Protocol - Protocol #1 Special Studies Codes and Eligibility for more details.

**d. Workgroup Attendance.** BHA facilitates JBBS Program Meetings every other month. The Contractor shall ensure that a representative from each jail participates in the

meetings. The representative(s) who attends the meetings shall be responsible for relaying the information discussed during the meetings to the rest of the Contractor's program organizational structure.

**e. Critical Incidents.** The Contractor shall ensure any critical incident involving a JBBS client that occurs within the jail, is documented and shared with the Behavioral Health Administration (BHA) via an encrypted email to [cdhs\\_bha\\_ci@state.co.us](mailto:cdhs_bha_ci@state.co.us), within 24 hours of the time the incident occurs. It is recommended that the Contractor include this reporting requirement in all subcontractor agreements. The documentation should include the following:

- i. Date and time of incident
- ii. Location of the incident
- iii. The nature of the incident
- iv. How the incident was resolved
- v. Name[s] of staff present
- vi. Whether the incident resulted in any physical harm to the participant or any staff.

**f. Copy of Proposed Subcontract.** The Contractor shall provide to BHA a copy of any proposed subcontract between the Contractor and any potential provider of services to fulfill any requirements of this Contract, to [cdhs\\_jbbs@state.co.us](mailto:cdhs_jbbs@state.co.us) within 30 days of subcontract execution. The subcontract will be evaluated to ensure it is in compliance with the maximum rates established in the Annual Budget document provided by BHA.

**g. Site Visits.** The JBBS Program Manager(s) shall conduct site visits for the purpose of providing technical assistance support and quality assurance monitoring of the program on a periodic/as needed basis.

**h. Monthly Contract Monitoring Tool.** The Contractor shall submit a completed contract monitoring tool to their assigned JBBS program manager no later than the 20th of the month with the prior month's information. JBBS program managers will update this internally.

**i. Plan of Action.** Contractors who do not meet the deliverables above, or any additional deliverables listed below, for which they have been provided funding, shall be asked to submit a plan of action to improve program performance for the current or next fiscal year.

**j. Monthly BHA Invoice.** Invoices will be submitted to [cdhs\\_bhpayment@state.co.us](mailto:cdhs_bhpayment@state.co.us) by the 20th of the following month. Only one month's expenses are allowed per invoice. Supporting documentation will only be required in the event of an audit, but these records should be maintained by the Contractor.

**k. Spending Projection Plan.** If a contractor is underspent by greater than 40% of their budget by mid fiscal year (Nov 30), Contractor shall submit a spending projection plan. Failure to submit the spending plan and failure to effectively utilize funding could result in reduction in the current year budget.

**l. Behavioral Health Screenings:**

- i. Individuals involved in the JBBS program are required to complete an evidence based behavioral health screen for each of the following five categories: Substance Use Disorder, Mental Health, Suicide, Trauma and Traumatic Brain

Injury. This information should be used to formulate a comprehensive treatment plan to include appropriate referrals.

ii. For individuals who are admitted to the JBBS program and are in custody more than 30 days, it is recommended that a Level of Supervision Inventory (LSI/LSI-R) risk assessment be completed.

### **1.2 Additional Deliverables Related to Mental Health Expansion (SB 18-250)**

**a. Data Entry.** The Contractor or designated subcontractor shall complete all applicable data fields in the JBBS (Civicore) Database, or another data system as prescribed by BHA. All data entry shall be updated on an ongoing basis and must reflect current individual enrollment and services provided by the 15th of each month following the month when the service was provided. In addition to the data reporting requirements outlined in Part 7, Article 1, Section 1.1, Subsection c, above, the following additional data related to Mental Health Expansion shall be collected:

i. Whether the individual is receiving mental health services only, not SUD services (checkbox in JBBS Database).

### **1.3 Additional Deliverables Related to Competency Enhancement (SB 19-223)**

**a. Data Entry.** The Contractor or designated subcontractor shall complete all applicable data fields in the JBBS (Civicore) Database, or another data system as prescribed by BHA. All data entry shall be updated on an ongoing basis and must reflect current individual enrollment and services provided by the 15th of each month following the month when the service was provided. In addition to the data reporting requirements outlined in Part 7, Article 1, Section 1.1, Subsection c, above, the following additional data related to Competency Enhancement shall be collected:

i. Whether the individual is involved in the competency restoration process (checkbox in JBBS Database).

ii. Whether the individual has returned to jail after receiving competency restoration services (checkbox in JBBS Database).

### **1.4 Additional Deliverables Related to Pre-Sentence Reentry Coordinator Services**

**a. Data Entry.** The Contractor or designated subcontractor shall complete all applicable data fields in the JBBS (Civicore) Database, or another data system as prescribed by BHA. All data entry shall be updated on an ongoing basis and must reflect current individual enrollment and services provided by the 15th of each month following the month when the service was provided. In addition to the data reporting requirements outlined in Part 7, Article 1, Section 1.1, Subsection c, above, the following additional data related to Pre-Sentence Reentry shall be collected:

i. Whether the individual is pre-sentence at time of admission (checkbox in JBBS (CiviCore) Database).

### **1.5 Additional Deliverables Related to Jail Medication-Assisted Treatment (SB 19-008)**

**a. Organizational Structure.** All Contractors participating in JBBS shall determine and provide an organizational structure designed to facilitate and promote effective MAT

program administration. Describe the use of evidence based best practices for coordination of care for identified inmates. This report is due via email to [cdhs\\_jbbs@state.co.us](mailto:cdhs_jbbs@state.co.us) by August 1 annually.

**b. Policies.** Prior to MAT services being delivered, the Contractor shall provide BHA a written policy for their intended Jail MAT service delivery method, via email to [cdhs\\_jbbs@state.co.us](mailto:cdhs_jbbs@state.co.us). Contact JBBS Program Manager for additional information on creating MAT policies.

**c. Barrier Reports.** If Contractor does not yet deliver MAT in its jail, Contractor shall submit a report detailing the barriers Contractor is experiencing that have prevented MAT delivery in the jail. Describe the capacity or efforts needed to get the jail into compliance or ability to provide MAT in the jail, including but not limited to withdrawal management, screening, and coordination of care for inmates identified for MAT. The report is due via email to [cdhs\\_jbbs@state.co.us](mailto:cdhs_jbbs@state.co.us) by August 1 annually.

**d. Start-Up Plans.** In the first year that Contractor will deliver MAT in its jail, Contractor shall submit a report of ramp-up activities that will occur in the first four months of the project via email to [cdhs\\_jbbs@state.co.us](mailto:cdhs_jbbs@state.co.us) by August 1 annually.

**e. Work Plan and Budget Submission/Approval.** In order to access MAT funds, Contractor must submit a work plan selecting an MAT tier and describing how the funds will be used. If Contractor's proposed budget exceeds the soft cap described in its tier (described in Part Six, article 3.5 above), Contractor shall provide an initial budget to the BHA JBBS Program Manager with Contractor submission of the work plan. BHA JBBS Program Manager will respond with an approval, a request for more information, or a rejection with cause. Budgets in excess of its tier's soft cap must be approved in advance in writing by the BHA JBBS Program Manager. Contractors with ongoing MAT programs must submit the workplan and budget by June 1 annually for the upcoming state fiscal year (beginning July 1). Contractors beginning new MAT programs must submit the workplan and budget prior to commencing services billed to this fund. Contractor work may not commence until the work plan and budget are approved by the BHA JBBS Program Manager.

**f. Data Entry.** The Contractor or designated subcontractor shall complete all applicable data fields as outlined in Part 7, Article 1, Section 1.1, Subsection c, above. Data shall be entered in the JBBS (Civcore) Database, or another data system as prescribed by BHA. All data entry shall be updated on an ongoing basis and must reflect current individual enrollment and services provided by the 15th of each month following the month when the service was provided.

**Table 1**

**Below is the deliverables table required by BHA, for each JBBS related service.**

<b>Program</b>	<b>Deliverable</b>	<b>Description</b>	<b>Due Date</b>	<b>Responsible Party</b>	<b>Deliver to</b>
All	Provide annual work plan	See Part 7, Article 1, Section 1.1, Subsection a, above	By EOB April 1, for the following fiscal year	Contractor	<a href="mailto:cdhs_jbbs@state.co.us">cdhs_jbbs@state.co.us</a>
All	BHAH invoice	See Part 1, Article 3, Section 3.2, above	By 20th of following month for previous month's expenses	Contractor	<a href="mailto:cdhs_bhpayment@state.co.us">cdhs_bhpayment@state.co.us</a>
All	Report critical incidents	See Part 7, Article 1, Section 1.1, Subsection e, above	Within 24 hours of incident	Contractor	<a href="mailto:cdhs_bha_ci@state.co.us">cdhs_bha_ci@state.co.us</a>
All	Provide JBBS annual report	See Part 7, Article 1, Section 1.1, Subsection b, above	By EOB July 31 of the current year	Contractor	<a href="mailto:cdhs_jbbs@state.co.us">cdhs_jbbs@state.co.us</a>
All	Workgroup attendance	See Part 7, Article 1, Section 1.1, Subsection d, above	Quarterly	Contractor	<a href="#">Locations TBD</a>
All	Send BHA copy of proposed subcontract	See Part 7, Article 1, Section 1.1, Subsection f, above	Within 30 days of contract being signed	Contractor	<a href="mailto:cdhs_jbbs@state.co.us">cdhs_jbbs@state.co.us</a>
All	Site Visits	See Part 7, Article 1, Section 1.1, Subsection g, above	Ongoing / as needed	BHA	<a href="#">Locations TBD</a>
All	Contract Monitoring Tool	See Part 7, Article 1, Section 1.1, Subsection	Ongoing, by the 20th of each month for all	Contractor	<a href="#">JBBS Program Manager</a>

		h, above	services provided during the previous month		
Mental Health Expansion (SB 18-250)	Data entry specific to SB 18-250	See Part 7, Article 1, Section 1.2, Subsection a, above	Ongoing, by the 15th of each month for all services provided during the previous month	Contractor or designated subcontractor	<a href="#">JBBS Civicore Database Jail Based Behavioral Health Services</a>
Competency Enhancement (SB 19-223)	Data entry specific to SB 19-223	See Part 7, Article 1, Section 1.3, Subsection a, above	Ongoing, by the 15th of each month for all services provided during the previous month	Contractor or designated subcontractor	<a href="#">JBBS Civicore Database Jail Based Behavioral Health Services</a>
Pre-sentence Reentry Coordinator Services	Data entry specific to pre-sentence Reentry coordinator services	See Part 7, Article 1, Section 1.4, Subsection a, above	Ongoing, by the 15th of each month for all services provided during the previous month	Contractor or designated subcontractor	<a href="#">JBBS Civicore Database Jail Based Behavioral Health Services</a>
JMAT (SB 19-008)	Organizational structure	Part 7, Article 1, Section 1.5, Subsection a, above	August 1 (annually)	Contractor	<a href="mailto:cdhs_jbbs@state.co.us">cdhs_jbbs@state.co.us</a>
JMAT (SB 19-008)	Policies	Part 7, Article 1, Section 1.5, Subsection b, above	Prior to MAT services being delivered	Contractor	<a href="mailto:cdhs_jbbs@state.co.us">cdhs_jbbs@state.co.us</a>
JMAT (SB 19-008)	Barrier Reports	Part 7, Article 1, Section 1.5,	August 1 (annually)	Contractor	<a href="mailto:cdhs_jbbs@state.co.us">cdhs_jbbs@state.co.us</a>

		Subsection c, above			
JMAT (SB 19-008)	Start-Up Plans	Part 7, Article 1, Section 1.5, Subsection d, above	August 1 (annually)	Contractor	<a href="mailto:cdhs_jbbs@state.co.us">cdhs_jbbs@state.co.us</a>
JMAT (SB 19-008)	Work Plan and Budget Submission/Approval	Part 7, Article 1, Section 1.5, Subsection e, above	Within five (5) business days of plan submission	Contractor	<a href="mailto:cdhs_jbbs@state.co.us">cdhs_jbbs@state.co.us</a>
JMAT (SB 19-008)	Data Entry Specific to JMATA (SB 19-008)	Part 7, Article 1, Section 1.5, Subsection f, above	Ongoing, by the 15th of each month for all services provided during the previous month	Contractor or designated subcontractor	<a href="#">JBBS Civicore Database Jail Based Behavioral Health Services</a>

**JBBS Work Plan**

**1. Identify the Project Name, Purpose and Timeline**

- i. The Project Name will be either JBBS/Substance Use Disorder Treatment, JBBS/Mental Health Treatment, JBBS/Pre-Sentence Coordinator, JBBS/Competency Enhancement, or JBBS/Medication Assisted Treatment (MAT).
- ii. The Purpose will include what you hope to accomplish by providing JBBS services in your facilities.
- iii. The Timeline will be June 30, 2022 - July 1, 2023

**2. Put Your Work Plan into Context**

- i. This should include an introduction and background of the facility's JBBS program.
- ii. Write an introduction and background to better outline why you need this project to happen - *Creating context and establishing the problem, helps explain why you need the solution.* Examples could include an increase in substance abuse usage, increase in mental health disorders, increased jail population, high recidivism rates, Colorado state statute requirements, etc....

- iii. Describe the overall goal of the JBBS program. Examples can include who is eligible for services, how will referrals to the program be made, what are the admission criteria, how services will be provided, etc....
  - iv. If the facility is a new JBBS program, please include a brief summary of how and why JBBS services will be implemented into your facility, and what you hope to gain from this program.
3. **Establish Your Goals and Objectives:** Goals and objectives should be developed in an integrated, multi-disciplinary fashion, which includes the active and ongoing participation of the offender, jail staff and community providers. Examples could include:
- i. What are / will be, the assessments and screenings between subcontracted treatment provider agencies?
  - ii. How will you interface with other agencies serving persons with substance use disorders or co-occurring mental illnesses, (i.e., community mental health centers, substance use disorder treatment programs, service programs for Veterans, community service agencies, and other licensed clinicians in private practice), to meet individuals' treatment needs?
  - iii. What is the service array available within the community to program participants upon their release from jail, OR, if there are limited services available in your area, highlight this as a potential barrier.
  - iv. Which recovery support services (RSS) are most needed in your community and/or catchment area and how will the provider or Sheriff's Department use a portion of their budget to meet these needs?
  - v. What security protocol and reporting requirements are expected from the treatment provider?
  - vi. What is the current capacity or efforts to screen all individuals booked into the jail facility for mental health, suicidality and substance use histories and needs?
  - vii. What are/will be, the continuum of services being offered, pursuant to this Contract based on evidence-based curricula?
  - viii. What will the frequency and duration of services offered look like? Discuss the availability of services during the week and hours of operation, as well as include a breakdown of staff time (FTE) allocated to the program, credentials and general duties of each position.
4. **Define and Coordinate Your Resources:**
- i. Determine and provide an organizational structure designed to facilitate and promote effective administration of the JBBS program (should include jail staff as well as any subcontracted staff).
  - ii. Describe how you plan to link offenders with community services upon their release from custody.
5. **Understand Your Constraints:** Are there any obstacles that are going to get in the way of providing these services?
- i. Examine if there are any barriers to treatment within the jail? Within the community?

ii. If so, it is possible to address these and, if so, how do you plan to do that?

6. **Discuss Risks and Accountability:** Here you will highlight any foreseeable risks to the program, as well as who will be accountable for each aspect of the program.

i. Activities, services, budgets, plans, timelines, goals, and outcome measures included in the Work Plan shall be interpreted as being material contractual performance requirements, outcomes, measures, and contract deliverables of the Contractor.

The work plan, once approved by BHA, shall be incorporated into this Contract by reference as work requirements of the Contractor supplemental to Contractor work requirements under the current Contract Exhibit A, Statement of Work, as amended.



**EXHIBIT B, FY23 ANNUAL BUDGET**

<b>BHA Program</b>	JBBS
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<b>Agency Name</b>	Gunnison County
<b>Budget Period</b>	July 1, 2022 - June 30, 2023
<b>Project Name</b>	JBBS

<b>Program Contact, Title</b>	Adam Murdie, Undersheriff
<b>Phone</b>	970-641-7657
<b>Email</b>	<a href="mailto:amurdie@gunnisoncounty.org">amurdie@gunnisoncounty.org</a>
<b>Fiscal Contract, Title</b>	Jody Wisem, Accountant
<b>Phone</b>	970-641-7679
<b>Email</b>	<a href="mailto:jwise@gunnisoncounty.org">jwise@gunnisoncounty.org</a>
<b>Date Completed</b>	March 22, 2022

SERVICE CATEGORIES		
Services (Fixed Price per rate Schedule)	Funding Source	Total
Substance Use Disorder Treatment	State General Fund	77,600.00
Mental Health Treatment	State General Fund	77,600.00
<b>Total Contract</b>		<b>155,200.00</b>

<b>General Accounting Encumbrance - Medication Assisted Treatment</b>	
<b>MAT Services</b>	
<b>GAE Total</b>	<b>1,483,700.00</b>

*GAE total for all Contractors is \$1,483,700. No minimum amount is guaranteed to Contractor. Funds are invoiced as earned per the terms of Exhibit A and the following Rate Schedule.*

JBBS RATE SCHEDULE	
<b>Statewide Maximum Salaries</b>	
Positions should be hired at salary levels indicative of qualifications, experience, and organization pay schedules. This table indicates a maximum salary only. It is understood that many positions will be hired at lower salary levels than the state maximum.	
Licensed Therapist (LPC/LCSW/LAC/LMFT)*	\$82,400/year
Unlicensed Master's Level Therapist or Substance Abuse Counselor (example CAS)*	\$66,950/year
Unlicensed Bachelor's Level Therapist or Substance Abuse Counselor (example CAS)*	\$61,800/year
Case Manager (CM) *	\$56,650/year
Certified Addiction Technician (CAT)	\$43,260/year
Physician Assistance (PA) *	\$123,600/year
MD/DO *	\$258,805/year
JBBS Program Administrator (Primary responsibility of managing the jail's JBBS program.) *	\$100,522/year
Pre-sentence Coordinator *	\$70,00/year
Pharmacist (Pharm-D)	\$131,933/year
Registered Nurse *	\$74,160/year
Data Entry Clerk	\$41,200/year
Peer Support Specialist	\$35,000/year
Qualified Medication Administration Person (QMAP)	\$15.50/hour
<b>*BHA will reimburse salaries up to the state maximum</b>	
<b>*BHA may consider rates 10% above statewide maximum salaries pending justification from jails and written pre-approval by BHA</b>	
<b>Travel</b>	
Mileage (IRS rate)	\$0.59/mile
<b>Operating Expenses</b>	
Maximum total percentage of contract budget	10%
Training and continuing education for jail employees/clinicians (including but not limited to QMAP, CIT, Motivational Interviewing, Mental Health First Aid, Trauma Informed Care, (Certified Addiction Specialist -Classes only) may be included in the operating expenses	
BHA may pay for one licensing test per clinician (NCE, MAC, NCAC). Up to \$200 per clinician, per test.	
BHA may consider operating expenses above 10% of total contract budget pending justification from jails and written pre-approval by BHA	
<b>Indirect Expenses</b>	
Maximum total percentage of contract budget	10%
BHA may consider operating expenses above 10% of total contract budget pending justification from jails and written pre-approval by BHA	
<b>RECOVERY SUPPORT SERVICES</b>	

Allowed Services *	Additional Notes
Application Fees ID / Birth Certificates	
Indigent Backpacks	
Basic Hygiene Items	
Bicycles	May be provided if client is engaged in treatment services for 2 + months post release. 1 bike per person.
Bus Pass – Daily, Monthly	
Child Care	1 month limit per client, per child
Clothing	
Educational Costs ( books, supplies, and fees)	
Emergency Housing/Rental Assistance	90 day limit per person
Food Assistance	
Gas Vouchers	
GED Program / Testing	
Job Placement Training	
Life Skills Training	
Medical Assistance – copays / infectious disease testing	Limit of \$250.00 per person
Medications	30 day limit per person
Personal Care (eg. haircuts)	
Phone Cards	Limit of \$15.00 per person
Pre-paid Cell Phones	To be paid for upon release and after client attends 2 appointments in the community. Cost of the phone and up to 2 months of bills.
Printed Resources	
Transportation Assistance	
Transportation to Residential Treatment	Out of state travel to treatment will need prior approval by BHA
UA / BAs	Limit of \$100.00 per person
Utilities	1 month limit per client
<b>* BHA may consider other expenses pending justification from jails and written pre-approval by BHA</b>	
<b>MEDICATIONS</b>	
Medication reimbursement will be based on a) providers established rate or b) jail purchase agreement rate or c) in the absence of an established rate or jail purchase agreement rate the following BHA rate schedule.	
Psychotropic Medication will be reimbursed at rate established on Preferred Drug List (PDL) which can be found at <a href="https://www.colorado.gov/hcpf/pharmacy">https://www.colorado.gov/hcpf/pharmacy</a> resources	
Medication	Rate
Methadone	\$18/day. Methodone treatment, including medication and integrated psychosocial and
Naltrexone (oral)	Monthly Medication Rate: \$85. Monthly Prescriber Rate: \$150
Depot-naltrexone (injectable) (Vivitrol)	\$1,376/unit; 380mg injection (extended release) per month
Buprenorphine (pregnancy) - 8mg	\$41/month
Buprenorphine (pregnancy) - 2mg	\$31/month
Buprenorphine/naloxone sublingual film (suboxone) - 12mg/3mg	\$275/month
Buprenorphine/naloxone sublingual film (suboxone) - 8mg/2mg	\$140/month
Buprenorphine/naloxone sublingual film (suboxone) - 4mg/1mg	\$140/month
Buprenorphine/naloxone sublingual film (suboxone) - 2mg/0.5mg	\$80/month
Naloxone (Narcan)	Unit Cost: \$75. Prescriber Rate: \$35
Suboxone and generics	\$5.55 / unit @30 days = \$166.50 for a 2mg-0.5mg dose; range can increase from 4mg-
Buprenorphine - 8mg	\$41/month
Buprenorphine - 2mg	\$31/month
Sublocade (injectable)	\$1,376/unit; 380mg injection (extended release) per month

Revised 02\_23\_2022

## Exhibit C Miscellaneous Provisions

### I. General Provisions and Requirements

#### A. Finance and Data Protocols

The Contractor shall comply with the Behavioral Health Administration's (BHA) most current Finance and Data Protocols and the Behavioral Health Accounting and Auditing Guidelines, made a part of this Contract by reference.

#### B. Marketing and Communications

The Contractor shall comply with the following marketing and communications requirements:

1. Reports or Evaluations. All reports or evaluations funded by BHA must be reviewed by BHA staff, including program, data, and communications, over a period of no fewer than 15 business days. The Contractor may be asked to place a report or evaluation on an BHA template and the report or evaluation is required to display the BHA logo. The Contractor shall submit the finished document to BHA in its final format and as an editable Word or Google document.
2. Press Releases. All press releases about work funded by BHA must note that the work is funded by the Colorado Department of Human Services, Behavioral Health Administration. Press releases about work funded by BHA must be reviewed by BHA program and communications staff over a period of no fewer than five business days.
3. Marketing Materials. Contractor shall include the current Colorado Department of Human Services, Behavioral Health Administration logo on any marketing materials, such as brochures or fact sheets, that advertise programs funded by this Contract. Marketing materials must be approved by the Contract's assigned BHA program contract over a period of no fewer than 5 business days.
4. All Other Documents. All other documents published by the Contractor about its BHA-funded work, including presentations or website content, should mention the Colorado Department of Human Services, Behavioral Health Administration as a funder.
5. Opinion of BHA. BHA may require the Contractor to add language to documents that mention BHA reading: "The views, opinions and content expressed do not necessarily reflect the views, opinions or policies of the Colorado Department of Human Services, Behavioral Health Administration."

#### C. Option Letter

For contracts using State funding: The State may increase or decrease the rates established in the Contract in **Exhibit B, "Budget,"** based upon a cost-of-living adjustment to the relevant lines in the Long Bill through an option letter. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to Contract Section 23, **"Sample Option Letter."** Delivery of Goods and performance of Services shall continue at

the same rates and terms as described in this Contract.

D. Start-up Costs

If the State reimburses the Contractor for any start-up costs and the Contractor closes the program or facility within three years of receipt of the start-up costs, the Contractor shall reimburse the State for said start-up costs within sixty (60) days of the closure. The Contractor is not required to reimburse the State for start-up costs if the facility or program closure is due to BHA eliminating funding to that specific program and/or budget line item.

E. Immediate Notification of Closures / Reductions in Force

If the Contractor intends to close a facility or program, it shall notify the BHA Contracts Unit at least five business days prior to the closure. Similarly, if the Contractor, or any sub-contractor provider, intends to conduct a reduction in force which affects a program funded through this contract, the Contractor shall notify the BHA Contracts Unit at least five business days prior to the layoffs.

F. Contract Contact Procedure

The Contractor shall submit all requests for BHA interpretation of this Contract or for amendments to this Contract to the BHA Contract Manager.

G. Continuity of Operations Plan

1. In the event of an emergency resulting in a disruption of normal activities, BHA may request that Contractor provide a plan describing how Contractor will ensure the execution of essential functions of the Contract, to the extent possible under the circumstances of the inciting emergency (“Continuity of Operations Plan” or “Plan”).
2. The Continuity of Operations Plan must be specific and responsive to the circumstances of the identified emergency.
3. BHA will provide formal notification of receipt of the Continuity of Operations Plan to the Contractor.
4. The Continuity of Operations Plan will not impact or change the budget or any other provisions of the contract, and Contractor's performance will be held to the same standards and requirements as the original Contract terms, unless otherwise specified in the Continuity of Operations Plan.
5. Any submitted Continuity of Operations Plan will serve as an amendment to the contract for the timeframe identified and agreed to by BHA and the Contractor.
6. Contractor shall communicate, in a format mutually agreed upon by BHA and Contractor staff, on a frequency that supports the monitoring of services under the Continuity of Operations Plan. If adjustments are needed to the Plan, such adjustments will be made in writing and accompanied by written notice of receipt from BHA.

- a. As part of the BHA/Contractor communication during the emergency, Contractor and BHA will evaluate whether the emergency has resolved such that normal operations may be resumed.
- b. Contractor and BHA will agree in writing when the emergency situation is sufficiently resolved and agree to a closeout period that is four weeks or less.
- c. BHA will submit notice accepting the termination of the Continuity of Operations Plan to the Contractor as the final action for any qualifying emergency response.

#### H. Cultural Responsiveness in Service Delivery

1. The Behavioral Health Administration expects funding dollars to support equity in access, services provided, and behavioral health outcomes among individuals of all cultures, gender identities, sexual orientations, races, and ethnicities. Accordingly, Contractors should collect and use data to: (1) identify priority populations vulnerable to health disparities encompassing the contractor's entire geographic service area (e.g., racial, ethnic, limited English speaking, indigenous, sexual orientation, gender identity groups, etc.) and (2) implement strategies to decrease the disparities in access, service use, and outcomes—both within those subpopulations and in comparison to the general population.
  2. One strategy for addressing health disparities is the use of the recently revised National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care (CLAS). The U.S. Department of Health and Human Services (HHS) Think Cultural Health website (<https://thinkculturalhealth.hhs.gov/>) also features information, continuing education opportunities, resources, and more for health and health care professionals to learn about culturally and linguistically appropriate services, or CLAS.
  3. Contractors providing direct behavioral health prevention, treatment, or recovery services shall submit one of the following two documents to [cdhs\\_bhadeliverables@state.co.us](mailto:cdhs_bhadeliverables@state.co.us) by August 31 annually:
    - a. If a provider has completed an equity plan that identifies how they will address health equity, they can submit the plan or;
    - b. Submit a completed CLAS checklist that follows this HHS format: <https://thinkculturalhealth.hhs.gov/assets/pdfs/AnImplementationChecklistfortheNationalCLASStandards.pdf>
- I. Prohibition on Marijuana. Funds may not be used, directly or indirectly, to purchase, prescribe, or provide marijuana or treatment using marijuana. Treatment in this context includes the treatment of opioid use disorder. Funds also cannot be provided to any individual who or organization that provides or permits marijuana use for the purposes of treating substance use or mental disorders. This prohibition does not apply to those providing such

treatment in the context of clinical research permitted by the DEA and under an FDA-approved investigational new drug application where the article being evaluated is marijuana or a constituent thereof that is otherwise a banned controlled substance under federal law.

## II. Use of Subcontracts.

- A. Services described in this Contract may be performed by Contractor or by a subcontractor, except where this Contract states explicitly that a service must not be subcontracted.
  1. To the extent a subcontractor is used, the Contractor shall provide a copy of the subcontract to BHA [cdhs\\_bhadeliverables@state.co.us](mailto:cdhs_bhadeliverables@state.co.us).
  2. Contractor shall ensure that its subcontractors perform to the terms of this Contract.
- B. Any subcontract for services must include, at a minimum, the following:
  3. A description of each partner's participation
  4. Responsibilities to the program (policy and/or operational)
  5. Resources the subcontractor will contribute, reimbursement rates, services to be included and processes in collecting and sharing data and the most recent CDHS version of the HIPAA Business Associates Addendum, if this Contract contains the HIPAA Business Associates Addendum/Qualified Service Organization Addendum as an exhibit.
- C. The Contractor shall provide to BHA a copy of any proposed subcontract between the Contractor and any potential provider of services to fulfill any requirements of this Contract, BHA [cdhs\\_bhadeliverables@state.co.us](mailto:cdhs_bhadeliverables@state.co.us) within 30 days of subcontract execution.
- D. BHA reserves the right to require Contractor to renegotiate subcontracts where necessary to adhere to the terms of this Contract.
- E. Subcontractor/Partnership Termination. In the event where partnerships with a subcontractor such as a treatment provider is terminated, the Contractor shall transition to a new partnership no later than 30 days from termination to ensure continuity of care for all participants of the program.

## III. Additional Remedies

- A. Duty to Act in Good Faith  
The Contractor shall comply with all the provisions of this contract and its amendments, if any, and shall act in good faith in the performance of the requirements of said contract. The Contractor agrees that failure to act in good faith in the performance with said requirements may result in the assessment of remedial actions, liquidated damages and/or termination of the contract in whole or in part and/or other actions by the State as allowed by law as set forth in this contract.
- B. Corrective Action  
The State will notify the Contractor of non-compliance and subsequently, after consultation with the Contractor, will establish a schedule for the Contractor to cure non-compliance. The Contractor shall be responsible for the submission of a plan of corrective action in accordance

with said schedule. If full compliance is not achieved, or a plan of action for correction is not submitted and approved by the State within the scheduled time frame, the State may exercise remedies specified in the General Provisions “Remedies” section of this Contract. If the State determines that the Contractor continues to be out of compliance with the Contract, the State may exercise liquidated damages herein.

C. Liquidated Damages.

If an extension of time is not granted by the State, and the required performance associated with this contract is not received from the Contractor then liquidated damages of \$300 a day will be assessed and may be permanently withheld from payments due to the Contractor for each day that performance is late. The parties agree that incomplete or incorrect performance shall also be cause for “late performance.” The parties agree that the damages from breach of this contract are difficult to prove or estimate, and the amount of liquidated damages specified herein represents a reasonable estimation of damages that will be suffered by the State from late performance, including costs of additional inspection and oversight, and lost opportunity for additional efficiencies that would have attended on-time completion of performance. Assessment of liquidated damages shall not be exclusive of or in any way limit remedies available to the State at law or equity for Contractor breach.

#### **IV. Audit Requirements**

A. Independent Audit Requirements

6. “Independent financial audit” shall be defined as follows– a financial audit conducted by a certified public accounting firm or certified public accountant (CPA) in accordance with generally accepted accounting principles and applicable federal regulations. The CPA or firm must be independent of the Contractor. “Independent” means not a regular full-time or part-time employee of the Contractor and not receiving any form of compensation from the Contractor other than compensation that the CPA receives for the conduct of the financial audit.
7. If the Contractor or sub-contractor expends federal awards from all sources (direct or from pass-through entities) in an amount of \$300,000 or more during its fiscal year shall have an independent financial audit performed annually. The audit shall identify, examine, and report the income and expenditures specific to operation of the services described in this contract. The audit will be presented in the format specified in the “Accounting and Auditing Guidelines” for Colorado Department of Human Services, Behavioral Health Administration (BHA), found on the BHA website.
8. The Contractor agrees to comply with the qualified or disclaimer opinion rendered by the independent auditor on financial statements or the negative opinion on peer review reports. Non-compliance with these standards shall result in enforcement of remedies against the Contractor as provided in this Contract.

B. Annual Single Audit

1. If the Contractor or sub-contractor expends federal awards from all sources (direct or from pass-through entities) in an amount of \$750,000 or more during its fiscal year, then the

Contractor or sub-contractor shall have an audit of that fiscal year in accordance with the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507), the provisions for which are outlined in **n/a**.

## V. Financial Requirements

### A. Funding Sources

1. The Contractor shall identify all funds delivered to subcontractors as state general fund, state cash funds, or federal grant dollars in **Exhibit B, "Budget."**
2. If a Single Audit is performed in accordance with Section III.B. above, the Contractor shall report the amount of the federal grant identified in the budget under the CFDA number identified on the first page of this Contract.
3. The Contractor shall communicate the CFDA number to all sub-contractors in their sub-contracts.

### B. Budget Reallocations

1. The Contractor may reallocate funds between the budget categories of this contract, up to 10% of the total contract amount, upon written approval by BHA, without a contract amendment. Any allowable reallocation is still subject to the limitations of the Not to Exceed and the Maximum Amount Available per Fiscal Year.

### C. Payment Terms

1. The Contractor shall invoice monthly for services, no later than the 20th of the month following when services are provided.
2. The Contractor shall utilize the invoice template(s) provided by BHA.
3. All payment requests shall be submitted electronically to [cdhs\\_bhayment@state.co.us](mailto:cdhs_bhayment@state.co.us)
4. Any requests for payment received after September 10th for the prior state fiscal year cannot be processed by BHA.
5. The State will make payment on invoices within 45 days of receipt of a correct and complete invoice to [cdhs\\_bhayment@state.co.us](mailto:cdhs_bhayment@state.co.us). Consequently, the Contractor must have adequate solvency to pay its expenses up to 45 days after invoice submission to the State.



## EXHIBIT D

### HIPAA BUSINESS ASSOCIATE / 42 PART 2

### QUALIFIED SERVICE ORGANIZATION AGREEMENT

This HIPAA Business Associate/42 Part 2 Qualified Service Organization Agreement (“Agreement”) between the State and Contractor is agreed to in connection with, and as an exhibit to, the Contract. For purposes of this Agreement, the State is referred to as “Covered Entity” and the Contractor is referred to as “Business Associate”. Unless the context clearly requires a distinction between the Contract and this Agreement, all references to “Contract” shall include this Agreement.

#### 1. PURPOSE

Covered Entity wishes to disclose information to Business Associate, which may include Protected Health Information ("PHI"). The Parties intend to protect the privacy and security of the disclosed PHI in compliance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Pub. L. No. 104-191 (1996) as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) enacted under the American Recovery and Reinvestment Act of 2009 (“ARRA”) Pub. L. No. 111-5 (2009), implementing regulations promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. Parts 160, 162 and 164 (the “HIPAA Rules”) and other applicable laws, as amended. Prior to the disclosure of PHI, Covered Entity is required to enter into an agreement with Business Associate containing specific requirements as set forth in, but not limited to, Title 45, Sections 160.103, 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and all other applicable laws and regulations, all as may be amended.

#### 2. DEFINITIONS

The following terms used in this Agreement shall have the same meanings as in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

The following terms used in this Agreement shall have the meanings set forth below:

- a. Business Associate. “Business Associate” shall have the same meaning as the term “business associate” at 45 C.F.R. 160.103 and, and shall refer to Contractor.
- b. Covered Entity. “Covered Entity” shall have the same meaning as the term “covered entity” at 45 C.F.R. 160.103, and shall refer to the State.
- c. Information Technology and Information Security. “Information Technology” and “Information Security” shall have the same meanings as the terms “information technology” and “information security”, respectively, in §24-37.5-102, C.R.S.

Capitalized terms used herein and not otherwise defined herein or in the HIPAA Rules shall have the meanings ascribed to them in the Contract.

### 3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

#### a. Permitted Uses and Disclosures.

- i. Business Associate shall use and disclose PHI only to accomplish Business Associate's obligations under the Contract.
- i. To the extent Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with any and all requirements of Subpart E that apply to Covered Entity in the performance of such obligation.
- ii. Business Associate may disclose PHI to carry out the legal responsibilities of Business Associate, provided, that the disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that:
  - A. the information will remain confidential and will be used or disclosed only as Required by Law or for the purpose for which Business Associate originally disclosed the information to that person, and;
  - B. the person notifies Business Associate of any Breach involving PHI of which it is aware.
- iii. Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity. Business Associate may de-identify any or all PHI created or received by Business Associate under this Agreement, provided the de-identification conforms to the requirements of the HIPAA Rules.

d. Minimum Necessary. Business Associate, its Subcontractors and agents, shall access, use, and disclose only the minimum amount of PHI necessary to accomplish the objectives of the Contract, in accordance with the Minimum Necessary Requirements of the HIPAA Rules including, but not limited to, 45 C.F.R. 164.502(b) and 164.514(d).

#### e. Impermissible Uses and Disclosures.

- i. Business Associate shall not disclose the PHI of Covered Entity to another covered entity without the written authorization of Covered Entity.
- ii. Business Associate shall not share, use, disclose or make available any Covered Entity PHI in any form via any medium with or to any person or entity beyond the boundaries or jurisdiction of the United States without express written authorization from Covered Entity.

#### f. Business Associate's Subcontractors.

- i. Business Associate shall, in accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractors who create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to safeguarding PHI.

- ii. Business Associate shall provide to Covered Entity, on Covered Entity's request, a list of Subcontractors who have entered into any such agreement with Business Associate.
  - iii. Business Associate shall provide to Covered Entity, on Covered Entity's request, copies of any such agreements Business Associate has entered into with Subcontractors.
- g. Access to System. If Business Associate needs access to a Covered Entity Information Technology system to comply with its obligations under the Contract or this Agreement, Business Associate shall request, review, and comply with any and all policies applicable to Covered Entity regarding such system including, but not limited to, any policies promulgated by the Office of Information Technology and available at <https://oit.colorado.gov/standards-policies-guides/technical-standards-policies>.
- h. Access to PHI. Business Associate shall, within ten days of receiving a written request from Covered Entity, make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.524.
- i. Amendment of PHI.
- i. Business Associate shall within ten days of receiving a written request from Covered Entity make any amendment to PHI in a Designated Record Set as directed by or agreed to by Covered Entity pursuant to 45 C.F.R. 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526.
  - ii. Business Associate shall promptly forward to Covered Entity any request for amendment of PHI that Business Associate receives directly from an Individual.
- j. Accounting Rights. Business Associate shall, within ten days of receiving a written request from Covered Entity, maintain and make available to Covered Entity the information necessary for Covered Entity to satisfy its obligations to provide an accounting of Disclosure under 45 C.F.R. 164.528.
- k. Restrictions and Confidential Communications.
- i. Business Associate shall restrict the Use or Disclosure of an Individual's PHI within ten days of notice from Covered Entity of:
    - A. a restriction on Use or Disclosure of PHI pursuant to 45 C.F.R. 164.522; or
    - B. a request for confidential communication of PHI pursuant to 45 C.F.R. 164.522.
  - ii. Business Associate shall not respond directly to an Individual's requests to restrict the Use or Disclosure of PHI or to send all communication of PHI to an alternate address.
  - iii. Business Associate shall refer such requests to Covered Entity so that Covered Entity can coordinate and prepare a timely response to the requesting Individual and provide direction to Business Associate.
- l. Governmental Access to Records. Business Associate shall make its facilities, internal practices, books, records, and other sources of information, including PHI, available to the Secretary for purposes of determining compliance with the HIPAA Rules in accordance with 45 C.F.R. 160.310.

m. Audit, Inspection and Enforcement.

- i. Business Associate shall obtain and update at least annually a written assessment performed by an independent third party reasonably acceptable to Covered Entity, which evaluates the Information Security of the applications, infrastructure, and processes that interact with the Covered Entity data Business Associate receives, manipulates, stores and distributes. Upon request by Covered Entity, Business Associate shall provide to Covered Entity the executive summary of the assessment.
- ii. Business Associate, upon the request of Covered Entity, shall fully cooperate with Covered Entity's efforts to audit Business Associate's compliance with applicable HIPAA Rules. If, through audit or inspection, Covered Entity determines that Business Associate's conduct would result in violation of the HIPAA Rules or is in violation of the Contract or this Agreement, Business Associate shall promptly remedy any such violation and shall certify completion of its remedy in writing to Covered Entity.

n. Appropriate Safeguards.

- i. Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provided in this Agreement.
- ii. Business Associate shall safeguard the PHI from tampering and unauthorized disclosures.
- iii. Business Associate shall maintain the confidentiality of passwords and other data required for accessing this information.
- iv. Business Associate shall extend protection beyond the initial information obtained from Covered Entity to any databases or collections of PHI containing information derived from the PHI. The provisions of this section shall be in force unless PHI is de-identified in conformance to the requirements of the HIPAA Rules.

o. Safeguard During Transmission.

- i. Business Associate shall use reasonable and appropriate safeguards including, without limitation, Information Security measures to ensure that all transmissions of PHI are authorized and to prevent use or disclosure of PHI other than as provided for by this Agreement.
- ii. Business Associate shall not transmit PHI over the internet or any other insecure or open communication channel unless the PHI is encrypted or otherwise safeguarded with a FIPS-compliant encryption algorithm.

p. Reporting of Improper Use or Disclosure and Notification of Breach.

- i. Business Associate shall, as soon as reasonably possible, but immediately after discovery of a Breach, notify Covered Entity of any use or disclosure of PHI not provided for by this Agreement, including a Breach of Unsecured Protected Health Information as such notice is

required by 45 C.F.R. 164.410 or a breach for which notice is required under §24-73-103, C.R.S.

- ii. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach.
  - iii. Business Associate shall, as soon as reasonably possible, but immediately after discovery of any Security Incident that does not constitute a Breach, notify Covered Entity of such incident.
  - iv. Business Associate shall have the burden of demonstrating that all notifications were made as required, including evidence demonstrating the necessity of any delay.
- q. Business Associate's Insurance and Notification Costs.
- i. Business Associate shall bear all costs of a Breach response including, without limitation, notifications, and shall maintain insurance to cover:
    - A. loss of PHI data;
    - B. Breach notification requirements specified in HIPAA Rules and in §24-73-103, C.R.S.; and
    - C. claims based upon alleged violations of privacy rights through improper use or disclosure of PHI.
  - ii. All such policies shall meet or exceed the minimum insurance requirements of the Contract or otherwise as may be approved by Covered Entity (e.g., occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status, and notice of cancellation).
  - iii. Business Associate shall provide Covered Entity a point of contact who possesses relevant Information Security knowledge and is accessible 24 hours per day, 7 days per week to assist with incident handling.
  - iv. Business Associate, to the extent practicable, shall mitigate any harmful effect known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of this Agreement.
- r. Subcontractors and Breaches.
- i. Business Associate shall enter into a written agreement with each of its Subcontractors and agents, who create, receive, maintain, or transmit PHI on behalf of Business Associate. The agreements shall require such Subcontractors and agents to report to Business Associate any use or disclosure of PHI not provided for by this Agreement, including Security Incidents and Breaches of Unsecured Protected Health Information, on the first day such Subcontractor or agent knows or should have known of the Breach as required by 45 C.F.R. 164.410.

- ii. Business Associate shall notify Covered Entity of any such report and shall provide copies of any such agreements to Covered Entity on request.
- s. Data Ownership.
  - i. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.
  - ii. Upon request by Covered Entity, Business Associate immediately shall provide Covered Entity with any keys to decrypt information that the Business Association has encrypted and maintains in encrypted form, or shall provide such information in unencrypted usable form.
- t. Retention of PHI. Except upon termination of this Agreement as provided in Section 5, below, Business Associate and its Subcontractors or agents shall retain all PHI throughout the term of this Agreement, and shall continue to maintain the accounting of disclosures required under Section 3.h, above, for a period of six years.

#### 4. OBLIGATIONS OF COVERED ENTITY

- a. Safeguards During Transmission. Covered Entity shall be responsible for using appropriate safeguards including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of PHI transmitted pursuant to this Agreement, in accordance with the standards and requirements of the HIPAA Rules.
- b. Notice of Changes.
  - i. Covered Entity maintains a copy of its Notice of Privacy Practices on its website. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission to use or disclose PHI, to the extent that it may affect Business Associate's permitted or required uses or disclosures.
  - ii. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522, to the extent that it may affect Business Associate's permitted use or disclosure of PHI.

#### 5. TERMINATION

- a. Breach.
  - i. In addition to any Contract provision regarding remedies for breach, Covered Entity shall have the right, in the event of a breach by Business Associate of any provision of this Agreement, to terminate immediately the Contract, or this Agreement, or both.
  - ii. Subject to any directions from Covered Entity, upon termination of the Contract, this Agreement, or both, Business Associate shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Business Associate in which Covered Entity has an interest.

b. Effect of Termination.

- i. Upon termination of this Agreement for any reason, Business Associate, at the option of Covered Entity, shall return or destroy all PHI that Business Associate, its agents, or its Subcontractors maintain in any form, and shall not retain any copies of such PHI.
- ii. If Covered Entity directs Business Associate to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.
- iii. If Business Associate believes that returning or destroying the PHI is not feasible, Business Associate shall promptly provide Covered Entity with notice of the conditions making return or destruction infeasible. Business Associate shall continue to extend the protections of Section 3 of this Agreement to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

## 6. INJUNCTIVE RELIEF

Covered Entity and Business Associate agree that irreparable damage would occur in the event Business Associate or any of its Subcontractors or agents use or disclosure of PHI in violation of this Agreement, the HIPAA Rules or any applicable law. Covered Entity and Business Associate further agree that money damages would not provide an adequate remedy for such Breach. Accordingly, Covered Entity and Business Associate agree that Covered Entity shall be entitled to injunctive relief, specific performance, and other equitable relief to prevent or restrain any Breach or threatened Breach of and to enforce specifically the terms and provisions of this Agreement.

## 7. LIMITATION OF LIABILITY

Any provision in the Contract limiting Contractor's liability shall not apply to Business Associate's liability under this Agreement, which shall not be limited.

## 8. DISCLAIMER

Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement or the HIPAA Rules will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made and actions taken by Business Associate regarding the safeguarding of PHI.

## 9. CERTIFICATION

Covered Entity has a legal obligation under HIPAA Rules to certify as to Business Associate's Information Security practices. Covered Entity or its authorized agent or contractor shall have the right to examine Business Associate's facilities, systems, procedures, and records, at Covered Entity's expense, if Covered Entity determines that examination is necessary to certify that Business Associate's Information Security safeguards comply with the HIPAA Rules or this Agreement.

## 10. AMENDMENT

- a. Amendment to Comply with Law. The Parties acknowledge that state and federal laws and regulations relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide procedures to ensure compliance with such developments.
- i. In the event of any change to state or federal laws and regulations relating to data security and privacy affecting this Agreement, the Parties shall take such action as is necessary to implement the changes to the standards and requirements of HIPAA, the HIPAA Rules and other applicable rules relating to the confidentiality, integrity, availability and security of PHI with respect to this Agreement.
  - ii. Business Associate shall provide to Covered Entity written assurance satisfactory to Covered Entity that Business Associate shall adequately safeguard all PHI, and obtain written assurance satisfactory to Covered Entity from Business Associate's Subcontractors and agents that they shall adequately safeguard all PHI.
  - iii. Upon the request of either Party, the other Party promptly shall negotiate in good faith the terms of an amendment to the Contract embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Rules, or other applicable rules.
  - iv. Covered Entity may terminate this Agreement upon 30 days' prior written notice in the event that:
    - A. Business Associate does not promptly enter into negotiations to amend the Contract and this Agreement when requested by Covered Entity pursuant to this Section; or
    - B. Business Associate does not enter into an amendment to the Contract and this Agreement, which provides assurances regarding the safeguarding of PHI sufficient, in Covered Entity's sole discretion, to satisfy the standards and requirements of the HIPAA, the HIPAA Rules and applicable law.
- b. Amendment of Appendix. The Appendix to this Agreement may be modified or amended by the mutual written agreement of the Parties, without amendment of this Agreement. Any modified or amended Appendix agreed to in writing by the Parties shall supersede and replace any prior version of the Appendix.

## 11. ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS

Covered Entity shall provide written notice to Business Associate if litigation or administrative proceeding is commenced against Covered Entity, its directors, officers, or employees, based on a claimed violation by Business Associate of HIPAA, the HIPAA Rules or other laws relating to security and privacy or PHI. Upon receipt of such notice and to the extent requested by Covered Entity, Business Associate shall, and shall cause its employees, Subcontractors, or agents assisting Business Associate in the performance of its obligations under the Contract to, assist Covered Entity in the defense of such litigation or proceedings. Business Associate shall, and shall cause its employees, Subcontractor's and agents to, provide assistance, to Covered Entity, which may

include testifying as a witness at such proceedings. Business Associate or any of its employees, Subcontractors or agents shall not be required to provide such assistance if Business Associate is a named adverse party.

## 12. INTERPRETATION AND ORDER OF PRECEDENCE

Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules. In the event of an inconsistency between the Contract and this Agreement, this Agreement shall control. This Agreement supersedes and replaces any previous, separately executed HIPAA business associate agreement between the Parties.

## 13. SURVIVAL

Provisions of this Agreement requiring continued performance, compliance, or effect after termination shall survive termination of this contract or this agreement and shall be enforceable by Covered Entity.

## APPENDIX TO HIPAA BUSINESS ASSOCIATE AGREEMENT

This Appendix (“Appendix”) to the HIPAA Business Associate Agreement (“Agreement”) is s an appendix to the Contract and the Agreement. For the purposes of this Appendix, defined terms shall have the meanings ascribed to them in the Agreement and the Contract.

Unless the context clearly requires a distinction between the Contract, the Agreement, and this Appendix, all references to “Contract” or “Agreement” shall include this Appendix.

### 1. PURPOSE

This Appendix sets forth additional terms to the Agreement. Any sub-section of this Appendix marked as “Reserved” shall be construed as setting forth no additional terms.

### 2. ADDITIONAL TERMS

- a. Additional Permitted Uses. In addition to those purposes set forth in the Agreement, Business Associate may use PHI for the following additional purposes:
  - i. Reserved.
- b. Additional Permitted Disclosures. In addition to those purposes set forth in the Agreement, Business Associate may disclose PHI for the following additional purposes:
  - i. Reserved.
- c. Approved Subcontractors. Covered Entity agrees that the following Subcontractors or agents of Business Associate may receive PHI under the Agreement:
  - i. Reserved.
- d. Definition of Receipt of PHI. Business Associate’s receipt of PHI under this Contract shall be deemed to occur, and Business Associate’s obligations under the Agreement shall commence, as follows:
  - i. Reserved.
- e. Additional Restrictions on Business Associate. Business Associate agrees to comply with the following additional restrictions on Business Associate’s use and disclosure of PHI under the Contract:
  - i. Reserved.
  - ii. The Associate:
    - A. Acknowledges this agreement qualifies as a Qualified Service Organization Addendum as the agreement is between a Substance Abuse Program (“Program”) and a Qualified Service Organization as defined by 42 C.F.R. Part 2.

- B. Acknowledges that in receiving, transmitting, transporting, storing, processing or otherwise dealing with any information received from the Program identifying or otherwise relating to the patient in the Program (“protected information”), it is fully bound by the provisions of the federal regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2. Protected information encompasses protected health information (“PHI”) and references to PHI shall be understood to include protected information.
  - C. Agrees to resist any efforts in judicial proceeding to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse patient Records, 42 C.F.R. Part 2.
  - D. Agrees that if the Associate enters into a contract with any agent or subcontractor, the agent or subcontractor will agree to comply with 42 C.F.R. Part 2.
  - E. Agrees to ensure that any agent or subcontractor to whom the Associate provides protected information received from the Program, or creates or receives on behalf of the Program, agrees to the same restrictions and conditions that apply through this agreement to the Associate with respect to such information.
  - F. Agrees that redisclosure of protected information is prohibited unless permitted by 42 C.F.R. Part 2.
- f. Additional Terms. Business Associate agrees to comply with the following additional terms under the Agreement.
- i. Reserved.

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

**Agenda Item:** Administrative Planning Grant Application, Departm

**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:**

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

Application for DOLA Planning grant for North Gunnison area plan

**Fiscal Impact:** +\$25,000

**Submitted by:** Cathie Pagano

**Submitter's Email Address:** cpagano@gunnisoncounty.org

**Finance Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\jguerra

Discharge Date: 4/21/2022

**County Attorney Review:**

Required

Not Required

Comments:

Reveiwed by: GUNCOUNTY1\mhoyt

Discharge Date: 4/27/2022

Certificate of Insurance Required

Yes  No

**County Manager Review:**

Comments:

Reveiwed by: GUNCOUNTY1\mbirmie

Discharge Date: 4/28/2022

Consent Agenda     Regular Agenda     Worksession

Time Allotted:

Agenda Date: 5/3/2022



Dana Hlavac  
222 S. 6<sup>th</sup> St. Room 409  
Grand Junction, CO 81501

May 3, 2022

Dear Mr. Hlavac,

Gunnison County is writing to request an Administrative Planning Grant to support the development of the north Gunnison area plan.

### **Project Scope**

Gunnison County and the City of Gunnison have prioritized the development of the north Gunnison subarea (as described in the City of Gunnison's 2030 Comprehensive Plan) for future development and potential annexation. The area is located along State Highway 135 and is experiencing increasing development pressure. The City and the County are seeking to create a plan that reflects the community values of avoiding sprawl and supporting development patterns that are similar to those within the city limits. The Comprehensive Plan states, "The North Gateway Subarea largely defines the area where the City will consider annexation and incremental growth within the three-mile area. Should parcels in the North Subarea be annexed into the City, their land use and zoning designations should reflect similar use and level of intensity to adjacent land uses currently within the municipal boundary."

The City of Gunnison Comprehensive Plan describes the north Gunnison subarea as the area from the north City boundary along Highway 135 to the Gunnison River. Currently, this area includes residential development, agricultural uses, and some commercial uses. Community outreach conducted as part of the 2016 One Valley Prosperity Project and the City of Gunnison 2030 Comprehensive Plan (Comp Plan), showed strong support among the community for incremental growth of the City to the north in a manner that prioritizes infill within the City first. Additionally, the public prioritized and supported: multi-modal connectivity, street/grid connection and extension, extension of City design standards. The Comp Plan notes that the north Gunnison subarea "should provide broad potential for walkable neighborhoods, missing middle, and multi-family, including seniors and students." The project area is in the jurisdiction of Gunnison County and subject to the standards of the Gunnison County *Land Use Resolution* and the City and County have an existing Intergovernmental Agreement for the three-mile planning area that will need to be updated. The primary goals of this project are to develop a plan that identifies the appropriate use types and densities in the subarea. The goal of the City and County are that the project shall be completed within 9 months of the issuance of the RFP. The scope of work will include, at a minimum, the following outcomes:

- Project management: The Consultant will be responsible for the development and facilitation of the project schedule, and coordination of all activities, tasks, meetings, and deliverables with the County and City's designated Project Manager.
- Public engagement: The Consultant will be responsible for developing and managing a public input process that will include public meetings with the County and City Planning Commissions and Board of County Commissioners and City Council as well as outreach to strategic stakeholder groups.
- Conceptual infrastructure extension and integration plan with staff input from the City and County Public Works departments.
- Recommendations for use types and locations in subarea and any associated permitting/entitlement process to streamline processes.
- Capital Improvements: A recommended timeline for capital improvements to accommodate sustainable, incremental growth that pays its own way.
- Street connections: Recommendations on implementation and planning for future street/grid connection in the subarea.
- Multi-modal connection: Conduct an analysis of the circulation patterns for bike, pedestrians, bus, and parking, to include the downtown core area and connecting street.
- Coordination and integration of outcomes from consultant team working with CDOT, the County, and City on a Multimodal Access Control Plan for HWY 50 and 135.
- Recommending changes to the current Intergovernmental Agreement for the three-mile planning area.

**Budget and Timeline**

**PROJECT BUDGET**

Source of Funds		DOLA Funds	Applicant Funds	Partner Funds	Total Funding
<b>CASH</b>					
	DOLA Planning Grant	\$25,000.00			\$25,000.00
	Gunnison County		\$35,000.00		\$35,000.00
	City of Gunnison			\$40,000.00	\$40,000.00
					\$0.00
					\$0.00
					\$0.00
					\$0.00
<b>IN-KIND</b>					
					\$0.00
					\$0.00
					\$0.00
<b>TOTAL SOURCE OF FUNDS</b>		<b>\$25,000.00</b>	<b>\$35,000.00</b>	<b>\$40,000.00</b>	<b>\$100,000.00</b>

CASH	Use of Cash Funds	Cost Per Unit	DOLA Funds	Applicant Funds	Cumulative Partner Funds	Total Funding
Step 1: Project Initiation		\$12,040.00	\$5,000.00	\$5,040.00	\$2,000.00	\$12,040.00
Step 2: Public Engagement		\$4,330.00	\$2,000.00	\$1,000.00	\$1,330.00	\$4,330.00
Step 3: Land Use and Development Framework		\$18,080.00	\$5,000.00	\$7,000.00	\$6,080.00	\$18,080.00
Step 4: Draft Master Plan and Conceptual Models		\$45,390.00	\$10,000.00	\$15,000.00	\$20,390.00	\$45,390.00
Step 5: Preparation of the Final North Gateway Master Plan		\$8,490.00	\$1,500.00	\$4,960.00	\$2,030.00	\$8,490.00
Step 6: West Gunnison Integration Ph. 1		\$11,670.00	\$1,500.00	\$2,000.00	\$8,170.00	\$11,670.00
			<b>\$25,000.00</b>	<b>\$35,000.00</b>	<b>\$40,000.00</b>	<b>\$100,000.00</b>

<b>TOTAL PROJECT COST</b>	<b>\$25,000.00</b>	<b>\$35,000.00</b>	<b>\$40,000.00</b>	<b>\$100,000.00</b>
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The project is expected to be completed in nine months from approval of consultant contract. Gunnison County has released a request for proposals and interviewed consultant candidates for the project. In collaboration with the City of Gunnison both jurisdictions have selected Houseal Lavigne to support the project completion. A contract for

services has not been executed.

### **Financial Need**

Both the City and the County have budgeted \$35,000 each to support this project. The City of Gunnison has requested additional work in the west Gunnison area and has increased their contribution to \$40,000 to accommodate the additional project scope. Both jurisdictions have a multitude of competing needs and priorities and support from DOLA for this project is needed to accomplish the work.

### **Project Urgency and Readiness to Begin Work**

The north Gunnison area is a location that is ripe for an area plan because of the high demand for development that is occurring in the Gunnison-Crested Butte highway corridor. In the past three years both City and County staff have fielded a number of applications and inquiries for development in the north Gunnison area. The City and the County desire to create an area plan in this location to meet the expressed needs of the community and align with desired development patterns. The current land use regulations do not meet the needs of the area nor do they adequately address the infrastructure challenges and needed connections in the area. We have an opportunity to design a development and land use regulations for this area that better align with the City's Comprehensive Plan, support a variety of attainable and affordable housing types, enable multi-modal connections, reduce greenhouse gas emissions, and align with environmental goals related to protection of water quality.

As stated above, the County and the City have selected the consultant team of Houseal Lavigne to support this project and are ready to begin work, although a contract for services has not yet been executed.

### **Energy and Mineral Impact**

Gunnison County's history has long been tied to the mining industry. The extraction of coal, gold, silver, uranium and secondary resources has been integral to the development of several of the County's communities. Gunnison County is home to two of Colorado's largest and most productive coal mines, Oxbow Mining LLC's Elk Creek Mine and Mountain Coal Company's West Elk Mine in Somerset, producing significant amounts of exported product, and significant tax revenues. Each mine produces approximately five-to-six million tons of high-quality bituminous coal annually. The Elk Creek Mine is one of the top five underground producing mines in the nation. Gunnison County has worked with Oxbow Mining and Mountain Coal to create a Special District under the Gunnison County *Land Use Resolution* to provide a smooth process for expansion of their respective mining operations.

In 2003, Gunnison County adopted the *Coal Resource Special Area Coal Mining Regulations*, to recognize the unique importance of coal mining within the Somerset area. Specifically, the special regulations intend to simplify and expedite the permitting process for existing coal companies and avoid duplication with State and Federal permitting requirements while avoiding or mitigating potential impacts to the environment, public services and facilities, property and public safety that are not addressed by other State or Federal agencies. Gunnison County has consistently supported lease revisions, the Colorado Roadless Rule versus the Clinton Roadless Rule, and even a lowering of the royalty rates in support of the coal mines.

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Jonathan Houck, Chair

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

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**Agenda Item:** Letter of Engagement Agreement; Berg Hill Greenlea

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**Action Requested:** Other Matthew Hoyt's signature

**Parties to the Agreement:**

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

Engagement letter for BHGR (Josh Marks) to represent Gunnison County in District Court Case No 2021CV30017

**Fiscal Impact:**

**Submitted by:** Donita Bishop

**Submitter's Email Address:** dbishop@gunnisoncounty.org

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**Finance Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\jguerra

Discharge Date: 4/28/2022

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**County Attorney Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 4/27/2022

Certificate of Insurance Required

Yes  No

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**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 4/28/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted:

Agenda Date: 5/3/2022

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Josh A. Marks  
Partner

Email: [jam@bhgrlaw.com](mailto:jam@bhgrlaw.com)

April 25, 2022

Via E-Mail: [MHoyt@gunnisoncounty.org](mailto:MHoyt@gunnisoncounty.org)

Gunnison County  
c/o Matthew Hoyt, County Attorney  
200 E. Virginia Avenue  
Gunnison, CO 81230

Re: Engagement Letter  
Andrew and Susan Tyzzer Appeal

Dear Matt:

Thank you for asking us to represent Gunnison County (the "County") in the appeal of *Andrew and Susan Tyzzer v. Gunnison County, Colorado, et al.*, Gunnison County District Court, Case No. 2021CV30017. We look forward to working with you to hopefully reverse Judge Patrick's adverse determination at the trial court level. The following documents our agreement for our appellate work.

The County will be responsible for my representation, including any costs incurred therein. Unless I hear otherwise from you, our firm will forward our monthly billing via e-mail. My hourly rate for this retention is \$300.00/hour, plus any expenses, such as computerized legal research charges. We may send certain expenses to the County for direct payment, but we may pay other expenses and charge them back to the County. I will likely utilize the services of DJ Goldfarb and/or another associate attorney and/or paralegal. If so, the associate attorney will bill at \$275.00/hour and the paralegal will bill at \$150/hour.

I will be the attorney in charge of the County's account, and therefore, will be the appropriate contact person for services to be rendered on the County's behalf by our firm. We will coordinate our work with your office, as appropriate, and keep you advised of the progress of this matter.

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Attorneys At Law

If all of the foregoing is agreeable with the County, please indicate its approval on the lines provided below, and return a copy of the signed acknowledgment to me via e-mail, fax or regular mail. Please retain the fully signed copy of this letter for the County's information and records. The receipt by the County of a fully-executed copy of this agreement is acknowledged by its signature hereto.

We look forward to representing you.

Very truly yours,



Josh A. Marks

JAM/cds

READ AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2022.

COUNTY OF GUNNISON, COLORADO

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By: MATTHEW HOYT  
Its: County Attorney

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

**Agenda Item:** BridgeCare Master Subscription and Services Agreem

**Action Requested:** County Manager Signature

**Parties to the Agreement:** BridgeCare

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

HHS requests signature on contract to use BridgeCare services to monitor and report available childcare slots as part of CDHS contract deliverable for the ECC.

**Fiscal Impact:**

**Submitted by:** Margaret Wacker

**Submitter's Email Address:** mwacker@gunnisoncounty.org

**Finance Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\jguerra

Discharge Date: 4/28/2022

**County Attorney Review:**

Required

Not Required

**Comments:**

Although no provision per se illegal, and while some provisions are arguably legally and minimally acceptable, CAO recommends against indemnification, limitations on liability, choice of law and choice of forum provisions contained in this contract. Whether to accept these provisions is ultimately business decision. MRH

Reveiwed by: GUNCOUNTY1\mhoyt

Discharge Date: 4/28/2022

Certificate of Insurance Required

Yes  No

**County Manager Review:**

Comments:

Reveiwed by: GUNCOUNTY1\mbirmie

Discharge Date: 4/28/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted:

Agenda Date: 5/3/2022

## BRIDGECARE MASTER SUBSCRIPTION AND SERVICES AGREEMENT

This Master Subscription and Services Agreement ("Agreement") is made as of April 1, 2022 ("Effective Date"), between BridgeCare Finance Inc. with an address at 208 Alto Drive, Boulder Creek, CA 95006 ("BridgeCare"), and Gunnison County with an address at 200 E. Virginia Ave, Gunnison CO 81230 ("Licensee"). BridgeCare and Licensee will be referenced to individually herein as "Party" and collectively as the "Parties."

BridgeCare has developed a Software-as-a-Service platform, as described in Exhibit A attached hereto ("Platform"). The Platform helps Licensee manage data and services related to child care and education ("Authorized Purpose"). This Agreement governs a relationship whereby BridgeCare will (i) grant Licensee access to the Platform; and (ii) perform the professional services set forth in Exhibit B attached hereto ("Professional Services," together with the Platform, the "Services"). Accordingly, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### 1. Proprietary Rights.

(a) Platform. Subject to the terms and conditions of this Agreement, BridgeCare hereby grants to Licensee during the Term (defined below) a non-exclusive, non-transferable and non-sublicensable license to allow its employees and contractors who have been issued valid access credentials from BridgeCare ("Authorized Users") to access and use the Platform solely to help facilitate the Authorized Purpose. BridgeCare will provide access to the Service to end-users who obtain valid access credentials from BridgeCare. BridgeCare will provide Licensee with the support services set forth in Exhibit C attached hereto. The number of Authorized Users shall be determined by the Licensee and BridgeCare shall impose no limit on the number of Authorized Users.

(b) Restrictions. Licensee will not, and will not permit any third party to: (i) copy, modify, translate, or create derivative works of the Platform; (ii) reverse engineer, decompile, disassemble or otherwise attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques, or algorithms of the Platform (except to the extent such prohibition is contrary to applicable law); (iii) lend, lease, offer for sale, sell or otherwise use the Platform for the benefit of any third party except as permitted under Section I (a); (iv) attempt to disrupt the integrity or performance of the Platform; (v) attempt to gain unauthorized access to the Platform or its related systems or networks; or (vi) use the Platform in a manner that violates this Agreement, any third party rights or any applicable laws, rules or regulations.

(c) BridgeCare Ownership. Except for the rights granted to Licensee in Section I(a) above and Licensee's rights to Data (defined below), as between the Parties, BridgeCare retains all right, title and interest, including all intellectual property rights, in and to the Platform (including all updates thereto) and all aggregated and de-identified information that BridgeCare's systems or applications automatically collect regarding the Platform and/or its use and/or performance (including, without limitation, de-identified Data that does not, and cannot reasonably be used to, identify Licensee or any individual) ("Diagnostic Data") (which, notwithstanding anything to the contrary, BridgeCare may fully exploit). All rights that BridgeCare does not expressly grant to Licensee in this Section I are reserved and BridgeCare does not grant any implied licenses under this Section I.

(d) Licensee Ownership. As between the Parties, Licensee owns all data, information and other materials submitted to the Platform or BridgeCare by Licensee or Authorized Users (which, for clarity, excludes Diagnostic Data) (collectively, "Data"). Licensee hereby grants to BridgeCare a non-exclusive and non-transferable (except under Section 10) license to use and host the Data, solely for the Authorized Purpose. Notwithstanding anything to the contrary, all data, information and other materials regarding childcare providers that is submitted to the Platform (whether directly such providers, or by Licensee or its Authorized Users), and BridgeCare's rights and obligations with respect thereto, will be governed by BridgeCare's Terms of Service and Privacy Policy for childcare providers and by applicable Colorado and Federal law, except that BridgeCare shall not have in rights in or to the Data without the express written permission of Licensee, which Licensee may withhold at its sole discretion. Upon termination or expiration of this Agreement for any reason, BridgeCare will permit Licensee to download all Data from the Platform in .csv format within thirty (30) days of termination or expiration. BridgeCare shall have no obligation to maintain or permit access to Licensee Data following said period and shall not be liable hereunder for any return, loss, or destruction of Licensee Data thereafter.

(e) Updates. From time to time, BridgeCare shall engage in commercially reasonable efforts to provide updates, upgrades, fixes, improvements, or additional features to the Platform which do not constitute a separate product or service (each an "Update"), which may be provided either free of charge at BridgeCare's discretion, or as an additional paid module or feature (subject to an amendment to Exhibit A or

separate contract between the Parties). Any duly authorized and implemented Update shall be deemed part of the "Platform" licensed hereunder upon release to Licensee.

(f) Feedback. During the Term, Licensee may provide general feedback, comments, suggestions, and other communications regarding potential improvements to the Services (collectively, "Feedback"). Licensee grants to BridgeCare the non-exclusive, perpetual, irrevocable, fully sublicensable, fully transferable, royalty-free right to use, copy, reproduce, publish, perform, display, distribute, create derivative works of, have and have made, sell, and otherwise commercially exploit Feedback in any format or medium for any purpose in its discretion. The foregoing license shall survive the termination or expiration of this Agreement for any reason.

(g) Branding. Licensee agrees that BridgeCare may use and display Licensee's name and/or current trademark brand or logo in its customer lists, advertisements, and other published marketing materials factually describing Licensee as BridgeCare's customer and/or a recipient of Services during the Term.

(h) Customizations. The Services may include certain customized configurations, developments, or integrations of the Platform (each a "Customization") according to the specifications set forth in Exhibit A and/or Exhibit B, including without limitation the incorporation of Licensee's pre-existing proprietary trademarks, service marks, trade names, logos, branding, content, or other materials (collectively, "Licensee Materials"). Licensee hereby grants to BridgeCare the non-exclusive, royalty-free right to use, display, copy, modify, publish, and perform Licensee Materials solely for the purpose of developing and implementing the Customizations in accordance with Exhibit A. Such license shall be sublicensable to BridgeCare's affiliates and third-party contractors in connection with the foregoing permitted purpose. As between the Parties, BridgeCare shall be the sole owner of all right, title, and interest in and to Customizations (excluding Licensee Materials incorporated therein), which shall be considered Inventions (defined below) and subject to the provisions of Section 3(b). Customizations are licensed and not sold to Licensee.

## 2. Use of the Services.

(a) BridgeCare's Obligations. BridgeCare will use commercially reasonable efforts to make the Service available at all times, except for planned downtime and any unavailability caused by Force Majeure Events (defined below). BridgeCare will maintain commercially reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of Data. BridgeCare shall at all times coordinate with Licensee's information technology (IT) staff to provide the Service, including but not limited to downtime, Data privacy, security and integrity, Data breaches, and Data incident response. Specifically with regard to planned downtime, BridgeCare shall provide Licensee's IT staff at least three (3) business days advance notice before the planned downtime commences, and shall also provide a reasonable estimate of the length of the planned downtime.

(b) Licensee's Obligations. Licensee acknowledges and agrees that it is responsible for the use or misuse of the Service by Authorized Users, and a breach by any Authorized User of any term of this Agreement will be deemed a breach by Licensee of this Agreement. In the event that the Service does not perform to the Licensee's satisfaction, the Licensee reserves the right to repudiate acceptance and terminate this Agreement in its sole discretion.

## 3. Professional Services.

(a) General. Subject to Licensee's compliance with the terms and conditions of this Agreement, BridgeCare will perform the Professional Services in accordance with any specifications set forth in Exhibit B. Each Party will communicate with the point of contact set forth in Exhibit B in connection with the Professional Services. Licensee will reasonably cooperate with BridgeCare to facilitate provision of Professional Services. This cooperation will include, without limitation, (i) performing any tasks reasonably necessary for BridgeCare to provide the Professional Services and to avoid unnecessary delays; (ii) fulfilling any Licensee obligations described in Exhibit B in a timely manner; and (iii) responding to BridgeCare's reasonable requests related to Professional Services in a timely manner. Notwithstanding anything in Exhibit B to the contrary, BridgeCare will not be liable for any delays in performing the Professional Services that arise, in whole or in part, from Licensee's acts or omissions, including, without limitation, its failure to comply with this Section 3(a).

(b) Intellectual Property Rights. BridgeCare solely owns all right, title and interest in and to any software, notes, records, drawings, designs or other copyrightable materials, inventions (whether or not patentable), improvements, developments, discoveries and trade secrets conceived, discovered, authored, invented, developed or reduced to practice by BridgeCare, solely or in collaboration with others, arising out of, or in connection with, BridgeCare performing the Professional Services, including any copyrights, patents, trade secrets, mask work rights or other intellectual property rights relating to the foregoing ("Inventions"). BridgeCare hereby grants to Licensee a non-exclusive, non-transferable, non-sublicensable, royalty-free and worldwide right during the Term to use the portion of the Inventions that is incorporated into any deliverables that BridgeCare provides to Licensee under Exhibit B solely to use any such

deliverables. BridgeCare reserves all rights not expressly granted in the prior sentence and does not grant any implied licensed under this Section 3.

4. Fees.

(a) Fees. Licensee will pay BridgeCare the fees for access to the Platform for each twelve (12) month period during the Term and the fees for Professional Services, in each case, as set forth in Exhibit D hereto (collectively, "Fees"). All Fees will be due and payable within thirty (30) days from the date of the applicable invoice issued by BridgeCare. Except as expressly set forth herein, all Fees are non-cancellable and non-refundable. Late Fee payments will accrue interest at the rate of one and one half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

(b) Taxes. The Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any applicable taxing authorities (collectively, "Taxes"). Licensee is responsible for paying all Taxes associated with its receipt of the Services (except for any Taxes based on BridgeCare's net income).

(c) Service Credit. Should the Service become unavailable for any reason, including but not limited to a Force Majeure Event, for a period of more than five (5) hours, BridgeCare shall provide a Service Credit to Licensee, consisting of five percent (5%) of the total Fees owed for the twelve-month period in which the Service became unavailable.

5. Confidential Information.

(a) Definition of Confidential Information. As used herein, "Confidential Information" means all confidential information disclosed by a Party ("Disclosing Party") to the other Party ("Receiving Party"), that is marked in writing as "confidential" or by a similar designation. For clarity, Confidential Information of BridgeCare also includes the BridgeCare technology underlying the Platform and any related non-public specifications, documentation or technical information that BridgeCare makes available to Licensee. Confidential Information will not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party without restriction prior to its disclosure by the Disclosing Party and without breach of any obligation owed to the Disclosing Party; (iii) is received from a third party without restriction and without breach of any obligation owed to the Disclosing Party; (iv) information that is deemed to be public under applicable law, including but not limited to the Colorado Open Records Act; or (v) was independently developed by the Receiving Party without use of or reference to any Confidential Information of the Disclosing Party.

(b) Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care). The Receiving Party may only use Confidential Information of the Disclosing Party to perform its obligations or exercise its rights under this Agreement. Except as expressly authorized by the Disclosing Party in writing, the Receiving Party will not disclose any Confidential Information of the Disclosing Party to any third party other than those of its and its affiliates' employees, contractors or agents who need such access to perform obligations under this Agreement and who agree to abide by substantially similar terms as those set forth in this Section 5.

(c) Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law, subpoena, warrant, or court order to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

6. Term and Termination.

(a) Term. This Agreement will commence on the Effective Date, and unless terminated earlier as expressly set forth herein, will continue for a period of three (3) years (the "Initial Term"). Thereafter, this Agreement will automatically renew for additional consecutive terms of twelve (12) months (each, a "Renewal Term," together with the Initial Term, the "Term"), unless either Party provides to the other a written notice, at least thirty (30) days prior to the expiration of the then-current Term, of its intention not to renew this Agreement. This Agreement is subject to Licensee making an annual budget appropriation in an amount sufficient to fund this Agreement. If Licensee fails or refuses to make such an appropriation, Licensee reserves the right to terminate this Agreement pursuant to the Termination paragraph of this Agreement.

(b) Termination. Either Party may terminate this Agreement upon thirty (30) days' prior written notice if the other Party is in material breach of this Agreement and the breaching Party fails to remedy such material breach within the thirty (30)-day notice period.

(c) Effect of Termination. Upon expiration or termination of this Agreement for any reason, the licenses granted by each Party will automatically terminate and all outstanding Fees owed pursuant to Section 4 will become immediately due and payable. The provisions of Sections I(b), I(c), 2(b), 3(b), 4, 5, 6(c), 7(d), 8, 9, 10 and all defined terms used in those Sections will survive any expiration or termination of this Agreement.

7. Representations and Warranties.

(a) Mutual. Each Party represents and warrants that: (i) it has the right, power and authority to enter into this Agreement and to grant the rights and licenses granted hereunder and to perform all of its obligations hereunder; (ii) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary organizational action of the Party; and (iii) when executed and delivered by both Parties, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

(b) Licensee. Licensee further represents and warrants that: (i) it owns or otherwise has sufficient rights to the Data to grant the license set forth in Section I(d); and (ii) no Data submitted to the Platform does or will violate the privacy, intellectual property or other rights of any person or entity or any applicable laws, rules or regulations.

(c) BridgeCare further warrants and represents that:

i The Service will conform to applicable specifications, and operate and produce results substantially in accordance with the attachments and exhibits hereto during the Term of this Agreement;

ii All technology related services will be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards;

iii It has the requisite ownership, rights and licenses to perform its obligations under this Agreement fully as contemplated hereby and to grant to the Licensee all rights with respect to the Service free and clear from all liens, adverse claims, encumbrances and interests of any third party;

iv There are no pending or threatened lawsuits, claims, disputes or actions: (i) alleging that the Service infringes, violates or misappropriates any third party rights; or (ii) adversely affecting the Service or BridgeCare's ability to perform its obligations hereunder;

v The Service will not violate, infringe, or misappropriate any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right of any third party;

vi The Service does not contain any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design, or other malicious, illicit or similar unrequested code, including surveillance software or routines which may, or is designed to, permit access by any person, or on its own, to erase, or otherwise harm or modify any Licensee system or Data (a "Disabling Code"). In the event a Disabling Code is identified, BridgeCare shall take all steps necessary, at no additional cost to Licensee, to: (a) restore and/or reconstruct any and all Data lost by Licensee as a result of Disabling Code; (b) furnish to Licensee a corrected version of the Services without the presence of Disabling Codes; and, (c) as needed, re-implement the Services at no additional cost to Licensee;

(d) EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH UNDER THIS SECTION 7, THE SERVICES AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT BY BRIDGECARE ARE PROVIDED ON AN "AS-IS" BASIS, AND LICENSEE ASSUMES ALL RESPONSIBILITIES FOR SELECTION OF THE SERVICES TO ACHIEVE LICENSEE'S INTENDED RESULTS, FOR THE ACCURACY AND/OR

-3-

QUALITY OF ITS DATA, AND FOR ITS USE OF, AND RESULTS OBTAINED FROM, THE SERVICES. BRIDGECARE DOES NOT WARRANT THAT THE SERVICES OR ANYTHING ELSE PROVIDED IN CONNECTION WITH THIS AGREEMENT WILL BE ERROR-FREE OR THAT THE SERVICES WILL WORK WITHOUT INTERRUPTIONS. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7, BRIDGECARE MAKES NO PROMISES, REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SERVICES, AND BRIDGECARE HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ANY LOCAL JURISDICTIONAL ANALOGUES TO THE FOREGOING.

8. Limitations on Liability. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, (I) EXCEPT WITH RESPECT TO SECTION 9, IN NO EVENT WILL EITHER PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE FEES PAID TO BRIDGECARE DURING THE TERM; AND (II) EXCEPT TO THE EXTENT SUCH DAMAGES ARE PAID OR PAYABLE TO UNAFFILIATED THIRD PARTIES PURSUANT TO EITHER PARTY'S OBLIGATIONS PURSUANT TO SECTION

-4-

9, IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING , WITHOUT LIMITATION , FOR LOST PROFITS , DATA OR OTHER BUSINESS OPPORTUNITIES), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE. THIS SECTION 8 DOES NOT LIMIT EITHER PARTY'S LIABILITY FOR INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

9. Indemnification.

(a) Licensee. To the extent permitted by law, if a third party asserts a claim (each, a "**Third Party Claim**") against BridgeCare or any of its affiliates, officers, employees or contractors (each, a "**BridgeCare Released Party**") alleging (a) that any Data infringes, violates, or misappropriates any intellectual property or proprietary right(s), (b) that any Data, or its provision to BridgeCare, violates any applicable law or regulation, or (c) any negligent act or intentional misconduct by Licensee or any of its Authorized Users in connection with the Service, then Licensee will defend the BridgeCare Released Party from the Third Party Claim and hold such BridgeCare Released Party harmless from and against all damages, settlements, costs, and/or expenses, in each case, that are paid or payable to third party(ies) with respect to the Third Party Claim (including, without limitation, reasonable attorneys' fees).

(b) BridgeCare. If a Third Party Claim is asserted against Licensee or any of its affiliates, officers, employees or contractors (each, a "Licensee Released Party") alleging that the Platform (not including any Data) infringes, violates, or misappropriates such third party's intellectual property or proprietary right(s) ("Infringement Claim"), then BridgeCare will defend the Licensee Released Party from the Infringement Claim and hold such Party harmless from and against all damages, settlements, costs, and/or expenses, in each case, that are paid or payable with respect to the Infringement Claim (including, without limitation, reasonable attorneys' fees). In the event of an Infringement Claim, BridgeCare, at its sole option and expense, may: (i) procure for Licensee the right to continue using the Platform or infringing part thereof; (ii) modify the Platform or infringing part thereof; (iii) replace the Platform or infringing part thereof with other software having substantially the same or better capabilities; or, (iv) if the foregoing are not commercially practicable, terminate this Agreement and repay to Licensee a pro-rata portion of the Fees. Notwithstanding the foregoing sentences of this Section 9(b), BridgeCare will have no liability for an Infringement Claim to the extent the actual or alleged infringement results from (a) any breach of this Agreement by Licensee or any Authorized Users; (b) any modification, alteration or addition made to the Platform by Licensee or any Authorized Users, including any combination of the Platform with software not provided by BridgeCare; (c) any failure by Licensee or any Authorized Users to use any updates made available by BridgeCare; or (d) any settlements entered into by Licensee or costs incurred by Licensee for the Infringement Claim that are not pre-approved by BridgeCare in writing.

(c) Procedures. Each Party's obligations pursuant to Sections 9(a) and 9(b) above (respectively) are expressly conditioned on: (a) the Party seeking indemnification under this Section 9 ("Indemnified Party") providing the other Party ("Indemnifying Party") with prompt written notice of the applicable Third Party Claim for which the Indemnified Party seeks indemnification; (b) the Indemnified Party reasonably cooperating in the defense and/or settlement of such Third Party Claim, at the Indemnifying Party's sole expense; and (c) the Indemnifying Party having sole control over the defense and/or settlement of such Third Party Claim. The Indemnifying Party may not agree to any settlement of any Third Party Claim against the Indemnified Party that admits wrongdoing by the Indemnified Party, or otherwise imposes any material obligation on the Indemnifying Party (not entirely covered by an indemnification obligation hereunder), without the Indemnified Party's prior express written consent, which consent will not be unreasonably withheld, conditioned or delayed. The Indemnified Party may participate in the defense of a Third Party Claim through counsel of its own choice at its own expense.

10. Insurance.

(a) BridgeCare shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, and during any warranty period.

(b) Each policy shall contain a valid provision or endorsement naming Licensee as Certificate Holder and requiring notification to the Licensee in the event any of the required policies is canceled or non-renewed before the expiration date. Written notice shall be sent to the parties identified in the Notices section of this Agreement and sent thirty (30) days prior to any cancellation or non-renewal unless due to non-payment of premiums, in which case, notice shall be sent ten (10) days prior. If written notice is unavailable from the insurer, BridgeCare shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s)

(c) If any policy is in excess of a deductible or self-insured retention, the Licensee must be notified by the BridgeCare. BridgeCare shall be responsible for the payment of any deductible or self-insured retention.

(d) The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the BridgeCare. The BridgeCare shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

(e) Within thirty (30) days of the execution of this Agreement, BridgeCare will provide insurance certificates to Gunnison Licensee, listing Gunnison Licensee as an additional insured, for the coverages required by this paragraph, which shall state that such policies shall not be materially changed or cancelled without thirty (30) days prior notice to Gunnison Licensee

(f) BridgeCare's insurance coverage shall be primary and non-contributory with respect to all other available sources. BridgeCare's policy shall contain a waiver of subrogation in favor of Gunnison Licensee.

(g) BridgeCare shall maintain workers compensation coverage as required by law for each work location of BridgeCare associated with the provision of the Service.

(h) BridgeCare shall maintain a Comprehensive General Liability Insurance or the equivalent in an amount no less than Four Hundred Twenty-Four Thousand and No/100 U.S. Dollars (\$424,000.00) for injury to one person in any single occurrence; and no less than One Million One Hundred Ninety-Five Thousand and No/100 U.S. Dollars (\$1,195,000.00) for injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate).

(i) BridgeCare shall maintain comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than Four Hundred Twenty-Four Thousand and No/100 U.S. Dollars (\$424,000.00) for injury to one person in any single occurrence; and no less than One Million One Hundred Ninety-Five Thousand and No/100 U.S. Dollars (\$1,195,000.00) for injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate).

(j) BridgeCare shall maintain Technology Errors and Omissions insurance including cyber liability, network security, privacy liability and product failure coverage with limits of \$1,000,000 per occurrence and \$2,000,000 policy aggregate

11. Governmental Immunity. The parties hereto understand and agree that the County is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, et seq., C.R.S.

Miscellaneous. Each Party agrees that any violation or threatened violation of this Agreement may cause irreparable injury to the other Party, entitling such Party to seek injunctive relief in addition to all available remedies. Neither Party may assign this Agreement or any rights under it, in whole or in part, without the other Party's prior written consent; provided that either Party may assign this Agreement or any rights under it without prior written consent to a successor in connection with a merger, acquisition, reorganization, consolidation, or sale of all or substantially all of its assets or the business to which this Agreement relates. Any attempt to assign this Agreement other than as permitted above will be void. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, then the remaining provisions of this Agreement will remain in full force and effect. This Agreement will be governed by and construed under the laws of California without reference to its conflict of laws principles. This Agreement, including all Exhibits attached hereto, embodies the entire agreement between the Parties with respect to the subject matter set forth herein and supersedes any previous or contemporaneous communications, whether oral or written, express or implied. This Agreement may be modified or amended only by a writing signed by both Parties. If there is any conflict or inconsistency between the terms of any Exhibit and the terms in the body of this Agreement, then the terms in the body of the Agreement will control solely to the extent of the conflict. All waivers made under this Agreement must be made in writing by the Party making the waiver. Any notice required or permitted to be given under this Agreement will be effective if it is (i) in writing and sent by certified or registered mail, or insured courier, return receipt requested, to the appropriate Party at the address set forth above and with the appropriate postage affixed; or (ii) sent via email to the following: in the case of BridgeCare: Jamee Herbert, [jamee@getbridgecare.com](mailto:jamee@getbridgecare.com); and in the case of Licensee:

\_\_\_\_\_  
Lana Athey LAthey@gunni

soncounty.org Either Party may change its address for receipt of notice by notice to the other Party in accordance with this Section. Notices are deemed given two (2) business days following the date of mailing, one (1) business day following delivery to a courier, and/or on the same day a facsimile or electronic mail is sent to the recipient. Neither party will not be liable or responsible to the other, nor be deemed to have breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the control of either party including, without limitation, acts of God, natural disaster, or pandemic, (collectively, "Force Majeure Events"). This Agreement may be signed in counterparts, each of which will be deemed an original, and all of which together will constitute a single agreement.

BRIDGECARE FINANCE INC.

LICENSEE

By: \_\_\_\_\_

By: Gunnison \_\_\_\_\_

County Matthew \_\_\_\_\_

Birnie \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: Gunnison \_\_\_\_\_

County Manager

EXHIBIT A  
PLATFORM

All capitalized terms that are used but not defined in this Exhibit will have the meanings ascribed to them in the body of the Agreement above.

The Platform as referenced in the body of the Agreement above includes the following modules & additional features. Licensee will be provided access to the Platform upon completion of Platform set-up and commissioning (as described in Exhibit B).

1. Modules. The modules below each have a designated website and are white-labeled to a brand name, logo, color scheme, and URL domain as defined by the Licensee.

- (a) CORE Platform. License and maintenance includes access to all three portals (Administrator, Parent, and Provider) for the projected scope of the number child care providers listed in Exhibit D. The CORE platform is used to manage all provider and family/child information. Provider data can be managed by admin and/or provider in their respective portals and can be publicly viewed on the Parent Portal's search tool. Provider Portal includes automated, scheduled availability reminders by email and option for text opt-in. Family/child information can be managed by the admin and/or parent in their respective portals. Full analytics dashboard and reporting functionality on platform-wide data are available in the Admin Portal. The CORE platform includes fully integrated back-end data storage with real-time updates across all portals, regular product upgrade release schedule, secure software development and security standards, encryption, access control, servers hosted within continental US, backup procedures, operating system (OS) updates, disaster recovery procedures, and more.

BridgeCare makes frequent updates to the Platform and can provide additional functionality at its discretion. Any additional modules or features that the Licensee wishes to purchase from BridgeCare will be mutually agreed upon by the Parties in writing and attached to this Exhibit A as successively numbered Exhibit "A"s (e.g., Exhibit A-1, Exhibit A-2, etc.).

This Exhibit A is accepted and agreed upon as of the Effective Date set forth in the body of the Agreement.

BRIDGECARE FINANCE INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

LICENSEE

By: \_\_\_\_\_

**Matthew Birnie**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT B

PROFESSIONAL SERVICES

All capitalized terms that are used but not defined in this Exhibit will have the meanings ascribed to them in the body of the Agreement above.

1. Contact. The principal contacts in connection with the Professional Services are as follows:

BridgeCare:	Licensee:
Name: Jamison Herbert	Matthew Birnie
Title: CEO	Name:
Address: P.O. Box 1171, Boulder creek, CA 95006	Title: Gunnison County Manager
Phone: 650-339-4134	Address: 200 E. Virginia Ave, Gunnison CO 81230
Email: jamee@getbridgecare.com	Phone:970-641-0248
	Email:
	mbirnie@gunnisoncounty.org

1. Services. BridgeCare will use commercially reasonable efforts to provide the following Professional Services:

a) Platform initial standup. Platform standup includes implementation of CORE Platform and all add-on modules. This process includes implementing white-label branding, configuring custom data fields and content, developing a custom FAQ page, and updating language translation for all new content. Also included is a direct, single point of contact and weekly check-ins throughout the implementation phase. BridgeCare will initiate the license, configure the system for each Business Instance, and update the configurable settings and permissions. BridgeCare will provide Licensee with a list of configurable settings and permissions. Licensee will provide BridgeCare a complete written list of all requested settings and permissions configurations to be made by BridgeCare. BridgeCare will use reasonable commercial efforts to implement all such settings and permissions configurations included in the Configuration List within thirty (30) days of its receipt thereof, unless otherwise agreed upon in writing.

Any additional Professional Services to be performed by BridgeCare will be mutually agreed upon by the Parties in writing and attached to this Exhibit B as successively numbered Exhibit "B"s (e.g., Exhibit B-1, Exhibit B-2, etc.).

This Exhibit B is accepted and agreed upon as of the Effective Date set forth in the body of the Agreement.

BRIDGECARE FINANCE INC.  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LICENSEE  
By: \_\_\_\_\_  
Matthew Birnie  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT C

SUPPORT

All capitalized terms that are used but not defined in this Exhibit will have the meanings ascribed to them in the body of the Agreement above.

1. Support. BridgeCare will provide technical support to Licensee from 6AM-5PM Pacific Standard time every day during the Term except for national holidays in the United States ("SUDDQÜ"). To request Support, Licensee must contact BridgeCare at 650-339-4134, via email at support@getbridgecare.com, or via BridgeCare's client-specific support channel on Slack.

(a) Provision of Support. BridgeCare will provide Support to the following Licensee contact: Lana Athey LAthey@gunnisoncounty.org BridgeCare will not be responsible for addressing or resolving Events (defined below) that BridgeCare reasonably determines are caused by Licensee's systems or any misuse of the Platform.

(b) Events. "Events" are occurrences that impact the availability of the Platform, except for scheduled downtime, as determined by BridgeCare in its reasonable discretion. BridgeCare distinguishes among three classes of Events as follows:

- (i) Class 1 Event: A complete loss of the Platform's mctionality such that no user can use the Platform.
- (ii) Class 2 Event: The Platform's functionality is materially impaired such that at least approximately 10% of users cannot use the Platform for its intended purpose.
- (iii) Class 3 Event: Any other problems or issues, including, without limitation, any general questions about the Platform or problems that do not rise to Class I Events or Class 2 Events.

(c) Response Times. BridgeCare will respond to Licensee support requests in accordance with the target response time frames set forth below, which begin at the time BridgeCare receives a Support request:

<u>Class Target Response Time</u>	
1	4 hours or better
2	24 hours or better
3	5 business days

(d) Scheduled Maintenance Downtime. In coordination with Licensee's Information Technology (IT) staff, BridgeCare will schedule maintenance between the hours of 10PM and 4AM Pacific Standard time. BridgeCare will provide Licensee with reasonable advance written notice of scheduled downtime. BridgeCare may access the Platform during the scheduled maintenance downtimes for maintenance purposes and to implement Platform updates, bug fixes and/or any other changes that BridgeCare deems necessary or advisable.

FEES

Solution Modules	Fee (US\$)	# of users/instances	Year 1	Subsequent years
CORE Platform (by # of providers)		14		
minimum 250	\$48		14\$672.00	\$672.00
Total Platform Fees			\$672.00	\$672.00
<b>Professional Services</b>				
Platform set-up and implementation (per provider)				
\$1 ,200 minimum	\$10.00	14	\$140.00	
Total Services Fees			\$140.00	
<b>Totals</b>				
		Subtotal	\$812.00	\$672.00
		Grand total	\$812.00	\$672.00

For clarity, BridgeCare will invoice Licensee on the following schedule:

- \$812 on April 1, 2022 for all Professional Services and Platform Fees for Year I of the Initial Term;
- \$672 on April 1, 2023 for all Platform Fees for Year 2 of the Initial Term;
- \$672 on April 1, 2024 for all Platform Fees for Year 3 of the Initial Term; and
- If applicable, \$672 on April I of each Renewal Term for on-going Platform Fees during such Renewal Term (if any).

EXHIBIT E  
CONFIGURABLE SETTINGS

Configurable settings include but are not limited to the following:

- Private branded domain (URL)
- Branded name
- Brand colors
- Brand logo
- FAQ page content
- Program highlights
- Program filters
- Quality Rating (name and scale)
- Provider Portal Fields & Values
- Specialist Portal Fields & Values
- Provider Portal editing permissions
- Specialist Portal editing permissions
- Provider messaging content
- Family referral feedback survey

## DATA USE AGREEMENT

This Data Use Agreement (this "Agreement") is by and between \_\_\_\_\_ a Colorado \_\_\_\_\_ ("Licensor"), and BridgeCare Finance, Inc., a Washington corporation ("Licensee"). Licensor and Licensee may each be referred to as a "Party" and collectively as the "Parties" to this Agreement.

WHEREAS, Licensor is the owner and/or authorized licensor of certain proprietary Data (defined below);

WHEREAS, Licensee provides Licensor with access to its proprietary BridgeCare software-as-a-service platform ("Platform") pursuant to a separate written agreement between the Parties; and

WHEREAS, Licensor desires to grant a license to such Data to Licensee, to permit Licensee to make such Data available to one or more third parties via the Platform, subject to the terms and conditions herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

### 1. LICENSE.

A. **Data Specifications.** The Data Specifications document attached hereto as Exhibit A and incorporated by reference ("Exhibit A") sets forth: (i) a description of Licensor's proprietary data, to be made accessible to Licensee pursuant to the license and procedure described in this Section (the "Data"); and (ii) the identity or category of third parties to whom Licensee may make such Data available on the Platform via its features and content (the "Recipients"). Licensee acknowledges that as between the Parties, Licensor is the sole owner of all ownership rights, title, and interest in and to the Data.

B. **License to Data.** Licensor hereby grants to Licensee a non-exclusive license during the Term to use, receive, access, display, transmit, process, and store the Data in connection with the provision of access to such Data to the Recipients via the Platform for use on the Recipients' own publicly available Parent Portals (the "Permitted Purpose"). Licensee may further modify, reformat, and display the Data to the extent reasonably required for the Permitted Purpose. The foregoing license shall be sublicensable to Licensee's third-party contractors in furtherance of the Permitted Purpose, provided that Licensee shall be responsible for such sublicensees' compliance with the applicable terms hereof.

C. **Security; No Backups.** Licensee agrees that it will maintain commercially reasonable technical and organizational measures to maintain the security of Data in accordance with applicable laws and regulations. Licensor acknowledges that nothing herein shall be construed as any obligation of Licensee to maintain backups or archives of Data or conduct any disaster recovery with respect to Data, or as creating any liability for Licensee's delay or failure to perform such activities.

### 2. TERM AND TERMINATION.

A. **Term.** The term of this Agreement (the "Term") shall commence as of the date last executed by both Parties (the "Effective Date") and continue for the "License Term" period specified in Exhibit A, unless earlier terminated pursuant to this Section. This Agreement is subject to Licensor making an annual budget appropriation in an amount sufficient to fund this Agreement. If Licensor fails or refuses to make such an appropriation, Licensor reserves the right to terminate this Agreement pursuant to the Termination paragraph of this Agreement.

B. Termination. Either Party may terminate this Agreement upon written notice to the other Party at least thirty (30) days in advance of the date of termination.

C. Effect of Termination. Upon the termination or expiration of this Agreement for any reason, except as otherwise expressly set forth hereunder, all licenses granted hereunder, including without limitation all licenses to the Data, shall immediately terminate, and Licensee shall within a commercially reasonable timeframe cease all use of and access to the Data as formerly permitted hereunder.

### 3. REPRESENTATIONS AND WARRANTIES.

A. Mutual. Each Party represents and warrants that: (i) it has all right, power, and authority to enter into this Agreement and to perform its obligations and duties set forth hereunder; and (ii) its execution, delivery, and performance of this Agreement does not and will not conflict with, violate, or breach any other agreement, judgment, order, stipulation, or decree by which such Party is bound.

B. By Licensor. Licensor represents and warrants that: (i) it possesses all necessary rights, licenses, and authorizations required to provide the Data as set forth herein for the Permitted Purpose, including without limitation all necessary intellectual property rights and consents required under applicable laws and regulations governing data privacy and information security; and (ii) the Data does not infringe, misappropriate, or otherwise violate the personal or proprietary rights of any third party.

C. Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WHETHER ARISING FROM STATUTE, CUSTOM, COURSE OF DEALING, OR TRADE USAGE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE PLATFORM.

4. **LIMITATION OF LIABILITY.** LICENSEE SHALL NOT BE LIABLE TO LICENSOR UNDER THIS AGREEMENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION ANY DAMAGES FOR LOSS OF DATA, WHETHER FORESEEABLE OR NOT, REGARDLESS OF THE LEGAL THEORY GIVING RISE TO THE CLAIMED LIABILITY, AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES

### 5. MISCELLANEOUS.

A. Independent Contractors. The Parties hereto are independent contractors, and nothing in this Agreement shall be construed as creating a joint venture, partnership, employment relationship, or agency relationship between the Parties.

B. Assignment. Neither Party may assign any of its rights or delegate any of its obligations under this Agreement, whether by operation of law or otherwise, without the prior express written consent of the other Party, Any assignment in violation of this provision shall be null and void ab initio and of no force and effect. Subject to the foregoing, this

Agreement will bind and inure to the benefit of each Party's respective successors and permitted assigns.

C. Written Amendment; Interpretation. The terms and conditions of this Agreement may only be modified by written instrument which references this Agreement and is signed by a duly authorized representative of each Party. The section headings contained herein are for reference purposes only and shall not affect the construction or interpretation of any material term hereof.

D. Severability. Any provision of this Agreement that is rendered void or unenforceable pursuant to the operation of applicable law shall be ineffective only to the extent of such unenforceability, and shall be deemed severed from the Agreement without invalidating the remaining provisions hereof; the remainder of the Agreement shall continue in full force and effect to the maximum extent permitted under applicable law.

E. Survival. Sections 2.C, 3.C, 4, and 5 of this Agreement shall survive the termination or expiration of this Agreement for any reason.

F. Governing Law; Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Colorado, without reference to its principles of conflict of laws. The Parties agree that any claim, suit, dispute, or other legal proceeding arising under this Agreement shall be brought exclusively before the state and federal courts sitting in the State of Colorado in the County of Gunnison.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

Accepted and Agreed:

Licensor

Licensee

\_\_\_\_\_

BRIDGECARE  
FINANCE, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Matthew Birnie Name:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT A

DATA SPECIFICATIONS

This Data Specifications document is subject to the terms and conditions of the foregoing Data Use Agreement to which it is attached and incorporated, and further describes the Data made available thereunder. All capitalized, undefined terms herein shall have the meanings ascribed to them in the Agreement.

1. Data.

DocuSign Envelope ID:

Care and education provider data stored in BridgeCare and displayed on the provider public profile including but not limited to provider business name, license number, quality rating, business hours, availability, etc.

2. Recipients.

Any Colorado Early Childhood Council as listed at the following website:  
<https://ecclacolorado.org/find-an-early-childhood-council/>.

3. License Term.

This Agreement will commence on the Effective Date of the BridgeCare Master Subscription and Services Agreement, and unless terminated earlier as expressly set forth herein, will continue for a period of three (3) years (the "Initial Term"). Thereafter, this Agreement will automatically renew for additional consecutive terms of twelve (12) months (each, a "Renewal Term" together with the Initial Term, the "Term"), unless either Party provides to the other a written notice, at least thirty (30) days prior to the expiration of the then-current Term, of its intention not to renew this Agreement.

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

**Agenda Item:** Grant Application to Colorado Department of Transp

**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:**

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

Grant application for CB-CB South Multimodal for planning from CDOT MMOF funds

**Fiscal Impact:** 172250

**Submitted by:** Cathie Pagano

**Submitter's Email Address:** cpagano@gunnisoncounty.org

**Finance Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\jguerra

Discharge Date: 4/28/2022

**County Attorney Review:**

Required

Not Required

Comments:

Reveiwed by:

Discharge Date:

Certificate of Insurance Required

Yes  No

**County Manager Review:**

Comments:

Reveiwed by: GUNCOUNTY1\mbirmie

Discharge Date: 4/28/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted:

Agenda Date: 5/3/2022



**Gunnison County, CO**  
**Community Development Department**  
221 N. Wisconsin St. Ste. D, Gunnison, CO 81230  
Phone: (970) 641-0360  
Website: [www.gunnisoncounty.org](http://www.gunnisoncounty.org)  
Email: [planning@gunnisoncounty.org](mailto:planning@gunnisoncounty.org)

**To:** Gunnison County Board of County Commissioners

**From:** Community & Economic Development Department

**Date:** April 27, 2022

**Subject:** Colorado Department of Transportation – Multimodal Transportation and Mitigation Options Fund (MMOF): To support the Crested Butte-to-Crested Butte-South Multimodal Trail Planning Project

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### Summary

The Community & Economic Development Department, alongside the Sustainable Tourism & Outdoor Recreation (STOR) Committee and other members of the community, is exploring the opportunity to construct a seasonal, multimodal trail from Crested Butte to Crested Butte-South (CB-CB South). A trail connecting these communities, and the growing residential and economic hubs in between, has been a public interest for many years, and it is a priority of many regional plans. The project has been included in Gunnison County's Capital Improvement Budget, the STOR Strategic Plan, and Town of Crested Butte Regional Master Plan, among others. The timing for planning this project has perhaps never been better, given the growing population in the north valley, increased recreational activity, rising interest in alternative forms of transportation, a changing climate, and available financial support opportunities from federal, state, and local sources.

One of those funding sources is the Colorado Department of Transportation (CDOT) and the Multimodal Transportation and Mitigation Options Fund (MMOF). The MMOF provides steady, annual funding for multimodal transportation projects. The program seeks to promote a "complete and integrated multimodal system" that benefits residents of rural communities by providing more accessible and flexible public transportation services, provides safe routes to schools, and reduces emissions of air pollutants and Greenhouse Gases (GHG) that contribute to adverse environmental effects, including climate change and adverse human health effects. The CB – CB South Multimodal Trail Planning Project will address all of these aforementioned focus areas.

The Community & Economic Development Department is submitting a grant request for \$125,000 to support trail planning, design, and public outreach. The grant would provide funds for the County to hire a consultant to host a public engagement process and to design a trail construction plan that includes alignment, design features, maintenance, and timeline. An undertaking such as this requires a team dedicated to navigating a design process for a multimodal trail that involves landowner negotiation (public and private), construction elements such as bridges and snow storage, and environmental factors such as riparian areas and wildlife impacts, among many other considerations.

The County and STOR Committee have not predetermined the placement of the trail and will instead look to the design process to identify a feasible alignment that meets the community interests while still being implementable on a timeline of the next 5-10 years. However, given the many challenges associated with

building a multimodal trail through a string of private land parcels, the County will direct the contracted consultant to prioritize working with CDOT to identify an alignment within the Highway-135 right-of-way.

### **Request**

The Community & Economic Development Department is seeking Board of County Commissioner support to submit an MMOF grant request to CDOT that will support the planning, design, and public engagement process for a seasonally accessible, multimodal trail connecting Crested Butte to Crested Butte-South. After extensive consultation with CDOT representatives, we have been given indication that the CB - CB South project aligns with CDOT's project priorities.

The grant request will include a budget of approximately \$172,250. This budget includes a grant request of approximately \$125,000 from CDOT and a 25% minimum matching fund requirement which will be met from the County Capital Improvement Project budget (\$31,250). Additional matching funds (\$16,000) may be available from partner organizations including: Met Rec, Town of Crested Butte, Tourism and Prosperity Partnership, Crested Butte Mountain Bike Association, and Crested Butte South Property Owners Association. The grant application will include a project summary, timeline, budget, and photos/maps.

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

**Agenda Item:** Extension of Commercial Lease Agreement; between D

**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:** Gunnison County and Michael Barnes and Chris Osmundson dba Drug Test West, Inc.

**Term Begins:** April 1, 2022

**Term Ends:**

**Grant Contract #:**

**Summary:**

Tenant has requested an extension to lease property from the Airport for one (1) year as stated in the original commercial lease agreement signed and dated June 1, 2021.

**Fiscal Impact:** \$4,200 annual rent plus CPI or 3%

**Submitted by:** Stephanie Petsch

**Submitter's Email Address:** spetsch@gunnisoncounty.org

**Finance Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\jguerra

Discharge Date: 4/12/2022

**County Attorney Review:**

Required

Not Required

Comments:

Under the terms of the lease, the extension request should have been submitted in February. BOCC may want to inquire about this. In any event, as landlord BOCC has ability to waive this requirement in its discretion. MRH

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 4/28/2022

Certificate of Insurance Required

Yes  No

**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 4/28/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted:

Agenda Date: 5/3/2022



519 Rio Grande Avenue • Gunnison, Colorado 81230 • P 970.641.2304 • F 970.641.8559

## Lease Extension

February 1<sup>st</sup>, 2022

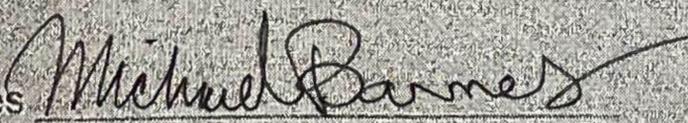
Rick Lamport  
Airport Manager  
719 S. 10<sup>th</sup> St.  
Gunnison, CO 81230

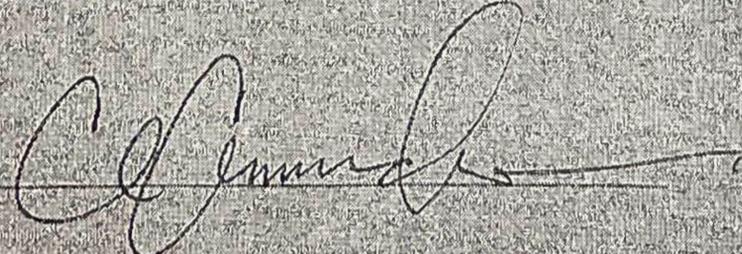
### Lease Extension Request

Dear Mr. Lamport,

As provided for in the existing Lease with Gunnison County that commenced April 1st 2021, Drug Test West, Inc doing business at 725 S. 10<sup>th</sup> Street, Unit A-1, Gunnison, CO 81230 would like to extend the current lease for a one year term as per the conditions stated in said lease.

Regards

Michael Barnes 

Chris Osmundson 

## COMMERCIAL LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is dated as of this 1<sup>st</sup> day of June, 2021 (the "Effective Date") by and between the **BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, COLORADO**, a body corporate and politic, on behalf of the **GUNNISON-CRESTED BUTTE REGIONAL AIRPORT** (the "County") and **MICHAEL BARNES AND CHRIS OSMUNDSON, D/B/A DRUG TEST WEST, INC.**, (the "Tenant").

### RECITALS

- A. The County is the owner and operator of the Gunnison-Crested Butte Regional Airport (the "Airport") and the County owns the real property located in the City of Gunnison, Gunnison County, Colorado as more particularly described in Exhibit A, commonly known as 711 S. 10<sup>th</sup> Street and 725 S. 10<sup>th</sup> Street, Units A, A-1, B, C and D, Gunnison, CO 81230 (the "Building").
- B. The Building is located within an area directly adjacent to the Airport, sometimes referred to as a land-side property, and the County desires to lease a portion of the Building as more particularly described in Exhibit B, also known as 725 S. 10<sup>th</sup> Street, Unit A-1, Gunnison, CO 81230 (the "Leased Premises") to the Tenant.
- C. The Tenant desires to lease the Leased Premises from the County for the purpose of alcohol and drug testing services with related laboratory and collection services and in accordance with the terms and provisions of the Lease and any applicable Airport regulations and the County desires to lease the Leased Premises to the Tenant.

### AGREEMENT

For and in consideration of the covenants and conditions set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the County and the Tenant agree as follows:

#### ARTICLE I. THE LEASED PREMISES

**Section 1.01** The Leased Premises. The County leases to the Tenant and the Tenant leases from County, upon the terms and provisions of this Lease and subject to the provisions of the applicable Airport regulations, including but not limited to Federal Aviation Regulations Part 77, exclusive use of the Leased Premises as shown on Exhibit B. The Tenant shall have non-exclusive access to shared parking directly in front of the Building fronting Railroad Ave. and behind the Building, off the alley between S. 9<sup>th</sup> St. and S. 10<sup>th</sup> St., all designated as common space equally shared by all tenants of the Building as shown on Exhibit B. **In no event shall any parking be permitted along either side of S. 10<sup>th</sup> Street along the side of the Building or against any of the Airport's runway fencing.** For purposes of clarity, this Lease does not permit the Tenant to use any portion of the Airport facility or property. Tenant, any of its employees, agents, guests, licensees or invitees must abide by all posted Airport signage and regulations.

**Section 1.02** Fixtures, Furniture and Equipment. As part of the Leased Premises, County includes fixtures, furniture and equipment as described in Exhibit C. Subject to prior written approval by the County, Tenant may purchase and install additional fixtures, furniture and equipment within the Leased Premises that it has exclusive use of. Any such purchase and installation shall be at the Tenant's own expense. The County and Tenant shall jointly verify the existing fixtures, furniture and equipment in Exhibit C as well as catalog any Tenant-provided fixtures, furniture and equipment.

**Section 1.03** Condition of Leased Premises. The Tenant has had an opportunity to inspect the Leased Premises and acknowledges that it is fit for Tenant's use and enjoyment. The taking of possession of the Leased Premises shall be deemed an acceptance of the same by the Tenant in its "AS IS" condition without any obligation whatsoever on the part of the County to repair, remodel, reconstruct or modify the Leased Premises for the Tenant. The Tenant has had an opportunity to inspect and measure the Leased Premises and acknowledges that the approximate square footage of the Leased Premises is **five hundred and four (504)** square feet.

**Section 1.04** Permitted Use. The Tenant shall use the Leased Premises solely for the purpose(s) described above at D of the Recitals, as approved by the County and other related business purposes. No other use shall be permitted without the County's prior written consent.

**Section 1.05** No Hazardous Use, Nuisance or Waste Permitted on Leased Premises. The Tenant shall not use or permit the Leased Premises to be used for any business or purpose deemed by the County to be hazardous, or in any manner as to constitute a violation of any federal, state, county, and local laws, rules, regulations, requirements or orders of any lawful governmental or public authority relating to the Leased Premises. Tenant covenants and agrees at its sole cost and expense to fully and promptly comply with all such laws, regulations, ordinances and every order or regulation enacted by such authorities, including but not limited to, the United States, the County of Gunnison, the State of Colorado and the Federal Aviation Administration. The Tenant agrees that it shall not permit any noxious or offensive activity on the Leased Premises or allow any nuisance to exist on the Leased Premises which may cause disturbance to other tenants of the Building or to others on adjacent or nearby property. Further, the Tenant agrees that nothing shall be done or kept on the Leased Premises which might impair the value of the Leased Premises or which would constitute waste.

**Section 1.06** No Smoking, Vaping and E-Cigarettes. Smoking, vaping and the use of e-cigarettes is not permitted on the Leased Premises, in the Building or in any County building. The Tenant may, at the Tenant's discretion, permit its employees and invitees to smoke, vape or use e-cigarettes outside of the Leased Premises and Building; provided, however, that such activities must occur at a distance of at least twenty-five (25) feet from any entrance. Smoking, vaping and e-cigarette use is not permitted in any location where prohibited by law or regulations governing the Airport. The Tenant shall remove all smoking, vaping and e-cigarette debris (including wrappers, butts and matches) from the Leased Premises and Building at least twice per week. If this task is not performed to the satisfaction of the County, the County may

remove such debris and charge the cost of removal, plus an administrative fee of 50% of such cost, to the Tenant.

## ARTICLE II. TERM

**Section 2.01** Term. The term of this Lease shall be a period of one (1) year (the "Term"), commencing on **April 1, 2021** (the "Commencement Date") and ending on **March 31, 2022** unless terminated earlier in accordance with the terms of this Lease.

**Section 2.02** Option to Extend. Upon expiration of the Term and provided that the Tenant is not in default of its obligations under this Lease, the Tenant may request an extension of this Lease for additional one (1) year periods (each an "Extended Term"), upon the same terms and conditions, but any such grant of an Extended Term shall solely be at the County's discretion. The Tenant shall make any such request for an Extended Term by providing written notice to the County no later than sixty (60) days prior to the expiration of the Term or Extended Term and no earlier than six (6) months prior to the expiration of the Term or Extended Term. Rent, for each Extended Term, if granted, shall be adjusted as set forth in this Lease.

## ARTICLE III. RENT

**Section 3.01** Rent. The Tenant shall make annual rental payments (the "Annual Rent") for the Premises of **four thousand and two hundred and 00/100 U.S. Dollars (\$4,200.00)** payable in monthly installments in advance on the first day of each month of **three hundred and fifty and 00/100 U.S. Dollars (\$350.00)**. The Tenant shall pay as "Additional Rent" all other payments of whatever nature that Tenant has agreed to pay or assume under this Lease, Annual Rent and Additional Rent may be referred to collectively as "Rent." The payment of Rent shall begin on the Commencement Date, without demand in accordance to the amounts set forth in the table below.

**Section 3.02** Extended Term Increased Annual Rent. Effective for any Extended Term, the Annual Rent shall be adjusted by the greater of either (1) the CPI Adjustment as described below, or (2) a flat three percent (3%) increase in the Annual Rent. The "CPI Adjustment" shall be calculated using the Bureau of Labor Statistics (BLS) CPI inflation calculator using the monthly installment of Annual Rent for the January of the expiring Term or Extended Term compared to the January of the year in which the Extended Term shall begin.

**Section 3.03** Security Deposit. The Tenant has previously paid, and the County continues to hold a security deposit in the amount of **three hundred and twenty-five and 00/100 U.S. Dollars (\$325.00)**. This security deposit will be held by the County to ensure the Tenant's faithful performance of all of the terms, conditions and covenants of this Lease. The County may apply the security deposit to cure any default. The Tenant may not apply the security deposit to the payment of Annual Rent or for the performance of other obligations. The County will refund the security deposit within 30 days after termination of the Lease, less any deductions for past due amounts or damage to the Leased Premises.

**Section 3.04** Manner of Payment. All amounts due under this Lease shall be paid on the first of each month during the Term or any Extended Term and paid to the County at

Gunnison County Finance  
200 E. Virginia Ave.  
Gunnison, CO 81230  
Attn: Juan Guerra, Interim Finance Director

or at such place as County designates by proper notice as provided in Section 18.12. All checks shall be subject to collection and the Tenant shall pay all bank charges incurred by the County as a result of dishonor. Any Rent or fees not received by the County within five (5) days of the applicable date due shall incur a late fee of ten and 00/100 U.S. Dollars (\$10.00) per day until paid. The County shall apply all payments received first to past due amounts and second to current Rent and fees.

**Section 3.05** Proration. If the Term or Extended Term commences on a day other than the first calendar day of a month, then Tenant shall pay to County a prorated monthly installment of Annual Rent, calculated using the number of days that exist prior to the first day of the succeeding month, with a similar adjustment being made at the termination of the Lease.

#### **ARTICLE IV. MAINTENANCE; UTILITIES; INSEPCCTIONS**

**Section 4.01** Tenant Maintenance Obligations. Throughout the duration of the Lease, the Tenant agrees to: (1) maintain the Leased Premises and all non-affixed improvements, fixtures, furnishings and equipment in good working order and repair; (2) keep the interior of the Leased Premises painted, clean and sanitary, (3) keep paved walkways leading to the Leased Premises clear of ice, snow, litter and debris, (4) perform routine maintenance of the Leased Premises, including, but not limited to, maintaining any landscaping adjacent to the Leased Premises, restroom plumbing, lighting, ballasts, doors and locks. The Tenant shall not overload the floors or walls of the Leased Premises. The Tenant shall be responsible for janitorial services for the Leased Premises. For purposes of this Section 4.01, "routine maintenance" shall mean any repair or maintenance done in the ordinary course for the purpose of preserving machinery, equipment and improvements in good working order and condition and shall not include any extraordinary maintenance or repair.

**Section 4.02** Failure to Maintain. Should the Tenant fail to maintain the Leased Premises in a satisfactory manner according to the terms of this Lease, the County may conduct such maintenance on behalf of the Tenant, and the Tenant shall reimburse the County for all costs and expenses plus an administrative charge of 50% of such costs incurred in connection with such maintenance.

**Section 4.03** Service and Maintenance by Professionals. All Tenant maintenance obligations at the Leased Premises shall only be performed by qualified or licensed service professionals. Upon request by the County, Tenant shall promptly provide a list of all service agreements, a copy of any service agreements in place as well as contact information for personnel providing such services to Leased Premises. The County shall have the right to enter the Leased Premises as more specifically set forth in Section 4.07 below, to determine compliance with this Section 4 of the Lease.

**Section 4.04** Utilities. The Tenant shall be responsible for obtaining all utilities associated with the Leased Premises, including but not limited to, electricity, heat, internet service, telecommunications services, snow removal, trash removal and any other services not provided by the County to the Leased Premises at the Tenant's sole cost and expense. To the extent the provision of additional services to the Leased Premises requires alterations of the Building, the Tenant shall comply with the terms of Article V below. The disruption, failure, lack or shortage of any service or utility due to any cause whatsoever shall not affect any obligation of the Tenant hereunder, and the Tenant shall faithfully keep and observe all the terms, conditions and covenants of this Lease and pay all Rent due hereunder, all without diminution, credit or deduction. The County shall not be liable for any failure to make any repairs or to perform any maintenance to utilities unless such failure shall persist for an unreasonable time after written notice of the need of such repairs or maintenance is given to the County by the Tenant. If any maintenance or repair is necessitated due to the acts or omissions of the Tenant, its employees, agents or invitees, the Tenant shall pay the costs of such repairs or maintenance to the County within thirty (30) days after receipt of an invoice, together with an administrative charge in the amount equal to fifteen percent (15%) of the cost of the repairs. The County shall not be liable to Tenant for any interruption of Tenant's business or inconvenience caused due to any work performed within the Leased Premises or Building. To the extent allowed by law, the Tenant waives the right to make repairs at the County's expense under any law, statute or ordinance now or hereafter in effect.

**Section 4.05** County Provided Services. Notwithstanding the above, the County shall provide to the Tenant during the Lease, as part of the rental consideration, the following services: **water and sewer**

**Section 4.06** Inspection of Leased Premises. The Tenant will permit the County, its representatives or agents to make inspection of the Leased Premises at any time to confirm compliance with the terms of this Lease. If there is a potential (based upon reasonable facts or circumstances) or an actual material breach or violation of this Lease, or if an emergency exists which necessitates the County's access to the Leased Premises in the County's sole discretion, the County shall have the right to enter upon and inspect the Leased Premises and to do any reasonable act or thing in order to enforce its rights and obligations under this Lease. In all cases except an emergency, the County shall give the Tenant twenty-four (24) hours prior written notice, which shall specify the particular purpose for entering onto the Leased Premises.

**Section 4.07** Accident Reports. In the case of an accident or emergency, Tenant agrees to cooperate with the County in the formulation of an action plan and any response to media inquiries. All accidents, significant occurrences, incidents, situations requiring official reporting or action, including law enforcement response, shall be reported to the County as soon as possible but no later than the next business day. Reports provided must include the name, address, telephone number for any injured persons and any witnesses, any statements collected, a description of the accident including when, where and how it occurred, a

description of any bodily injury or property damage and the action taken by Tenant or other persons.

## **ARTICLE V. IMPROVEMENTS; ALTERATIONS; ADDITIONS**

**Section 5.01** Requirements for Improvements; Alterations; Additions. No improvements, alterations or additions (“Alterations”) shall be made to the Leased Premises by the Tenant without prior written consent of the County, including but not limited to, Alterations of Building walls, roofs, support, finishes, any mechanical, electrical or plumbing system, carpet, paint, interior remodel of spaces and any exterior alterations. In such event, any permitted Alterations shall be performed subject to the following conditions.

- (a) Prior to the construction of any Alterations, the Tenant shall submit Detailed Plans and Specifications to the County for approval. “Detailed Plans and Specifications” means drawings, maps or plans depicting the location, character, dimension and details of the Leased Premises and all improvements the Tenants desires to make to the Leased Premises. The Detailed Plans and Specifications may include, without limitation, construction details, fire protection systems, lighting, utilities, architectural drawings, layout and colors, containment areas for construction equipment and materials, building footprint, fencing and gates and any other information which may reasonably be required by the County to assess the plans.
- (b) The Tenant shall be responsible for obtaining all applicable planning and zoning approval, building permits and other required governmental authorizations, including but not limited to, any necessary Federal Aviation Administration approvals, for the Alterations with copies of all permits and authorizations provided to County prior to commencement of any Alteration.
- (c) The Tenant shall execute a contract for construction with a provision naming the County as a third-party beneficiary, with a copy of this provided to the County.
- (d) The Tenant shall provide proof of surety bonds in a form acceptable to the County covering the Alterations.
- (e) All Alterations shall be done in a good and workmanlike manner in compliance with all applicable laws, ordinances, rules and regulations and subject to the County’s reasonable acceptance. If Alterations are not done in a good and workmanlike manner and in accordance with all applicable authorities, the County shall have the right to correct such Alterations and the Tenant shall pay the cost and expense of such correction to the County immediately upon demand by the County, plus an amount equal to the County’s cost of overhead expense attributable to the making of such repairs (to be reasonably determined by the County).
- (f) All work done in connection with Alterations shall be at the Tenant’s sole cost and expense and Tenant shall be wholly responsible to all contractors, subcontractors, laborers and materialmen.
- (g) The Tenant shall ensure that at no time shall any mechanic’s lien or lien for work connected to Alterations be asserted against the Leased Premises or any part of the Building. If such a lien or encumbrance is filed or recorded against the Leased Premises or Building, the Tenant shall promptly discharge said lien or encumbrance. If any such lien or encumbrance has not been removed within thirty (30) days from the date it is filed or recorded, the Tenant shall deposit with the County an amount in cash equal to one

hundred fifty percent (150%) of the amount of the lien filed or post a bond in form reasonably satisfactory to the County until said lien or encumbrance is discharged. If the Tenant fails, neglects or refuses to satisfy any such lien or encumbrance or refuses to secure the County as provided above, then the County shall have the option, but not the obligation, to satisfy such lien or encumbrance and any amounts paid by the County shall be promptly reimbursed by the Tenant.

- (h) The Tenant shall diligently pursue construction of any approved Alterations until completion.
- (i) Upon completion of work on any Alterations, the Tenant shall be responsible for restoring all areas disturbed by construction activities, whether or not such areas are located outside the Leased Premises, to the general condition existing prior to construction.
- (j) Approved Alterations shall not be removed, expanded or materially altered without the prior written consent of the County, which consent shall not be unreasonably withheld or delayed.
- (k) Approved Alterations constructed in accordance with this process shall be permanently attached to the Premises and at the termination of this Lease shall not be removed, altered or changed by the Tenant in any way.
- (l) In no case shall any Alterations constitute grounds for extending the term of this Lease.

#### **ARTICLE VI. SIGNAGE**

**Section 6.01** Signage. The Tenant shall not install any new sign, lettering, advertisement or posting in, upon or around the Leased Premises or Building without the prior written consent of the County. The Tenant shall pay for all costs in connection with the posting of a sign approved by the County, including, but not limited to, artwork, application, permits, installation and maintenance. The County shall have absolute discretion in approving any such sign. The Tenant shall pay for costs of removal of signs from the Leased Premises and Building upon termination of the Lease and the Tenant shall pay the costs of repair if any damage is caused by such removal.

#### **ARTICLE VII. INSURANCE; INDEMNIFICATION; DAMAGE**

**Section 7.01** Insurance. During the Term and any Extended Term of this Lease, the Tenant shall carry and maintain in full force and effect and at its sole cost and expense, the following insurance policies, which limits can be met with a combination of primary and excess/umbrella policies. Within thirty (30) days of the execution of this Lease, Tenant will provide insurance certificates to the County, listing the County as an additional insured for all liability insurances, for the coverages required herein. Any such policies shall not be materially changed or cancelled without thirty (30) days advance written notice to the County.

- (a) Comprehensive General Liability Insurance, or the equivalent, in the minimum amount of one million ninety-three thousand and no/100 U.S. Dollars (\$1,093,000.00) per occurrence or as a combined single limit each occurrence.
- (b) Fire or Extended Coverage Insurance in an amount sufficient to fully cover replacement costs for Tenant's improvements, fixtures, furnishings, equipment and any other personal property of Tenant's kept or maintained at the Leased Premises.
- (c) Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Tenant during the term of this Agreement.
- (d) Automobile Insurance on all vehicles used by Tenant in the course of business related to this Lease, including but not limited to, any storage or operation of owned or hired vehicles on the Leased Premises or Building, in the minimum amount of one million ninety-three thousand and no/100 U.S. Dollars (\$1,093,000.00) per occurrence or as a combined single limit each occurrence.

**Section 7.02** County Rights. If the Tenant fails to obtain and maintain insurance, the County may obtain insurance coverage on behalf of the Tenant, and the amount of any premium paid by the County for such insurance shall be immediately payable by the Tenant to the County. The County may also treat the failure of the Tenant to obtain insurance as a default under this Lease and may proceed with any remedy available to it.

**Section 7.03** Additional Insurance. The Tenant may insure the Premises in such additional amounts and for such other risks as the Tenant deems appropriate or as may be required by the County.

**Section 7.04** Waiver of Subrogation. The Tenant agrees to waive all rights of recovery against the County if any damage, claim, loss or liability sustained by Tenant is covered and paid for by insurance to the extent of the insurance coverage. Tenant shall give notice to its insurance carrier(s) that a waiver of subrogation is contained in this Lease and all policies required shall contain a waiver of subrogation endorsement naming the County.

**Section 7.05** Indemnification. The Tenant shall indemnify, defend and hold the County, its elected officials, officers, employees and agents harmless from and against any and all claims, losses, liabilities and expenses (including reasonable attorneys' fees) in connection with: (1) the Tenant's failure to perform its obligations under this Lease, and (2) the acts and omissions of Tenant, its officers, employees, agents and invitees that occur on or about the Airport, Building and Leased Premises during the term of this Lease. The indemnities set forth in the paragraph shall survive the termination or expiration of this Lease.

**Section 7.06** Risk of Loss. The Tenant assumes the risk of loss or damage to the contents of the Leased Premises, whether from fire, theft, accident, earthquake, snow, water damage or any other cause whatsoever. The Tenant assumes all risk of loss to personal property located on the Leased Premises, and the County shall not be liable for any damage to, or loss of, such property, or for damage or loss suffered by Tenant in connection with any act or omission of a third party. The County shall not be liable for damage or loss resulting from: (1) bursting, overflowing or leaking water, (2) sewer or steam pipes, (3) heating or plumbing fixtures, (4) electrical wiring, (5) gases or odors or (6) or any other loss or damage that would otherwise

have been avoided if Tenant had obtained appropriate insurance that insured against such loss or damage.

**Section 7.07**     Casualty Damage.

- (a) In the case where the Leased Premises shall be rendered untenable by fire, explosion or other casualty, which is not the fault of the Tenant, and the Leased Premises cannot be restored within 180 days after such occurrence, the County or the Tenant may, at their option, terminate this Lease. The Tenant shall pay all amounts due and accruing through such date of termination, and the parties shall be discharged of all further obligations under this Lease.
- (b) If the Leased Premises are damaged, without fault of the Tenant, in such a way as to make the Leased Premises unfit for occupancy, the Tenant's obligation to pay Rent shall be abated until such damage is repaired and the Leased Premises are again fit for occupancy. If such damage can be repaired within a reasonable period of time by the County's estimation, then the County shall repair such damage with all reasonable speed and Rent shall be abated for the period during which the Tenant is deprived of the use and occupancy of the Leased Premises.
- (c) If the Leased Premises, without fault of the Tenant, receives only minor damage but such damage does not render the Leased Premises unfit for occupancy, the County, upon receipt of notice of the occurrence of such event, shall repair such damage with reasonable promptness; provided, however, that there shall be no abatement of Rent.
- (d) If the Leased Premises are damaged or destroyed by the Tenant, its employees, invitees or agents, the Tenant shall be liable for all costs and expenses to repair the Leased Premises and Building to substantially the same condition that existed prior to the casualty, and the Tenant shall continue to pay Rent during the pendency of any such repairs. The Tenant agrees to commence any remedial work within 15 days after written notice by the County and to complete all remedial work required in the reasonable opinion of the County to restore the Leased Premises and Building to its original condition, within the number of days specified in the written notice provided such work can be reasonably performed within such number of days. If remedial work is not undertaken and completed in the specified time frame, the County may undertake and complete the work or contract to complete the remedial work and shall be reimbursed by the Tenant for any and all reasonable costs incurred by the County in performing such repairs, including any overhead costs reasonably allocable to the performance thereof. The remedies in this section are cumulative to any other remedies provided in this Lease.

**Section 7.08**     Environmental Matters. If the Tenant stores, spills or releases any hazardous or toxic substance or material (including any substance that could constitute a hazardous waste or environmental condition) on, near, in or at the Leased Premises or Building (each, an "Incident"), the Tenant shall immediately notify the County and any other governmental authority with jurisdiction (such as the Environmental Protection Agency) and shall promptly take all action necessary to remediate the Incident and restore the affected area in accordance with applicable law. The remediation and restoration of any such area shall not adversely affect

the maintenance, operations or future development of the adjacent Airport. The Tenant agrees to release, hold harmless and indemnify the County, its officials, employees, officers and agents from and against any and all fines, suits, claims, losses, demands, penalties, liabilities, costs or expenses (including reasonable attorney's fees), settlements, remedial action requirements, enforcement actions, administrative proceedings and any other action of any kind or nature, including personal injury, wrongful death or property damage arising out of, or in connection with, the discovery, remediation or disposal of any hazardous waste or environmental condition existing on, in, under or about the Leased Premises, Building or the Airport caused directly or indirectly by an act or omission of the Tenant or its officers, employees, agents, contractors, invitees, successors, predecessors, sublessees, or assigns. As used in this Lease, the terms "hazardous waste" and "environmental condition" shall mean (a) any "hazardous waste" as defined in the Solid Waste Disposal Act (as amended by the Resource Conservation and Recovery Act of 1976, as amended) and the regulations promulgated thereunder; (b) any "Hazardous Substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and the regulations promulgated thereunder; (c) any oil, petroleum products or by-products; (d) asbestos or asbestos-containing substances; and (e) any Hazardous Substance, toxic substance, toxic pollutant, or any substance whose release, disposal, generation, storage or emission is regulated by federal, state or local law.

#### **ARTICLE VIII.      DISCLAIMER OF LIABILITY**

THE COUNTY HEREBY DISCLAIMS, AND THE TENANT HEREBY RELEASES THE COUNTY AND ITS EMPLOYEES, AGENTS OR REPRESENTATIVES, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY THE TENANT, ITS EMPLOYEES, AGENTS, OR INVITEES DURING THE TERM OF THIS LEASE OR ANY EXTENSION THEREOF INCLUDING, WITHOUT LIMITATION, LOSS, DAMAGE OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF TENANT OR TENANT'S BUSINESS INVITEES THAT MIGHT BE LOCATED OR STORED ON THE LEASED PREMISES OR BUILDING, UNLESS SUCH LOSS, DAMAGE OR INJURY IS CAUSED BY THE COUNTY'S NEGLIGENCE OR WILLFUL MISCONDUCT, OR IS CAUSED BY THE COUNTY'S BREACH OF ITS OBLIGATIONS UNDER THIS LEASE. THE PARTIES HERETO EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL THE COUNTY BE LIABLE FOR SPECIAL OR EXEMPLARY DAMAGES, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, WITHOUT LIMITATION, PUNITIVE DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT BE CONSTRUED TO CONSTITUTE AN AGREEMENT BY THE TENANT TO INDEMNIFY THE COUNTY FOR THE COUNTY'S NEGLIGENT, WILLFUL OR INTENTIONAL ACTS.

#### **ARTICLE IX.      LIENS AND BANKRUPTCY**

**Section 9.01**    Liens Prohibited. The Tenant shall not permit any lien or encumbrance to be placed upon the Leased Premises. If a lien or encumbrance is placed upon the Leased Premises, the County may satisfy such lien or encumbrance, and the Tenant shall reimburse the County

in full at the next rent payment date. If the Tenant fails to reimburse the County by the next rent due date, amounts remaining past due shall bear interest at the lesser of: (1) the maximum rate permitted by law or (2) 18% per annum until paid and the County may pursue any other remedy available to it.

**Section 9.02** Bankruptcy. If Tenant is unable to pay its debts when due, files for bankruptcy, seeks relief from creditors or has a receiver appointed on its behalf, the County may terminate this Lease, except to the extent such termination may be avoided by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect regarding creditors' rights generally or principles governing the availability of equitable remedies. Nevertheless, the County shall have a claim in such bankruptcy or receivership proceeding in an amount equal to the aggregate amount of Rent due and payable from the date such proceeding commenced through the remainder of the Term (and any renewal or extension thereof). The amount of such damages may be satisfied by the County out of monies or assets deposited by the Tenant under this Lease as security for payment of its obligations.

## **ARTICLE X. REPRESENTATIONS & WARRANTIES**

**Section 10.01** Representations & Warranties. The Tenant represents and warrants to the County as follows:

- (a) The Tenant is lawfully existing entity or individual that is qualified to conduct business in Colorado.
- (b) The Tenant has all requisite power and authority to enter into, and perform its obligations under, this Lease.
- (c) All requisite entity action authorizing the Tenant to enter into, and perform its obligations under this Lease have been duly taken and approved.
- (d) The execution, delivery and performance of this Lease by the Tenant does not and will not: (1) require the consent of any person or entity, (2) violate any legal requirement, (3) conflict with or constitute a breach or violation of (a) the Tenant's articles of organization, or (b) the terms or provisions of any other agreement, instrument or understanding by which the Tenant is bound or affected.
- (e) The Tenant understands and shall comply with Colorado Revised Statutes §18-8-301, et seq. (Bribery and Corrupt Influences) and Colorado Revised Statutes §18-8-401, et seq. (Abuse of Public Office) and that no violation of such statutes has occurred or is occurring.
- (f) No officer or employee of the County has any personal, financial or beneficial interest whatsoever in this Lease or in any operations to be conducted by the Tenant upon the Leased Premises.

## **ARTICLE XI.        DEFAULT AND REMEDIES.**

**Section 11.01** Events of Default. Any one or more of the following events shall be an “Event of Default”:

- (a) The failure of the Tenant to make any payment of Rent or any other payment required to be paid by the Tenant under this Lease when and as the same shall become due and payable, if such failure continues for a period of ten (10) days after written notice thereof from the County to the Tenant;
- (b) The Tenant shall vacate or abandon the Leased Premises; however, as long as no monetary default exists, Rent is being paid and the Tenant is maintaining the insurance described in Article VII above, vacation or abandonment of the Leased Premises shall not constitute a default;
- (c) The Tenant shall fail to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease other than those referred to in the foregoing Sections 11.01(a) and (b), and the Tenant fails to remedy the same within thirty (30) days after the County has given the Tenant written notice specifying such default or such additional period, if any, as may be reasonably required to cure the failure if the failure reasonably cannot be cured within a thirty (30) day period, provided the Tenant commences to cure such default within thirty (30) days after receipt of notice and thereafter diligently pursues such cure to completion;
- (d) The Tenant fails to vacate the Leased Premises upon the termination of a hold-over term in accordance with Section 11.03 of this Lease; or
- (e) The making by the Tenant of any general arrangement or assignment for the benefit of creditors; (ii) the filing by the Tenant of a voluntary petition in bankruptcy under Title 11 U.S.C. or the filing of an involuntary petition against the Tenant which remains uncontested for a period of sixty (60) days; (iii) the appointment of a trustee or receiver to take possession of substantially all of the Tenant’s assets located at the Leased Premises or of the Tenant’s interest in this Lease; or (iv) the attachment, execution or other judicial seizure of substantially all of the Tenant’s assets located at the Leased Premises or of the Tenant’s interest in this Lease, provided, however, in the event that any provisions of this Section 11.01(e) is contrary to any applicable law, such provision shall be of no force or effect.

**Section 11.02** Remedies. Upon the occurrence of an Event of Default, the County shall have the option to (i) institute suit against the Tenant to collect Rent or other sum as it becomes due or to enforce any obligation under this Lease, (ii) terminate this Lease, (iii) terminate the Tenant’s right to possession without terminating this Lease, or (iv) cure the Event of Default on behalf of the Tenant. If County cures an Event of Default on behalf of the Tenant, the Tenant shall, on demand and as Additional Rent, reimburse the County for the County’s expenses incurred thereby including the costs of removing and storing the Tenant’s or any other occupant’s property. All past due payments required of the Tenant hereunder shall bear interest from the date due until paid at the lesser of ten percent (10%) per annum or the maximum lawful rate of interest. If the County terminates either this Lease or the Tenant’s right to possession of the Leased Premises, the Tenant will immediately surrender the Leased

Premises to the County. If the Tenant fails to surrender the Leased Premises, the County may enter upon and take possession of the Leased Premises and expel or remove the Tenant and any other person who may be occupying the Leased Premises or any part thereof. Any termination only of the Tenant's right to possession of the Leased Premises will not relieve the Tenant of the Tenant's obligation to pay the Rent under this Lease. The County shall use reasonable efforts to mitigate any damages incurred by the County and to re-let the Leased Premises. In determining the amount of loss which the County suffers by reason of termination of this Lease, allowance shall be made for the expense of repossession and any necessary repairs, but not for any remodeling undertaken by the County following repossession. Except as provided otherwise in this Lease, the County shall have the option to terminate all or a portion of this Lease upon default by the Tenant, and in addition to, or in lieu thereof, the County may seek any relief available to it at law or in equity. Nothing in this Lease shall be deemed a restriction or waiver of any right or remedy that either party may have at law or equity for any breach or default by either party.

**Section 11.03 Surrender and Holding Over.** Upon the expiration or earlier termination of this Lease, the Tenant shall quit and surrender the Leased Premises in generally good and serviceable condition, reasonable wear and tear excepted. Thereafter, the County shall have the right to enter and take possession of the Leased Premises, with or without process of law and without liability for trespass. Holding over or failure to vacate the Leased Premises at the end of the initial Term or any Extended Term shall not be construed to be the granting or exercise of any additional term. Any holding over after the expiration of the initial Term or any Extended Term without the written consent of the County shall be construed to be a month-to-month tenancy at sufferance, at 150% of the Annual Rent payable during the last month of the Term or the Extended Term thereof, whichever is applicable (prorated on a monthly basis, the "Holdover Rent"), but shall otherwise be subject to all of the terms and conditions of this Lease. Notwithstanding anything to the contrary contained in this Section, the Tenant shall not be deemed to be holding over the Premises in the event that both parties are engaged in good faith negotiations to extend the term of the Lease. The County and the Tenant each agree to give the other party written notice at least thirty (30) days prior to the last day of a monthly term to terminate this holdover tenancy. In the event the Tenant does not vacate the Premises thirty (30) days after County's notice terminating the holdover tenancy and the County re-lets the Leased Premises to a new tenant with a lease term commencing after the date the Tenant is required to vacate the Leased Premises, such failure shall be an Event of Default under Section 11.01 of this Lease.

**Section 11.04 Performance of Covenants.** If the Tenant is in default in the performance of any covenant or condition required to be performed by it, the County may, without notice, perform such covenant or condition for the account and at the expense of the Tenant. Such expense may include reasonable attorney's fees in prosecuting or defending any action or proceeding instituted by reason of default of the Tenant, and the Tenant shall promptly reimburse the County for the amount of such expense.

**Section 11.05 Title to Leased Premises & Improvements.** Any fixtures or improvements erected or constructed on the Leased Premises shall be permanently and inseparably attached to the Premises and shall not be removed without prior written consent of the County. Title to the Leased Premises and improvements is and shall remain vested in the County. All of the

Tenant's moveable personal property located in or on the Leased Premises shall remain the property of the Tenant. The Tenant shall have the right at any time during the term of this Lease and upon expiration or termination, to remove all such equipment and property; provided that the Tenant is not in default of its obligations under the Lease. If the Tenant has been provided with notice of default or breach under this Section 11, the Tenant shall not be entitled to remove any of the Tenant's personal property from the Leased Premises until such default has been cured. Any property affixed to the Leased Premises so that the same may not be removed without material damage to the Leased Premises shall not be removed by the Tenant at any time, but shall become the property of the County upon expiration or earlier termination of this Lease.

**Section 11.06** Payments Received After Termination. No payment received by the County from the Tenant after the termination of this Lease or after the giving of a notice of termination, shall reinstate, continue or extend the Term or any Renewal Term or affect any prior termination notice delivered to the Tenant. The parties agree that after (1) delivery of a notice of termination, (2) commencement of an action for repossession or (3) final judgment that grants the County possession of the Leased Premises, the County may receive and collect any amounts past due and owing under the terms of this Lease, and the collection of such amounts shall not waive any notice previously given or waive such action or judgment.

## **ARTICLE XII. ASSIGNMENT AND SUBLETTING**

**Section 12.01** Transfers and Assignments by the Tenant. Except as provided below, the Tenant shall not, without the prior written consent of the County: (a) assign, transfer, or encumber this Lease or any estate or interest herein, whether directly or by operation of law; (b) permit any other person or entity to become the Tenant hereunder by merger, consolidation or other reorganization; (c) if the Tenant is an entity other than a corporation whose stock is public traded, permit the transfer of an ownership interest in the Tenant that results in a change in current control of the Tenant; (d) grant any license, concession, or other right of occupancy of any portion of the Leased Premises; or (e) use or permit the use of the Leased Premises by any parties other than the Tenant (any of the prior described events in Section 12.01 (a to e) being a "Transfer"). Any Transfer of this Lease shall require that the Transfer is to (i) a transferee who is commercially reasonable and acceptable to the County; and (ii) the use and occupancy of the Leased Premises and any improvement following the Transfer remains substantially the same as contemplated by this Lease. The Tenant shall provide copies to the County of any and all documents or instruments that effect a Transfer of the Premises. No Transfer shall release the Tenant from its obligations under this Lease, but rather the Tenant and the transferee shall be jointly and severally liable.

**Section 12.02** Subleasing. The Tenant shall not have the right to sublease property within the Leased Premises without the written consent of the County.

**Section 12.03** Successors to County. The rights and obligations of the County under this Lease may be assigned by the County at its option and without the consent of the Tenant.

### **ARTICLE XIII. ABANDONMENT**

**Section 13.01** Abandonment/Vacation of the Premises. If Tenant abandons or vacates the Leased Premises before the end of the Term (or any renewal or extension thereof), the County may enter the Leased Premises, remove fixtures and personal property of the Tenant and re-let the Leased Premises as it sees fit without terminating this Lease. In addition, the County may make any repairs, changes, alterations or additions to the Leased Premises as may be necessary or desirable for the purpose of re-letting. If the County cannot obtain rent from such re-letting (after payment of all costs and expenses, including payment of Rent accruing from the date of abandonment) in an amount equivalent to the Rent, then Tenant shall be liable for any such deficiency. If the Tenant neglects to retrieve its personal property from Leased Premises upon abandonment or upon termination or expiration of the Lease, the County may remove and store such personal property (without liability to the Tenant for risk of loss), and the Tenant agrees to reimburse the County on demand, for any and all expenses incurred in such removal and storage, including court costs, attorney's fees and storage charges for the period of time such property remains in storage. The County may, after 30 days' notice to the Tenant, sell such property, in whole or in part, at private sale and without legal process, and apply the proceeds of such sale towards any amounts due from the Tenant to the County and render the surplus, if any, to the Tenant.

### **ARTICLE XIV. OBLIGATIONS OF THE COUNTY**

**Section 14.01** Quiet Enjoyment. The Tenant shall be entitled to quiet enjoyment of the Leased Premises and County will not interfere with that right, as long as the Tenant pays Rent in a timely manner and performs all other obligations under this Lease. The Tenant acknowledges that its right to enjoy the Leased Premises is subject to the use of the surrounding property for industrial, commercial and airport purposes with the accompanying industrial, commercial and airport noises, odors, smoke, sonic booms and low-flying aircraft and the danger and nuisance thereof.

### **ARTICLE XV. EMINENT DOMAIN; CONDEMNATION**

**Section 15.01** General. If the Leased Premises (or a substantial part thereof) are taken in eminent domain, or are conveyed under threat of condemnation proceedings ("a Taking"), then this Lease shall forthwith terminate upon such taking as if the Term expired at the time of such Taking; provided that Rent and any other amounts due under this Lease shall be paid to the County by the Tenant as of the date of such taking.

**Section 15.02** Partial Taking – Tenant's Rights. If any part of the Leased Premises becomes subject to a Taking and such Taking will prevent the Tenant from conducting its business in the Leased Premises in a manner reasonably comparable to that conducted immediately before such Taking for a period of more than 180 days, then the Tenant may terminate this Lease as of the date of such Taking by giving written notice to the County within 30 days after the Taking, and Rent shall be apportioned as of the date of such Taking. If the Tenant does not

terminate this Lease, then Rent shall be abated on a reasonable basis as to that portion of the Leased Premises rendered untenable by the Taking.

**Section 15.03** Partial Taking – County’s Rights. If any material portion, but less than all, of the Building becomes subject to a Taking, then the County may terminate this Lease by delivering written notice thereof to the Tenant within 30 days after such Taking, and Rent shall be apportioned as of the date of such Taking. If the County does not terminate this Lease, then Rent shall be abated on a reasonable basis as to that portion of the Leased Premises rendered untenable by the Taking.

**Section 15.04** Award. If an award is made for a taking of the Leased Premises in condemnation proceedings, the County is entitled to all amounts awarded or paid for such Taking; provided, however, the Tenant may separately pursue a claim (to the extent it will not reduce the County’s award) against the condemner for the value of the Tenant’s personal property which the Tenant is entitled to remove under this Lease, moving costs, loss of business and other claims it may have.

## **ARTICLE XVI. COMPLIANCE WITH LAWS; ADDITIONAL RULES**

**Section 16.01** Compliance with Laws. Both parties hereto shall observe and comply with all applicable laws, including but not limited to federal, state and local laws, regulations, rules, ordinances, policies, and standards, including but not limited to, any County land development regulations, zoning regulations and Airport requirements, all as may be amended from time to time.

**Section 16.02** Additional Rules. The Tenant, its officers, employees, agents and invitees shall comply with the following:

- (a) Sidewalks, entries, passages and stairways shall not be obstructed in any manner, this shall include prompt removal of all snow from any walkways, drives, porches, sidewalks and parking areas that serve the Leased Premises.
- (b) The Leased Premises shall be maintained at all times in a clean, sanitary and attractive condition with all rubbish, garbage and other waste properly contained and disposed of to appropriate refuse facilities.
- (c) Items, which may constitute a hazard or danger to the any person or property, shall not be moved into the Leased Premises.
- (d) Antennas, satellite dishes and other equipment may not be erected or installed on the Leased Premises without the prior written consent of the County.
- (e) All appliances, utilities and fixtures shall be properly operated and used, restrooms are not to be used for any purpose other than that for which they are intended, and any damage resulting to any appliance, utility or fixture from the Tenant’s misuse shall be paid by the Tenant.
- (f) Animals, except qualified services animals, are prohibited in the Leased Premises and in

the Building.

- (g) The Tenant shall not play loud music or cause other nuisances that disturb the occupants or adjoining tenants or other parties in the Building.
- (h) The Tenant shall obtain the written consent of the County prior to installing or changing locks on doors of the Leased Premises. If locks are changed or installed, it shall be accomplished at the Tenant's sole expense, the Tenant shall provide copies of new keys to the County.
- (i) The Tenant must obtain the prior written consent of the County for installation of, change to or temporary installation of any objects along the exterior of the Leased Premises or Building, all such exterior changes are subject to any applicable pre-notice or approval regulations given the designation as a land-side property, including but not limited to the Federal Aviation Regulations Part 77.
- (j) Tenant shall not deface the walls, ceilings, partitions or floors of the Leased Premises or of the Building. The Tenant shall pay for any defacement, damage or injury caused by the Tenant, its agents, employees or invitees.
- (k) The County may institute such other rules and regulations as in its reasonable judgment may be necessary or desirable for the safety, care and preservation of the Leased Premises and the Building.

## **ARTICLE XVII. COMPLIANCE WITH LAWS; AIRPORT CONSTRUCTION**

**Section 17.01** Taxes. The Tenant is responsible for all taxes assessed against the Tenant's personal property located upon the Leased Premises during the term of this Lease and any sales or other taxes that may be assessed in connection with Tenant's use of the Leased Premises.

**Section 17.02** Non-Discrimination. The Tenant and its successor and assigns shall comply with pertinent statutes, executive orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, religion, sexual orientation, political affiliation or disability be excluded from participating in any activity conducted that is directly or indirectly related to this Lease. The Tenant shall use the Leased Premises in compliance with all requirements imposed by or pursuant to Title 49, Part 21 of the Regulations of the Office of the Secretary of Transportation, the Colorado Anti-Discrimination Act of 1957 and any other laws and regulations respecting discrimination, all as may be amended from time to time. The Tenant and County shall comply with any enforcement procedures as may be demanded by any authority for the purposes of complying with such laws and regulations.

**Section 17.03** Agreements with Other Governmental Authorities. This Lease shall be subject to the provisions and requirements of any existing or future agreement between the County and the United States, the Federal Aviation Administration or the State of Colorado.

**Section 17.04** Energy Conservation Requirements. The Tenant agrees to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy

conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 et seq).

**Section 17.05 Fair Labor Standards Act Requirements.** The Tenant shall comply with the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (“FLSA”), with the same force and effect as if given in full text herein. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The Tenant has full responsibility to monitor compliance to the referenced statute or regulation. The Tenant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

**Section 17.06 Occupational Safety and Health Act of 1970 Requirements.** The Tenant shall comply with the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The Tenant must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Tenant retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The Tenant must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

**Section 17.07 Clean Air and Water Pollution Control Requirements.** The Tenant agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Tenant agrees to report any violation to the County immediately upon discovery. The County assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration. The Tenant must include this requirement in all contracts and subcontracts relating to the Leased Premises that exceeds \$150,000.

**Section 17.08 Airspace Above Premises.** The County reserves for itself and for the use and benefit of the public, and the Tenant acknowledges and accepts the Leased Premises subject to, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises, together with the right to cause in said airspace such noise, vibration, exhaust and fumes as may be inherent in the operation of aircraft now known or hereafter used for landing upon, taking off from, or operating on, the Airport.

**Section 17.09 Interference with Aircraft.** The Tenant shall not erect or permit the erection of any structure or object on the Leased Premises above the elevations established by the Airport. The Tenant shall not make use of the Leased Premises in any manner that might interfere with the landing, taking off, or operation of aircraft upon the Airport nor create any hazard at the Airport. If the Tenant fails to comply with this Section, the County reserves the right to enter upon the Leased Premises and remove any offending structure or object, or cause the abatement of any interference or hazard, at the sole cost and expense of the Tenant.

**Section 17.10 Construction by the County.** From time to time, it may be necessary for the County to carry out extensive programs of construction, reconstruction, expansion, relocation, maintenance and repair to the Building and adjacent County Buildings, including but not

limited to the Airport, which programs may inconvenience or temporarily interrupt the Tenant's operations. The County shall give the Tenant at least seven (7) days' notice prior to commencement of such construction only in the event that such construction must necessarily commence in seven (7) days due to the emergency nature of the situation; in all other cases, the County must give the Tenant not less than thirty (30) days prior notice. The County shall use commercially reasonable efforts to minimize any interruption of the Tenant's use of the Leased Premises as permitted under this Lease. The Tenant acknowledges and agrees that such construction may require the Tenant to take a longer route to its Leased Premises during construction.

## ARTICLE XVIII. MISCELLANEOUS

**Section 18.01** County Representative. The Airport Manager and the County Manager, as appointed by the Gunnison Board of County Commissioners, each acting independent of the other, shall be a County Representative for purposes of this Lease.

**Section 18.02** Force Majeure. A party shall not be deemed in violation of this Lease (excluding payment obligations) if such party is prevented from performing any of its obligations by reason of, boycott, embargo, act of nature, act of God, pending litigation or legal proceedings or any other circumstance which is beyond its reasonable control and conditioned on the other party providing reasonable written notice to the other of the circumstance and taking commercially reasonable actions to mitigate any such impact.

**Section 18.03** Brokerage. Neither the County nor the Tenant has dealt with any broker or agent in connection with the negotiation or execution of this Lease. The Tenant shall indemnify, defend and hold the County harmless from and against all costs, expenses, attorneys' fees, liens and other liability for commissions or compensation claimed by any broker or agent claiming the same, by, through or under the Tenant. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

**Section 18.04** Headings. The Section headings contained in this Lease are for convenience in reference and are not intended to define or limit the scope of any provision.

**Section 18.05** Time of Essence. Time is of the essence in this Lease.

**Section 18.06** Attorneys' Fees. In the event any action or proceeding is brought to take possession of the Leased Premises, breach of any provision of this Lease or to enforce compliance with this Lease for failure to observe any of a party's covenants, the prevailing party shall be awarded reasonable attorneys' fees, expenses and costs.

**Section 18.07** Waiver. Waiver by a party of, or the failure of a party to insist upon, the strict performance of any provision of this Lease shall not constitute a waiver of such party's right or prevent such party from requiring the strict performance of any such provision in the future. Any waiver of an obligation, right, term or provision contained in this Lease must be in writing and signed by the party against whom enforcement is sought.

**Section 18.08** Limitation of Benefit. There are no third-party beneficiaries of this Lease. Without limiting the generality of the preceding sentence, this Lease does not create in or

bestow upon any other person or entity not an express party to this Lease any right, privilege or benefit unless expressly provided in this Lease. This Lease does not in any way represent, nor should it be deemed to imply, any standard of conduct to which the parties expect to conform their operations in relation to any person or entity not an express party to this Lease.

**Section 18.09** Severability. If any provision of this Lease is held invalid, illegal or unenforceable by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, and this Lease shall be construed as if such invalid, illegal or unenforceable provision had not been contained in this Lease.

**Section 18.10** Successors. The terms and provisions in this Lease shall extend to and bind the permitted successors and assigns of each party.

**Section 18.11** Non-Exclusive Right. Nothing contained in this Lease shall be construed to grant or authorize the granting of an exclusive right. The County reserves the right to grant to others the privilege and right of conducting activities at the Building. The County reserves the right, during the term hereof, to reduce and reallocate space leased for the exclusive use of the Tenant in any case where the failure to do so might reasonably constitute the granting by the County to the Tenant of an exclusive right. Notwithstanding anything contained herein, this Section shall not be construed to permit the interference with the Tenant's right to the undisturbed, peaceful and quiet enjoyment of the Leased Premises throughout the Term of this Lease.

**Section 18.12** Notices. All notices required under this Lease shall be in writing and delivered personally, by email or by first class certified mail, return receipt. If delivered personally, notice shall be deemed given when actually received. If delivered email, notice shall be deemed given upon full transmission of such notice and confirmation of receipt during regular business hours. If delivered by mail, notice shall be deemed given at the date and time indicated on the return receipt. Notice shall be delivered to:

If to Tenant:

Drug Test West, Inc.  
Attn: Michael Barnes and Chris Osmundson  
725 S. 10<sup>th</sup> Street, Unit A-1  
Gunnison, CO 81230  
Email: \_\_\_\_\_

If to the County:

Gunnison-Crested Butte Regional Airport  
Attn: Rick Lamport, Airport Manager  
519 W. Rio Grande  
Gunnison, CO 81230  
Email: [rlamport@gunnisoncounty.org](mailto:rlamport@gunnisoncounty.org)

County Manager's Office  
Attn: Matthew Birnie, County Manager  
200 E. Virginia Ave.  
Gunnison, CO 81230

with a copy to:

Gunnison County Attorney's Office  
200 E. Virginia Ave.  
Gunnison, CO 81230  
Email: mhoyt@gunnisoncounty.org

or to such other address or addresses as the parties may designate in writing.

**Section 18.13 Governing Law; Jurisdiction.** This Lease shall be governed by, and construed in accordance with, the laws of the State of Colorado without regard to its conflicts of law provisions. The parties submit this Lease and any dispute arising under this lease to the sole and exclusive jurisdiction of the courts in and for Gunnison County, Colorado. Any action to enforce or interpret the provisions of this Lease shall be brought in a court in and for Gunnison County, Colorado.

**Section 18.14 Incorporation of Exhibits, Other Documents.** The Exhibits and any applicable Airport regulations are incorporated by reference into this Lease and made a part of this Lease. In the event of a conflict between this Lease and the applicable Airport Regulations, the Airport regulations shall control.

**Section 18.15 Entire Agreement.** This Lease embodies the entire agreement between the parties concerning the subject matter and supersedes all prior written or oral conversations, proposals, negotiations, understandings and agreements. This Lease may not be altered or modified in any manner whatsoever except by a writing signed by the parties.

**Section 18.16 Relationship of Parties.** Nothing contained in this Lease shall be deemed or construed by the parties as creating a relationship of principal and agent, partners, joint venturers or any other relationship. It is understood and agreed that neither the method of computation of fees, nor any other provision contained herein, nor any act of a party creates a relationship other than the relationship of County and the Tenant.

**Section 18.17 No Waiver of Immunity.** Nothing in this Lease shall be deemed a waiver of any protections available to the County under the Colorado Governmental Immunity Act, or any similar statutory provision.

**Section 18.18 Counterparts.** This Lease may be executed in counterparts, each of which will be deemed an original. Delivery of an executed signature page of this Lease by facsimile or email transmission will constitute effective and binding execution and delivery of this Lease. The County and the Tenant agree to allow the use of electronic signatures for execution of this

Lease. All documents must be properly notarized, if applicable. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24-71.3-101 to -121.

*[Signatures appear on following page.]*

The parties have executed this Commercial Lease Agreement as of the Effective Date listed above.

**LANDLORD:**

**BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF GUNNISON,**

By:   
Jonathan Houck, Chairperson

**ATTEST:**

  
Deputy Clerk



**TENANT:**

**MICHAEL BARNES AND CHRIS  
OSMUNDSON, D/B/A DRUG TEST  
WEST INC.,**

By:   
Michael Barnes

By:   
Chris Osmundson

EXHIBIT A

LEGAL DESCRIPTION OF BUILDING

Lots 16 through 26, Block 11, RIO GRANDE ADDITION, according to the plat recorded April 14, 1961 as Reception No. 247973, TOGETHER WITH the E 15' of the vacated north-south alley adjacent to Lots 16 through 22, said Block 11,

City of Gunnison  
County of Gunnison  
State of Colorado;

known as 725 S. 10<sup>th</sup> Street, Units A, A-1, B, C, D and 711 S. 10<sup>th</sup> Street, Gunnison, CO 81230, consisting of three buildings, together with all appurtenances.

EXHIBIT B

LEASED PREMISES DESCRIPTION

**Gunnison County  
10th Street Leases**

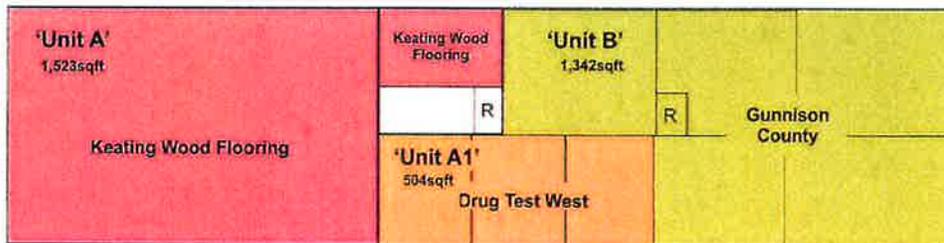
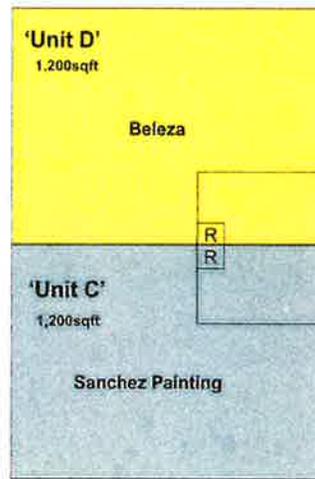


EXHIBIT C

EXISTING FIXTURES, FURNISHINGS, EQUIPMENT

- None

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

**Agenda Item:** Extension of Commercial Lease Agreement; Gunnison-

**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:** Gunnison County and Tom Keating dba Keating Wood Floors, Inc.

**Term Begins:** April 1, 2022

**Term Ends:**

**Grant Contract #:**

**Summary:**

The tenant has requested for an extension to lease property from the Airport for an additional one (1) year as stated in the original signed and dated lease on April 6, 2021.

**Fiscal Impact:** Annual rent revenue \$9,300 plus CPI or 3%

**Submitted by:** Stephanie Petsch

**Submitter's Email Address:** spetsch@gunnisoncounty.org

**Finance Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\jguerra

Discharge Date: 4/12/2022

**County Attorney Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 4/29/2022

Certificate of Insurance Required

Yes  No

**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 4/29/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted:

Agenda Date: 5/3/2022



519 Rio Grande Avenue • Gunnison, Colorado 81230 • P 970.641.2304 • F 970.641.8559

## Lease Extension

Rick Lamport  
Airport Manager  
719 S. 10<sup>th</sup> St.  
Gunnison, CO 81230

February 1<sup>st</sup>, 2022

### Lease Extension Request

Dear Mr. Lamport,

As provided for in the existing Lease with Gunnison County that commenced April 1st 2021, Keating Wood Flooring, Inc doing business at 725 S. 10<sup>th</sup> Street, Unit A, Gunnison, CO 81230, would like to extend the current lease for a one year term as per the conditions stated in said lease.

Regards

A handwritten signature in black ink, appearing to read "Tom Keating". The signature is stylized and cursive.

Tom Keating

## COMMERCIAL LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is dated as of this 6<sup>th</sup> day of April, 2021 (the "Effective Date") by and between the **BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, COLORADO**, a body corporate and politic, on behalf of the **GUNNISON-CRESTED BUTTE REGIONAL AIRPORT** (the "County") and **TOM KEATING, D/B/A KEATING WOOD FLOORS INC.**, (the "Tenant").

### RECITALS

- A. The County is the owner and operator of the Gunnison-Crested Butte Regional Airport (the "Airport") and the County owns the real property located in the City of Gunnison, Gunnison County, Colorado as more particularly described in Exhibit A, commonly known as 711 S. 10<sup>th</sup> Street and 725 S. 10<sup>th</sup> Street, Units A, A-1, B, C and D, Gunnison, CO 81230 (the "Building").
- B. The Building is located within an area directly adjacent to the Airport, sometimes referred to as a land-side property, and the County desires to lease a portion of the Building as more particularly described in Exhibit B, also known as 725 S. 10<sup>th</sup> Street, Unit A, Gunnison, CO 81230 (the "Leased Premises") to the Tenant.
- C. The Tenant desires to lease the Leased Premises from the County for the purpose of wood flooring business and all related purposes including but not limited to retail, consultations, designing and installation and in accordance with the terms and provisions of the Lease and any applicable Airport regulations and the County desires to lease the Leased Premises to the Tenant.

### AGREEMENT

For and in consideration of the covenants and conditions set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the County and the Tenant agree as follows:

#### ARTICLE I. THE LEASED PREMISES

**Section 1.01** The Leased Premises. The County leases to the Tenant and the Tenant leases from County, upon the terms and provisions of this Lease and subject to the provisions of the applicable Airport regulations, including but not limited to Federal Aviation Regulations Part 77, exclusive use of the Leased Premises as shown on Exhibit B. The Tenant shall have non-exclusive access to shared parking directly in front of the Building fronting Railroad Ave. and behind the Building, off the alley between S. 9<sup>th</sup> St. and S. 10<sup>th</sup> St., all designated as common space equally shared by all tenants of the Building as shown on Exhibit B. **In no event shall any parking be permitted along either side of S. 10<sup>th</sup> Street along the side of the Building or against any of the Airport's runway fencing.** For purposes of clarity, this Lease does not permit the Tenant to use any portion of the Airport facility or property. Tenant, any of its employees, agents, guests, licensees or invitees must abide by all posted Airport signage and regulations.

**Section 1.02** Fixtures, Furniture and Equipment. As part of the Leased Premises, County includes fixtures, furniture and equipment as described in Exhibit C. Subject to prior written approval by the County, Tenant may purchase and install additional fixtures, furniture and equipment within the Leased Premises that it has exclusive use of. Any such purchase and installation shall be at the Tenant's own expense. The County and Tenant shall jointly verify the existing fixtures, furniture and equipment in Exhibit C as well as catalog any Tenant-provided fixtures, furniture and equipment.

**Section 1.03** Condition of Leased Premises. The Tenant has had an opportunity to inspect the Leased Premises and acknowledges that it is fit for Tenant's use and enjoyment. The taking of possession of the Leased Premises shall be deemed an acceptance of the same by the Tenant in its "AS IS" condition without any obligation whatsoever on the part of the County to repair, remodel, reconstruct or modify the Leased Premises for the Tenant. The Tenant has had an opportunity to inspect and measure the Leased Premises and acknowledges that the approximate square footage of the Leased Premises is **one thousand and five hundred (1,500)** square feet.

**Section 1.04** Permitted Use. The Tenant shall use the Leased Premises solely for the purpose(s) described above at D of the Recitals, as approved by the County and other related business purposes. No other use shall be permitted without the County's prior written consent.

**Section 1.05** No Hazardous Use, Nuisance or Waste Permitted on Leased Premises. The Tenant shall not use or permit the Leased Premises to be used for any business or purpose deemed by the County to be hazardous, or in any manner as to constitute a violation of any federal, state, county, and local laws, rules, regulations, requirements or orders of any lawful governmental or public authority relating to the Leased Premises. Tenant covenants and agrees at its sole cost and expense to fully and promptly comply with all such laws, regulations, ordinances and every order or regulation enacted by such authorities, including but not limited to, the United States, the County of Gunnison, the State of Colorado and the Federal Aviation Administration. The Tenant agrees that it shall not permit any noxious or offensive activity on the Leased Premises or allow any nuisance to exist on the Leased Premises which may cause disturbance to other tenants of the Building or to others on adjacent or nearby property. Further, the Tenant agrees that nothing shall be done or kept on the Leased Premises which might impair the value of the Leased Premises or which would constitute waste.

**Section 1.06** No Smoking, Vaping and E-Cigarettes. Smoking, vaping and the use of e-cigarettes is not permitted on the Leased Premises, in the Building or in any County building. The Tenant may, at the Tenant's discretion, permit its employees and invitees to smoke, vape or use e-cigarettes outside of the Leased Premises and Building; provided, however, that such activities must occur at a distance of at least twenty-five (25) feet from any entrance. Smoking, vaping and e-cigarette use is not permitted in any location where prohibited by law or regulations governing the Airport. The Tenant shall remove all smoking, vaping and e-cigarette debris (including wrappers, butts and matches) from the Leased Premises and Building at least twice per week. If this task is not performed to the satisfaction of the County, the County may

remove such debris and charge the cost of removal, plus an administrative fee of 50% of such cost, to the Tenant.

## ARTICLE II. TERM

**Section 2.01** Term. The term of this Lease shall be a period of one (1) year (the "Term"), commencing on **April 1, 2021** (the "Commencement Date") and ending on **March 31, 2022** unless terminated earlier in accordance with the terms of this Lease.

**Section 2.02** Option to Extend. Upon expiration of the Term and provided that the Tenant is not in default of its obligations under this Lease, the Tenant may request an extension of this Lease for additional one (1) year periods (each an "Extended Term"), upon the same terms and conditions, but any such grant of an Extended Term shall solely be at the County's discretion. The Tenant shall make any such request for an Extended Term by providing written notice to the County no later than sixty (60) days prior to the expiration of the Term or Extended Term and no earlier than six (6) months prior to the expiration of the Term or Extended Term. Rent, for each Extended Term, if granted, shall be adjusted as set forth in this Lease.

## ARTICLE III. RENT

**Section 3.01** Rent. The Tenant shall make annual rental payments (the "Annual Rent") for the Premises of **nine thousand and three hundred and 00/100 U.S. Dollars (\$9,300.00)** payable in monthly installments in advance on the first day of each month of **seven hundred and seventy-five and 00/100 U.S. Dollars (\$775.00)**. The Tenant shall pay as "Additional Rent" all other payments of whatever nature that Tenant has agreed to pay or assume under this Lease, Annual Rent and Additional Rent may be referred to collectively as "Rent." The payment of Rent shall begin on the Commencement Date.

**Section 3.02** Extended Term Increased Annual Rent. Effective for any Extended Term, the Annual Rent shall be adjusted by the greater of either (1) the CPI Adjustment as described below, or (2) a flat three percent (3%) increase in the Annual Rent. The "CPI Adjustment" shall be calculated using the Bureau of Labor Statistics (BLS) CPI inflation calculator using the monthly installment of Annual Rent for the January of the expiring Term or Extended Term compared to the January of the year in which the Extended Term shall begin.

**Section 3.03** Security Deposit. The Tenant has previously paid, and the County continues to hold a security deposit in the amount of **seven hundred and 00/100 U.S. Dollars (\$700.00)**. This security deposit will be held by the County to ensure the Tenant's faithful performance of all of the terms, conditions and covenants of this Lease. The County may apply the security deposit to cure any default. The Tenant may not apply the security deposit to the payment of Annual Rent or for the performance of other obligations. The County will refund the security deposit within 30 days after termination of the Lease, less any deductions for past due amounts or damage to the Leased Premises.

**Section 3.04** Manner of Payment. All amounts due under this Lease shall be paid on the first of each month during the Term or any Extended Term and paid to the County at

Gunnison County Finance  
200 E. Virginia Ave.  
Gunnison, CO 81230  
Attn: Juan Guerra, Interim Finance Director

or at such place as County designates by proper notice as provided in Section 18.12. All checks shall be subject to collection and the Tenant shall pay all bank charges incurred by the County as a result of dishonor. Any Rent or fees not received by the County within five (5) days of the applicable date due shall incur a late fee of ten and 00/100 U.S. Dollars (\$10.00) per day until paid. The County shall apply all payments received first to past due amounts and second to current Rent and fees.

**Section 3.05** Proration. If the Term or Extended Term commences on a day other than the first calendar day of a month, then Tenant shall pay to County a prorated monthly installment of Annual Rent, calculated using the number of days that exist prior to the first day of the succeeding month, with a similar adjustment being made at the termination of the Lease.

#### **ARTICLE IV. MAINTENANCE; UTILITIES; INSEPCCTIONS**

**Section 4.01** Tenant Maintenance Obligations. Throughout the duration of the Lease, the Tenant agrees to: (1) maintain the Leased Premises and all non-affixed improvements, fixtures, furnishings and equipment in good working order and repair; (2) keep the interior of the Leased Premises painted, clean and sanitary, (3) keep paved walkways leading to the Leased Premises clear of ice, snow, litter and debris, (4) perform routine maintenance of the Leased Premises, including, but not limited to, maintaining any landscaping adjacent to the Leased Premises, restroom plumbing, lighting, ballasts, doors and locks. The Tenant shall not overload the floors or walls of the Leased Premises. The Tenant shall be responsible for janitorial services for the Leased Premises. For purposes of this Section 4.01, "routine maintenance" shall mean any repair or maintenance done in the ordinary course for the purpose of preserving machinery, equipment and improvements in good working order and condition and shall not include any extraordinary maintenance or repair.

**Section 4.02** Failure to Maintain. Should the Tenant fail to maintain the Leased Premises in a satisfactory manner according to the terms of this Lease, the County may conduct such maintenance on behalf of the Tenant, and the Tenant shall reimburse the County for all costs and expenses plus an administrative charge of 50% of such costs incurred in connection with such maintenance.

**Section 4.03** Service and Maintenance by Professionals. All Tenant maintenance obligations at the Leased Premises shall only be performed by qualified or licensed service professionals. Upon request by the County, Tenant shall promptly provide a list of all service agreements, a copy of any service agreements in place as well as contact information for personnel providing such services to Leased Premises. The County shall have the right to enter the Leased Premises as more specifically set forth in Section 4.07 below, to determine compliance with this Section 4 of the Lease.

**Section 4.04** Utilities. The Tenant shall be responsible for obtaining all utilities associated with the Leased Premises, including but not limited to, electricity, heat, internet service, telecommunications services, snow removal, trash removal and any other services not provided by the County to the Leased Premises at the Tenant's sole cost and expense. To the extent the provision of additional services to the Leased Premises requires alterations of the Building, the Tenant shall comply with the terms of Article V below. The disruption, failure, lack or shortage of any service or utility due to any cause whatsoever shall not affect any obligation of the Tenant hereunder, and the Tenant shall faithfully keep and observe all the terms, conditions and covenants of this Lease and pay all Rent due hereunder, all without diminution, credit or deduction. The County shall not be liable for any failure to make any repairs or to perform any maintenance to utilities unless such failure shall persist for an unreasonable time after written notice of the need of such repairs or maintenance is given to the County by the Tenant. If any maintenance or repair is necessitated due to the acts or omissions of the Tenant, its employees, agents or invitees, the Tenant shall pay the costs of such repairs or maintenance to the County within thirty (30) days after receipt of an invoice, together with an administrative charge in the amount equal to fifteen percent (15%) of the cost of the repairs. The County shall not be liable to Tenant for any interruption of Tenant's business or inconvenience caused due to any work performed within the Leased Premises or Building. To the extent allowed by law, the Tenant waives the right to make repairs at the County's expense under any law, statute or ordinance now or hereafter in effect.

**Section 4.05** County Provided Services. Notwithstanding the above, the County shall provide to the Tenant during the Lease, as part of the rental consideration, the following services: **water and sewer**

**Section 4.06** Inspection of Leased Premises. The Tenant will permit the County, its representatives or agents to make inspection of the Leased Premises at any time to confirm compliance with the terms of this Lease. If there is a potential (based upon reasonable facts or circumstances) or an actual material breach or violation of this Lease, or if an emergency exists which necessitates the County's access to the Leased Premises in the County's sole discretion, the County shall have the right to enter upon and inspect the Leased Premises and to do any reasonable act or thing in order to enforce its rights and obligations under this Lease. In all cases except an emergency, the County shall give the Tenant twenty-four (24) hours prior written notice, which shall specify the particular purpose for entering onto the Leased Premises.

**Section 4.07** Accident Reports. In the case of an accident or emergency, Tenant agrees to cooperate with the County in the formulation of an action plan and any response to media inquiries. All accidents, significant occurrences, incidents, situations requiring official reporting or action, including law enforcement response, shall be reported to the County as soon as possible but no later than the next business day. Reports provided must include the name, address, telephone number for any injured persons and any witnesses, any statements collected, a description of the accident including when, where and how it occurred, a

description of any bodily injury or property damage and the action taken by Tenant or other persons.

## **ARTICLE V. IMPROVEMENTS; ALTERATIONS; ADDITIONS**

**Section 5.01** Requirements for Improvements; Alterations; Additions. No improvements, alterations or additions (“Alterations”) shall be made to the Leased Premises by the Tenant without prior written consent of the County, including but not limited to, Alterations of Building walls, roofs, support, finishes, any mechanical, electrical or plumbing system, carpet, paint, interior remodel of spaces and any exterior alterations. In such event, any permitted Alterations shall be performed subject to the following conditions.

- (a) Prior to the construction of any Alterations, the Tenant shall submit Detailed Plans and Specifications to the County for approval. “Detailed Plans and Specifications” means drawings, maps or plans depicting the location, character, dimension and details of the Leased Premises and all improvements the Tenants desires to make to the Leased Premises. The Detailed Plans and Specifications may include, without limitation, construction details, fire protection systems, lighting, utilities, architectural drawings, layout and colors, containment areas for construction equipment and materials, building footprint, fencing and gates and any other information which may reasonably be required by the County to assess the plans.
- (b) The Tenant shall be responsible for obtaining all applicable planning and zoning approval, building permits and other required governmental authorizations, including but not limited to, any necessary Federal Aviation Administration approvals, for the Alterations with copies of all permits and authorizations provided to County prior to commencement of any Alteration.
- (c) The Tenant shall execute a contract for construction with a provision naming the County as a third-party beneficiary, with a copy of this provided to the County.
- (d) The Tenant shall provide proof of surety bonds in a form acceptable to the County covering the Alterations.
- (e) All Alterations shall be done in a good and workmanlike manner in compliance with all applicable laws, ordinances, rules and regulations and subject to the County’s reasonable acceptance. If Alterations are not done in a good and workmanlike manner and in accordance with all applicable authorities, the County shall have the right to correct such Alterations and the Tenant shall pay the cost and expense of such correction to the County immediately upon demand by the County, plus an amount equal to the County’s cost of overhead expense attributable to the making of such repairs (to be reasonably determined by the County).
- (f) All work done in connection with Alterations shall be at the Tenant’s sole cost and expense and Tenant shall be wholly responsible to all contractors, subcontractors, laborers and materialmen.
- (g) The Tenant shall ensure that at no time shall any mechanic’s lien or lien for work connected to Alterations be asserted against the Leased Premises or any part of the Building. If such a lien or encumbrance is filed or recorded against the Leased Premises or Building, the Tenant shall promptly discharge said lien or encumbrance. If any such lien or encumbrance has not been removed within thirty (30) days from the date it is filed or recorded, the Tenant shall deposit with the County an amount in cash equal to one

hundred fifty percent (150%) of the amount of the lien filed or post a bond in form reasonably satisfactory to the County until said lien or encumbrance is discharged. If the Tenant fails, neglects or refuses to satisfy any such lien or encumbrance or refuses to secure the County as provided above, then the County shall have the option, but not the obligation, to satisfy such lien or encumbrance and any amounts paid by the County shall be promptly reimbursed by the Tenant.

- (h) The Tenant shall diligently pursue construction of any approved Alterations until completion.
- (i) Upon completion of work on any Alterations, the Tenant shall be responsible for restoring all areas disturbed by construction activities, whether or not such areas are located outside the Leased Premises, to the general condition existing prior to construction.
- (j) Approved Alterations shall not be removed, expanded or materially altered without the prior written consent of the County, which consent shall not be unreasonably withheld or delayed.
- (k) Approved Alterations constructed in accordance with this process shall be permanently attached to the Premises and at the termination of this Lease shall not be removed, altered or changed by the Tenant in any way.
- (l) In no case shall any Alterations constitute grounds for extending the term of this Lease.

#### **ARTICLE VI. SIGNAGE**

**Section 6.01** Signage. The Tenant shall not install any new sign, lettering, advertisement or posting in, upon or around the Leased Premises or Building without the prior written consent of the County. The Tenant shall pay for all costs in connection with the posting of a sign approved by the County, including, but not limited to, artwork, application, permits, installation and maintenance. The County shall have absolute discretion in approving any such sign. The Tenant shall pay for costs of removal of signs from the Leased Premises and Building upon termination of the Lease and the Tenant shall pay the costs of repair if any damage is caused by such removal.

#### **ARTICLE VII. INSURANCE; INDEMNIFICATION; DAMAGE**

**Section 7.01** Insurance. During the Term and any Extended Term of this Lease, the Tenant shall carry and maintain in full force and effect and at its sole cost and expense, the following insurance policies, which limits can be met with a combination of primary and excess/umbrella policies. Within thirty (30) days of the execution of this Lease, Tenant will provide insurance certificates to the County, listing the County as an additional insured for all liability insurances, for the coverages required herein. Any such policies shall not be materially changed or cancelled without thirty (30) days advance written notice to the County.

- (a) Comprehensive General Liability Insurance, or the equivalent, in the minimum amount of one million ninety-three thousand and no/100 U.S. Dollars (\$1,093,000.00) per occurrence or as a combined single limit each occurrence.
- (b) Fire or Extended Coverage Insurance in an amount sufficient to fully cover replacement costs for Tenant's improvements, fixtures, furnishings, equipment and any other personal property of Tenant's kept or maintained at the Leased Premises.
- (c) Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Tenant during the term of this Agreement.
- (d) Automobile Insurance on all vehicles used by Tenant in the course of business related to this Lease, including but not limited to, any storage or operation of owned or hired vehicles on the Leased Premises or Building, in the minimum amount of one million ninety-three thousand and no/100 U.S. Dollars (\$1,093,000.00) per occurrence or as a combined single limit each occurrence.

**Section 7.02** County Rights. If the Tenant fails to obtain and maintain insurance, the County may obtain insurance coverage on behalf of the Tenant, and the amount of any premium paid by the County for such insurance shall be immediately payable by the Tenant to the County. The County may also treat the failure of the Tenant to obtain insurance as a default under this Lease and may proceed with any remedy available to it.

**Section 7.03** Additional Insurance. The Tenant may insure the Premises in such additional amounts and for such other risks as the Tenant deems appropriate or as may be required by the County.

**Section 7.04** Waiver of Subrogation. The Tenant agrees to waive all rights of recovery against the County if any damage, claim, loss or liability sustained by Tenant is covered and paid for by insurance to the extent of the insurance coverage. Tenant shall give notice to its insurance carrier(s) that a waiver of subrogation is contained in this Lease and all policies required shall contain a waiver of subrogation endorsement naming the County.

**Section 7.05** Indemnification. The Tenant shall indemnify, defend and hold the County, its elected officials, officers, employees and agents harmless from and against any and all claims, losses, liabilities and expenses (including reasonable attorneys' fees) in connection with: (1) the Tenant's failure to perform its obligations under this Lease, and (2) the acts and omissions of Tenant, its officers, employees, agents and invitees that occur on or about the Airport, Building and Leased Premises during the term of this Lease. The indemnities set forth in the paragraph shall survive the termination or expiration of this Lease.

**Section 7.06** Risk of Loss. The Tenant assumes the risk of loss or damage to the contents of the Leased Premises, whether from fire, theft, accident, earthquake, snow, water damage or any other cause whatsoever. The Tenant assumes all risk of loss to personal property located on the Leased Premises, and the County shall not be liable for any damage to, or loss of, such property, or for damage or loss suffered by Tenant in connection with any act or omission of a third party. The County shall not be liable for damage or loss resulting from: (1) bursting, overflowing or leaking water, (2) sewer or steam pipes, (3) heating or plumbing fixtures, (4) electrical wiring, (5) gases or odors or (6) or any other loss or damage that would otherwise

have been avoided if Tenant had obtained appropriate insurance that insured against such loss or damage.

**Section 7.07** Casualty Damage.

- (a) In the case where the Leased Premises shall be rendered untenable by fire, explosion or other casualty, which is not the fault of the Tenant, and the Leased Premises cannot be restored within 180 days after such occurrence, the County or the Tenant may, at their option, terminate this Lease. The Tenant shall pay all amounts due and accruing through such date of termination, and the parties shall be discharged of all further obligations under this Lease.
- (b) If the Leased Premises are damaged, without fault of the Tenant, in such a way as to make the Leased Premises unfit for occupancy, the Tenant's obligation to pay Rent shall be abated until such damage is repaired and the Leased Premises are again fit for occupancy. If such damage can be repaired within a reasonable period of time by the County's estimation, then the County shall repair such damage with all reasonable speed and Rent shall be abated for the period during which the Tenant is deprived of the use and occupancy of the Leased Premises.
- (c) If the Leased Premises, without fault of the Tenant, receives only minor damage but such damage does not render the Leased Premises unfit for occupancy, the County, upon receipt of notice of the occurrence of such event, shall repair such damage with reasonable promptness; provided, however, that there shall be no abatement of Rent.
- (d) If the Leased Premises are damaged or destroyed by the Tenant, its employees, invitees or agents, the Tenant shall be liable for all costs and expenses to repair the Leased Premises and Building to substantially the same condition that existed prior to the casualty, and the Tenant shall continue to pay Rent during the pendency of any such repairs. The Tenant agrees to commence any remedial work within 15 days after written notice by the County and to complete all remedial work required in the reasonable opinion of the County to restore the Leased Premises and Building to its original condition, within the number of days specified in the written notice provided such work can be reasonably performed within such number of days. If remedial work is not undertaken and completed in the specified time frame, the County may undertake and complete the work or contract to complete the remedial work and shall be reimbursed by the Tenant for any and all reasonable costs incurred by the County in performing such repairs, including any overhead costs reasonably allocable to the performance thereof. The remedies in this section are cumulative to any other remedies provided in this Lease.

**Section 7.08** Environmental Matters. If the Tenant stores, spills or releases any hazardous or toxic substance or material (including any substance that could constitute a hazardous waste or environmental condition) on, near, in or at the Leased Premises or Building (each, an "Incident"), the Tenant shall immediately notify the County and any other governmental authority with jurisdiction (such as the Environmental Protection Agency) and shall promptly take all action necessary to remediate the Incident and restore the affected area in accordance with applicable law. The remediation and restoration of any such area shall not adversely affect

the maintenance, operations or future development of the adjacent Airport. The Tenant agrees to release, hold harmless and indemnify the County, its officials, employees, officers and agents from and against any and all fines, suits, claims, losses, demands, penalties, liabilities, costs or expenses (including reasonable attorney's fees), settlements, remedial action requirements, enforcement actions, administrative proceedings and any other action of any kind or nature, including personal injury, wrongful death or property damage arising out of, or in connection with, the discovery, remediation or disposal of any hazardous waste or environmental condition existing on, in, under or about the Leased Premises, Building or the Airport caused directly or indirectly by an act or omission of the Tenant or its officers, employees, agents, contractors, invitees, successors, predecessors, sublessees, or assigns. As used in this Lease, the terms "hazardous waste" and "environmental condition" shall mean (a) any "hazardous waste" as defined in the Solid Waste Disposal Act (as amended by the Resource Conservation and Recovery Act of 1976, as amended) and the regulations promulgated thereunder; (b) any "Hazardous Substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and the regulations promulgated thereunder; (c) any oil, petroleum products or by-products; (d) asbestos or asbestos-containing substances; and (e) any Hazardous Substance, toxic substance, toxic pollutant, or any substance whose release, disposal, generation, storage or emission is regulated by federal, state or local law.

#### **ARTICLE VIII. DISCLAIMER OF LIABILITY**

THE COUNTY HEREBY DISCLAIMS, AND THE TENANT HEREBY RELEASES THE COUNTY AND ITS EMPLOYEES, AGENTS OR REPRESENTATIVES, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY THE TENANT, ITS EMPLOYEES, AGENTS, OR INVITEES DURING THE TERM OF THIS LEASE OR ANY EXTENSION THEREOF INCLUDING, WITHOUT LIMITATION, LOSS, DAMAGE OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF TENANT OR TENANT'S BUSINESS INVITEES THAT MIGHT BE LOCATED OR STORED ON THE LEASED PREMISES OR BUILDING, UNLESS SUCH LOSS, DAMAGE OR INJURY IS CAUSED BY THE COUNTY'S NEGLIGENCE OR WILLFUL MISCONDUCT, OR IS CAUSED BY THE COUNTY'S BREACH OF ITS OBLIGATIONS UNDER THIS LEASE. THE PARTIES HERETO EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL THE COUNTY BE LIABLE FOR SPECIAL OR EXEMPLARY DAMAGES, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, WITHOUT LIMITATION, PUNITIVE DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT BE CONSTRUED TO CONSTITUTE AN AGREEMENT BY THE TENANT TO INDEMNIFY THE COUNTY FOR THE COUNTY'S NEGLIGENT, WILLFUL OR INTENTIONAL ACTS.

#### **ARTICLE IX. LIENS AND BANKRUPTCY**

**Section 9.01** Liens Prohibited. The Tenant shall not permit any lien or encumbrance to be placed upon the Leased Premises. If a lien or encumbrance is placed upon the Leased Premises, the County may satisfy such lien or encumbrance, and the Tenant shall reimburse the County

in full at the next rent payment date. If the Tenant fails to reimburse the County by the next rent due date, amounts remaining past due shall bear interest at the lesser of: (1) the maximum rate permitted by law or (2) 18% per annum until paid and the County may pursue any other remedy available to it.

**Section 9.02** Bankruptcy. If Tenant is unable to pay its debts when due, files for bankruptcy, seeks relief from creditors or has a receiver appointed on its behalf, the County may terminate this Lease, except to the extent such termination may be avoided by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect regarding creditors' rights generally or principles governing the availability of equitable remedies. Nevertheless, the County shall have a claim in such bankruptcy or receivership proceeding in an amount equal to the aggregate amount of Rent due and payable from the date such proceeding commenced through the remainder of the Term (and any renewal or extension thereof). The amount of such damages may be satisfied by the County out of monies or assets deposited by the Tenant under this Lease as security for payment of its obligations.

## **ARTICLE X. REPRESENTATIONS & WARRANTIES**

**Section 10.01** Representations & Warranties. The Tenant represents and warrants to the County as follows:

- (a) The Tenant is lawfully existing entity or individual that is qualified to conduct business in Colorado.
- (b) The Tenant has all requisite power and authority to enter into, and perform its obligations under, this Lease.
- (c) All requisite entity action authorizing the Tenant to enter into, and perform its obligations under this Lease have been duly taken and approved.
- (d) The execution, delivery and performance of this Lease by the Tenant does not and will not: (1) require the consent of any person or entity, (2) violate any legal requirement, (3) conflict with or constitute a breach or violation of (a) the Tenant's articles of organization, or (b) the terms or provisions of any other agreement, instrument or understanding by which the Tenant is bound or affected.
- (e) The Tenant understands and shall comply with Colorado Revised Statutes §18-8-301, et seq. (Bribery and Corrupt Influences) and Colorado Revised Statutes §18-8-401, et seq. (Abuse of Public Office) and that no violation of such statutes has occurred or is occurring.
- (f) No officer or employee of the County has any personal, financial or beneficial interest whatsoever in this Lease or in any operations to be conducted by the Tenant upon the Leased Premises.

## **ARTICLE XI. DEFAULT AND REMEDIES.**

**Section 11.01** Events of Default. Any one or more of the following events shall be an “Event of Default”:

- (a) The failure of the Tenant to make any payment of Rent or any other payment required to be paid by the Tenant under this Lease when and as the same shall become due and payable, if such failure continues for a period of ten (10) days after written notice thereof from the County to the Tenant;
- (b) The Tenant shall vacate or abandon the Leased Premises; however, as long as no monetary default exists, Rent is being paid and the Tenant is maintaining the insurance described in Article VII above, vacation or abandonment of the Leased Premises shall not constitute a default;
- (c) The Tenant shall fail to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease other than those referred to in the foregoing Sections 11.01(a) and (b), and the Tenant fails to remedy the same within thirty (30) days after the County has given the Tenant written notice specifying such default or such additional period, if any, as may be reasonably required to cure the failure if the failure reasonably cannot be cured within a thirty (30) day period, provided the Tenant commences to cure such default within thirty (30) days after receipt of notice and thereafter diligently pursues such cure to completion;
- (d) The Tenant fails to vacate the Leased Premises upon the termination of a hold-over term in accordance with Section 11.03 of this Lease; or
- (e) The making by the Tenant of any general arrangement or assignment for the benefit of creditors; (ii) the filing by the Tenant of a voluntary petition in bankruptcy under Title 11 U.S.C. or the filing of an involuntary petition against the Tenant which remains uncontested for a period of sixty (60) days; (iii) the appointment of a trustee or receiver to take possession of substantially all of the Tenant’s assets located at the Leased Premises or of the Tenant’s interest in this Lease; or (iv) the attachment, execution or other judicial seizure of substantially all of the Tenant’s assets located at the Leased Premises or of the Tenant’s interest in this Lease, provided, however, in the event that any provisions of this Section 11.01(e) is contrary to any applicable law, such provision shall be of no force or effect.

**Section 11.02** Remedies. Upon the occurrence of an Event of Default, the County shall have the option to (i) institute suit against the Tenant to collect Rent or other sum as it becomes due or to enforce any obligation under this Lease, (ii) terminate this Lease, (iii) terminate the Tenant’s right to possession without terminating this Lease, or (iv) cure the Event of Default on behalf of the Tenant. If County cures an Event of Default on behalf of the Tenant, the Tenant shall, on demand and as Additional Rent, reimburse the County for the County’s expenses incurred thereby including the costs of removing and storing the Tenant’s or any other occupant’s property. All past due payments required of the Tenant hereunder shall bear interest from the date due until paid at the lesser of ten percent (10%) per annum or the maximum lawful rate of interest. If the County terminates either this Lease or the Tenant’s right to possession of the Leased Premises, the Tenant will immediately surrender the Leased

Premises to the County. If the Tenant fails to surrender the Leased Premises, the County may enter upon and take possession of the Leased Premises and expel or remove the Tenant and any other person who may be occupying the Leased Premises or any part thereof. Any termination only of the Tenant's right to possession of the Leased Premises will not relieve the Tenant of the Tenant's obligation to pay the Rent under this Lease. The County shall use reasonable efforts to mitigate any damages incurred by the County and to re-let the Leased Premises. In determining the amount of loss which the County suffers by reason of termination of this Lease, allowance shall be made for the expense of repossession and any necessary repairs, but not for any remodeling undertaken by the County following repossession. Except as provided otherwise in this Lease, the County shall have the option to terminate all or a portion of this Lease upon default by the Tenant, and in addition to, or in lieu thereof, the County may seek any relief available to it at law or in equity. Nothing in this Lease shall be deemed a restriction or waiver of any right or remedy that either party may have at law or equity for any breach or default by either party.

**Section 11.03 Surrender and Holding Over.** Upon the expiration or earlier termination of this Lease, the Tenant shall quit and surrender the Leased Premises in generally good and serviceable condition, reasonable wear and tear excepted. Thereafter, the County shall have the right to enter and take possession of the Leased Premises, with or without process of law and without liability for trespass. Holding over or failure to vacate the Leased Premises at the end of the initial Term or any Extended Term shall not be construed to be the granting or exercise of any additional term. Any holding over after the expiration of the initial Term or any Extended Term without the written consent of the County shall be construed to be a month-to-month tenancy at sufferance, at 150% of the Annual Rent payable during the last month of the Term or the Extended Term thereof, whichever is applicable (prorated on a monthly basis, the "Holdover Rent"), but shall otherwise be subject to all of the terms and conditions of this Lease. Notwithstanding anything to the contrary contained in this Section, the Tenant shall not be deemed to be holding over the Premises in the event that both parties are engaged in good faith negotiations to extend the term of the Lease. The County and the Tenant each agree to give the other party written notice at least thirty (30) days prior to the last day of a monthly term to terminate this holdover tenancy. In the event the Tenant does not vacate the Premises thirty (30) days after County's notice terminating the holdover tenancy and the County re-lets the Leased Premises to a new tenant with a lease term commencing after the date the Tenant is required to vacate the Leased Premises, such failure shall be an Event of Default under Section 11.01 of this Lease.

**Section 11.04 Performance of Covenants.** If the Tenant is in default in the performance of any covenant or condition required to be performed by it, the County may, without notice, perform such covenant or condition for the account and at the expense of the Tenant. Such expense may include reasonable attorney's fees in prosecuting or defending any action or proceeding instituted by reason of default of the Tenant, and the Tenant shall promptly reimburse the County for the amount of such expense.

**Section 11.05 Title to Leased Premises & Improvements.** Any fixtures or improvements erected or constructed on the Leased Premises shall be permanently and inseparably attached to the Premises and shall not be removed without prior written consent of the County. Title to the Leased Premises and improvements is and shall remain vested in the County. All of the

Tenant's moveable personal property located in or on the Leased Premises shall remain the property of the Tenant. The Tenant shall have the right at any time during the term of this Lease and upon expiration or termination, to remove all such equipment and property; provided that the Tenant is not in default of its obligations under the Lease. If the Tenant has been provided with notice of default or breach under this Section 11, the Tenant shall not be entitled to remove any of the Tenant's personal property from the Leased Premises until such default has been cured. Any property affixed to the Leased Premises so that the same may not be removed without material damage to the Leased Premises shall not be removed by the Tenant at any time, but shall become the property of the County upon expiration or earlier termination of this Lease.

**Section 11.06** Payments Received After Termination. No payment received by the County from the Tenant after the termination of this Lease or after the giving of a notice of termination, shall reinstate, continue or extend the Term or any Renewal Term or affect any prior termination notice delivered to the Tenant. The parties agree that after (1) delivery of a notice of termination, (2) commencement of an action for repossession or (3) final judgment that grants the County possession of the Leased Premises, the County may receive and collect any amounts past due and owing under the terms of this Lease, and the collection of such amounts shall not waive any notice previously given or waive such action or judgment.

## **ARTICLE XII. ASSIGNMENT AND SUBLETTING**

**Section 12.01** Transfers and Assignments by the Tenant. Except as provided below, the Tenant shall not, without the prior written consent of the County: (a) assign, transfer, or encumber this Lease or any estate or interest herein, whether directly or by operation of law; (b) permit any other person or entity to become the Tenant hereunder by merger, consolidation or other reorganization; (c) if the Tenant is an entity other than a corporation whose stock is public traded, permit the transfer of an ownership interest in the Tenant that results in a change in current control of the Tenant; (d) grant any license, concession, or other right of occupancy of any portion of the Leased Premises; or (e) use or permit the use of the Leased Premises by any parties other than the Tenant (any of the prior described events in Section 12.01 (a) to e) being a "Transfer"). Any Transfer of this Lease shall require that the Transfer is to (i) a transferee who is commercially reasonable and acceptable to the County; and (ii) the use and occupancy of the Leased Premises and any improvement following the Transfer remains substantially the same as contemplated by this Lease. The Tenant shall provide copies to the County of any and all documents or instruments that effect a Transfer of the Premises. No Transfer shall release the Tenant from its obligations under this Lease, but rather the Tenant and the transferee shall be jointly and severally liable.

**Section 12.02** Subleasing. The Tenant shall not have the right to sublease property within the Leased Premises without the written consent of the County.

**Section 12.03** Successors to County. The rights and obligations of the County under this Lease may be assigned by the County at its option and without the consent of the Tenant.

### **ARTICLE XIII. ABANDONMENT**

**Section 13.01** Abandonment/Vacation of the Premises. If Tenant abandons or vacates the Leased Premises before the end of the Term (or any renewal or extension thereof), the County may enter the Leased Premises, remove fixtures and personal property of the Tenant and re-let the Leased Premises as it sees fit without terminating this Lease. In addition, the County may make any repairs, changes, alterations or additions to the Leased Premises as may be necessary or desirable for the purpose of re-letting. If the County cannot obtain rent from such re-letting (after payment of all costs and expenses, including payment of Rent accruing from the date of abandonment) in an amount equivalent to the Rent, then Tenant shall be liable for any such deficiency. If the Tenant neglects to retrieve its personal property from Leased Premises upon abandonment or upon termination or expiration of the Lease, the County may remove and store such personal property (without liability to the Tenant for risk of loss), and the Tenant agrees to reimburse the County on demand, for any and all expenses incurred in such removal and storage, including court costs, attorney's fees and storage charges for the period of time such property remains in storage. The County may, after 30 days' notice to the Tenant, sell such property, in whole or in part, at private sale and without legal process, and apply the proceeds of such sale towards any amounts due from the Tenant to the County and render the surplus, if any, to the Tenant.

### **ARTICLE XIV. OBLIGATIONS OF THE COUNTY**

**Section 14.01** Quiet Enjoyment. The Tenant shall be entitled to quiet enjoyment of the Leased Premises and County will not interfere with that right, as long as the Tenant pays Rent in a timely manner and performs all other obligations under this Lease. The Tenant acknowledges that its right to enjoy the Leased Premises is subject to the use of the surrounding property for industrial, commercial and airport purposes with the accompanying industrial, commercial and airport noises, odors, smoke, sonic booms and low-flying aircraft and the danger and nuisance thereof.

### **ARTICLE XV. EMINENT DOMAIN; CONDEMNATION**

**Section 15.01** General. If the Leased Premises (or a substantial part thereof) are taken in eminent domain, or are conveyed under threat of condemnation proceedings ("a Taking"), then this Lease shall forthwith terminate upon such taking as if the Term expired at the time of such Taking; provided that Rent and any other amounts due under this Lease shall be paid to the County by the Tenant as of the date of such taking.

**Section 15.02** Partial Taking – Tenant's Rights. If any part of the Leased Premises becomes subject to a Taking and such Taking will prevent the Tenant from conducting its business in the Leased Premises in a manner reasonably comparable to that conducted immediately before such Taking for a period of more than 180 days, then the Tenant may terminate this Lease as of the date of such Taking by giving written notice to the County within 30 days after the Taking, and Rent shall be apportioned as of the date of such Taking. If the Tenant does not

terminate this Lease, then Rent shall be abated on a reasonable basis as to that portion of the Leased Premises rendered untenable by the Taking.

**Section 15.03** Partial Taking – County’s Rights. If any material portion, but less than all, of the Building becomes subject to a Taking, then the County may terminate this Lease by delivering written notice thereof to the Tenant within 30 days after such Taking, and Rent shall be apportioned as of the date of such Taking. If the County does not terminate this Lease, then Rent shall be abated on a reasonable basis as to that portion of the Leased Premises rendered untenable by the Taking.

**Section 15.04** Award. If an award is made for a taking of the Leased Premises in condemnation proceedings, the County is entitled to all amounts awarded or paid for such Taking; provided, however, the Tenant may separately pursue a claim (to the extent it will not reduce the County’s award) against the condemner for the value of the Tenant’s personal property which the Tenant is entitled to remove under this Lease, moving costs, loss of business and other claims it may have.

#### **ARTICLE XVI. COMPLIANCE WITH LAWS; ADDITIONAL RULES**

**Section 16.01** Compliance with Laws. Both parties hereto shall observe and comply with all applicable laws, including but not limited to federal, state and local laws, regulations, rules, ordinances, policies, and standards, including but not limited to, any County land development regulations, zoning regulations and Airport requirements, all as may be amended from time to time.

**Section 16.02** Additional Rules. The Tenant, its officers, employees, agents and invitees shall comply with the following:

- (a) Sidewalks, entries, passages and stairways shall not be obstructed in any manner, this shall include prompt removal of all snow from any walkways, drives, porches, sidewalks and parking areas that serve the Leased Premises.
- (b) The Leased Premises shall be maintained at all times in a clean, sanitary and attractive condition with all rubbish, garbage and other waste properly contained and disposed of to appropriate refuse facilities.
- (c) Items, which may constitute a hazard or danger to the any person or property, shall not be moved into the Leased Premises.
- (d) Antennas, satellite dishes and other equipment may not be erected or installed on the Leased Premises without the prior written consent of the County.
- (e) All appliances, utilities and fixtures shall be properly operated and used, restrooms are not to be used for any purpose other than that for which they are intended, and any damage resulting to any appliance, utility or fixture from the Tenant’s misuse shall be paid by the Tenant.
- (f) Animals, except qualified services animals, are prohibited in the Leased Premises and in

the Building.

- (g) The Tenant shall not play loud music or cause other nuisances that disturb the occupants or adjoining tenants or other parties in the Building.
- (h) The Tenant shall obtain the written consent of the County prior to installing or changing locks on doors of the Leased Premises. If locks are changed or installed, it shall be accomplished at the Tenant's sole expense, the Tenant shall provide copies of new keys to the County.
- (i) The Tenant must obtain the prior written consent of the County for installation of, change to or temporary installation of any objects along the exterior of the Leased Premises or Building, all such exterior changes are subject to any applicable pre-notice or approval regulations given the designation as a land-side property, including but not limited to the Federal Aviation Regulations Part 77.
- (j) Tenant shall not deface the walls, ceilings, partitions or floors of the Leased Premises or of the Building. The Tenant shall pay for any defacement, damage or injury caused by the Tenant, its agents, employees or invitees.
- (k) The County may institute such other rules and regulations as in its reasonable judgment may be necessary or desirable for the safety, care and preservation of the Leased Premises and the Building.

#### **ARTICLE XVII. COMPLIANCE WITH LAWS; AIRPORT CONSTRUCTION**

**Section 17.01** Taxes. The Tenant is responsible for all taxes assessed against the Tenant's personal property located upon the Leased Premises during the term of this Lease and any sales or other taxes that may be assessed in connection with Tenant's use of the Leased Premises.

**Section 17.02** Non-Discrimination. The Tenant and its successor and assigns shall comply with pertinent statutes, executive orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, religion, sexual orientation, political affiliation or disability be excluded from participating in any activity conducted that is directly or indirectly related to this Lease. The Tenant shall use the Leased Premises in compliance with all requirements imposed by or pursuant to Title 49, Part 21 of the Regulations of the Office of the Secretary of Transportation, the Colorado Anti-Discrimination Act of 1957 and any other laws and regulations respecting discrimination, all as may be amended from time to time. The Tenant and County shall comply with any enforcement procedures as may be demanded by any authority for the purposes of complying with such laws and regulations.

**Section 17.03** Agreements with Other Governmental Authorities. This Lease shall be subject to the provisions and requirements of any existing or future agreement between the County and the United States, the Federal Aviation Administration or the State of Colorado.

**Section 17.04** Energy Conservation Requirements. The Tenant agrees to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy

conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 et seq).

**Section 17.05** Fair Labor Standards Act Requirements. The Tenant shall comply with the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (“FLSA”), with the same force and effect as if given in full text herein. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The Tenant has full responsibility to monitor compliance to the referenced statute or regulation. The Tenant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

**Section 17.06** Occupational Safety and Health Act of 1970 Requirements. The Tenant shall comply with the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The Tenant must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Tenant retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The Tenant must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

**Section 17.07** Clean Air and Water Pollution Control Requirements. The Tenant agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Tenant agrees to report any violation to the County immediately upon discovery. The County assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration. The Tenant must include this requirement in all contracts and subcontracts relating to the Leased Premises that exceeds \$150,000.

**Section 17.08** Airspace Above Premises. The County reserves for itself and for the use and benefit of the public, and the Tenant acknowledges and accepts the Leased Premises subject to, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises, together with the right to cause in said airspace such noise, vibration, exhaust and fumes as may be inherent in the operation of aircraft now known or hereafter used for landing upon, taking off from, or operating on, the Airport.

**Section 17.09** Interference with Aircraft. The Tenant shall not erect or permit the erection of any structure or object on the Leased Premises above the elevations established by the Airport. The Tenant shall not make use of the Leased Premises in any manner that might interfere with the landing, taking off, or operation of aircraft upon the Airport nor create any hazard at the Airport. If the Tenant fails to comply with this Section, the County reserves the right to enter upon the Leased Premises and remove any offending structure or object, or cause the abatement of any interference or hazard, at the sole cost and expense of the Tenant.

**Section 17.10** Construction by the County. From time to time, it may be necessary for the County to carry out extensive programs of construction, reconstruction, expansion, relocation, maintenance and repair to the Building and adjacent County Buildings, including but not

limited to the Airport, which programs may inconvenience or temporarily interrupt the Tenant's operations. The County shall give the Tenant at least seven (7) days' notice prior to commencement of such construction only in the event that such construction must necessarily commence in seven (7) days due to the emergency nature of the situation; in all other cases, the County must give the Tenant not less than thirty (30) days prior notice. The County shall use commercially reasonable efforts to minimize any interruption of the Tenant's use of the Leased Premises as permitted under this Lease. The Tenant acknowledges and agrees that such construction may require the Tenant to take a longer route to its Leased Premises during construction.

## ARTICLE XVIII. MISCELLANEOUS

**Section 18.01** County Representative. The Airport Manager and the County Manager, as appointed by the Gunnison Board of County Commissioners, each acting independent of the other, shall be a County Representative for purposes of this Lease.

**Section 18.02** Force Majeure. A party shall not be deemed in violation of this Lease (excluding payment obligations) if such party is prevented from performing any of its obligations by reason of, boycott, embargo, act of nature, act of God, pending litigation or legal proceedings or any other circumstance which is beyond its reasonable control and conditioned on the other party providing reasonable written notice to the other of the circumstance and taking commercially reasonable actions to mitigate any such impact.

**Section 18.03** Brokerage. Neither the County nor the Tenant has dealt with any broker or agent in connection with the negotiation or execution of this Lease. The Tenant shall indemnify, defend and hold the County harmless from and against all costs, expenses, attorneys' fees, liens and other liability for commissions or compensation claimed by any broker or agent claiming the same, by, through or under the Tenant. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

**Section 18.04** Headings. The Section headings contained in this Lease are for convenience in reference and are not intended to define or limit the scope of any provision.

**Section 18.05** Time of Essence. Time is of the essence in this Lease.

**Section 18.06** Attorneys' Fees. In the event any action or proceeding is brought to take possession of the Leased Premises, breach of any provision of this Lease or to enforce compliance with this Lease for failure to observe any of a party's covenants, the prevailing party shall be awarded reasonable attorneys' fees, expenses and costs.

**Section 18.07** Waiver. Waiver by a party of, or the failure of a party to insist upon, the strict performance of any provision of this Lease shall not constitute a waiver of such party's right or prevent such party from requiring the strict performance of any such provision in the future. Any waiver of an obligation, right, term or provision contained in this Lease must be in writing and signed by the party against whom enforcement is sought.

**Section 18.08** Limitation of Benefit. There are no third-party beneficiaries of this Lease. Without limiting the generality of the preceding sentence, this Lease does not create in or

bestow upon any other person or entity not an express party to this Lease any right, privilege or benefit unless expressly provided in this Lease. This Lease does not in any way represent, nor should it be deemed to imply, any standard of conduct to which the parties expect to conform their operations in relation to any person or entity not an express party to this Lease.

**Section 18.09** Severability. If any provision of this Lease is held invalid, illegal or unenforceable by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, and this Lease shall be construed as if such invalid, illegal or unenforceable provision had not been contained in this Lease.

**Section 18.10** Successors. The terms and provisions in this Lease shall extend to and bind the permitted successors and assigns of each party.

**Section 18.11** Non-Exclusive Right. Nothing contained in this Lease shall be construed to grant or authorize the granting of an exclusive right. The County reserves the right to grant to others the privilege and right of conducting activities at the Building. The County reserves the right, during the term hereof, to reduce and reallocate space leased for the exclusive use of the Tenant in any case where the failure to do so might reasonably constitute the granting by the County to the Tenant of an exclusive right. Notwithstanding anything contained herein, this Section shall not be construed to permit the interference with the Tenant's right to the undisturbed, peaceful and quiet enjoyment of the Leased Premises throughout the Term of this Lease.

**Section 18.12** Notices. All notices required under this Lease shall be in writing and delivered personally, by email or by first class certified mail, return receipt. If delivered personally, notice shall be deemed given when actually received. If delivered email, notice shall be deemed given upon full transmission of such notice and confirmation of receipt during regular business hours. If delivered by mail, notice shall be deemed given at the date and time indicated on the return receipt. Notice shall be delivered to:

If to Tenant:

Keating Wood Floors, Inc.  
Attn: Tom Keating  
725 S. 10<sup>th</sup> Street, Unit A  
Gunnison, CO 81230  
Email: \_\_\_\_\_

If to the County:

Gunnison-Crested Butte Regional Airport  
Attn: Rick Lamport, Airport Manager  
519 W. Rio Grande  
Gunnison, CO 81230  
Email: [rlamport@gunnisoncounty.org](mailto:rlamport@gunnisoncounty.org)

County Manager's Office  
Attn: Matthew Birnie, County Manager  
200 E. Virginia Ave.  
Gunnison, CO 81230

with a copy to:

Gunnison County Attorney's Office  
200 E. Virginia Ave.  
Gunnison, CO 81230  
Email: mhoyt@gunnisoncounty.org

or to such other address or addresses as the parties may designate in writing.

**Section 18.13 Governing Law; Jurisdiction.** This Lease shall be governed by, and construed in accordance with, the laws of the State of Colorado without regard to its conflicts of law provisions. The parties submit this Lease and any dispute arising under this lease to the sole and exclusive jurisdiction of the courts in and for Gunnison County, Colorado. Any action to enforce or interpret the provisions of this Lease shall be brought in a court in and for Gunnison County, Colorado.

**Section 18.14 Incorporation of Exhibits, Other Documents.** The Exhibits and any applicable Airport regulations are incorporated by reference into this Lease and made a part of this Lease. In the event of a conflict between this Lease and the applicable Airport Regulations, the Airport regulations shall control.

**Section 18.15 Entire Agreement.** This Lease embodies the entire agreement between the parties concerning the subject matter and supersedes all prior written or oral conversations, proposals, negotiations, understandings and agreements. This Lease may not be altered or modified in any manner whatsoever except by a writing signed by the parties.

**Section 18.16 Relationship of Parties.** Nothing contained in this Lease shall be deemed or construed by the parties as creating a relationship of principal and agent, partners, joint venturers or any other relationship. It is understood and agreed that neither the method of computation of fees, nor any other provision contained herein, nor any act of a party creates a relationship other than the relationship of County and the Tenant.

**Section 18.17 No Waiver of Immunity.** Nothing in this Lease shall be deemed a waiver of any protections available to the County under the Colorado Governmental Immunity Act, or any similar statutory provision.

**Section 18.18 Counterparts.** This Lease may be executed in counterparts, each of which will be deemed an original. Delivery of an executed signature page of this Lease by facsimile or email transmission will constitute effective and binding execution and delivery of this Lease. The County and the Tenant agree to allow the use of electronic signatures for execution of this

Lease. All documents must be properly notarized, if applicable. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24-71.3-101 to -121.

*[Signatures appear on following page.]*

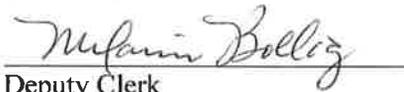
The parties have executed this Commercial Lease Agreement as of the Effective Date listed above.

**LANDLORD:**

BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF GUNNISON,

By:   
Jonathan Houck, Chairperson

ATTEST:

  
Deputy Clerk



**TENANT:**

TOM KEATING, D/B/A KEATING  
WOOD FLOORS, INC.,

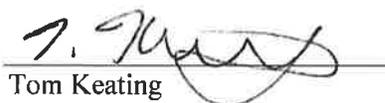
By:   
Tom Keating

EXHIBIT A

LEGAL DESCRIPTION OF BUILDING

Lots 16 through 26, Block 11, RIO GRANDE ADDITION, according to the plat recorded April 14, 1961 as Reception No. 247973, TOGETHER WITH the E 15' of the vacated north-south alley adjacent to Lots 16 through 22, said Block 11,

City of Gunnison  
County of Gunnison  
State of Colorado;

known as 725 S. 10<sup>th</sup> Street, Units A, A-1, B, C, D and 711 S. 10<sup>th</sup> Street, Gunnison, CO 81230, consisting of three buildings, together with all appurtenances.

EXHIBIT B

LEASED PREMISES DESCRIPTION

**Gunnison County  
10th Street Leases**

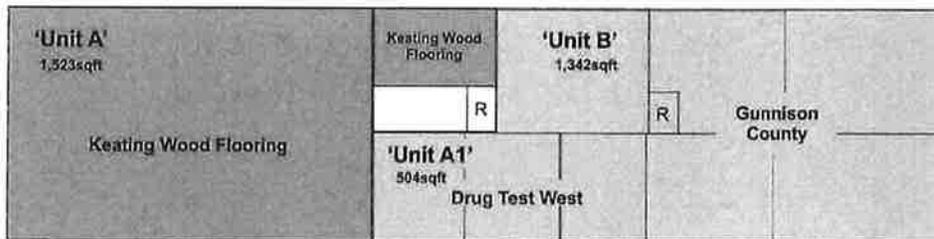
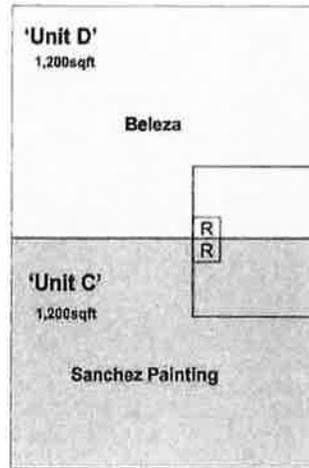


EXHIBIT C

EXISTING FIXTURES, FURNISHINGS, EQUIPMENT

- None

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

**Agenda Item:** Extension of Commercial Lease Agreement; Gunnison-

**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:** Gunnison County and Tom Anderson dba Beleza, Inc.

**Term Begins:** April 1, 2022

**Term Ends:**

**Grant Contract #:**

**Summary:**

Tenant has requested an extension for one (1) year as stated in the original commercial lease agreement signed and dated April 6, 2021

**Fiscal Impact:** \$7,200 annual rent plus CPI or 3% increase

**Submitted by:** Stephanie Petsch

**Submitter's Email Address:** spetsch@gunnisoncounty.org

**Finance Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\jguerra

Discharge Date: 4/12/2022

**County Attorney Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 4/29/2022

Certificate of Insurance Required

Yes  No

**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 4/29/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted:

Agenda Date: 5/3/2022



519 Rio Grande Avenue • Gunnison, Colorado 81230 • P 970.641.2304 • F 970.641.8559

## Lease Extension

Rick Lamport  
Airport Manager  
719 S. 10<sup>th</sup> St.  
Gunnison, CO 81230

February 1<sup>st</sup>, 2022

### Lease Extension Request

Dear Mr. Lamport,

As provided for in the existing Lease with Gunnison County that commenced April 1st 2021, Beleza, Inc doing business at 725 S. 10<sup>th</sup> Street, Unit D, Gunnison, CO 81230 would like to extend the current lease for a one year term as per the conditions stated in said lease.

Regards

A handwritten signature in black ink, appearing to read "Tom Anderson". The signature is fluid and cursive, with a large initial "T" and "A".

Tom Anderson

## COMMERCIAL LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is dated as of this 6<sup>th</sup> day of April, 2021 (the "Effective Date") by and between the **BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, COLORADO**, a body corporate and politic, on behalf of the **GUNNISON-CRESTED BUTTE REGIONAL AIRPORT** (the "County") and **TOM ANDERSON, D/B/A BELEZA, INC.**, (the "Tenant").

### RECITALS

- A. The County is the owner and operator of the Gunnison-Crested Butte Regional Airport (the "Airport") and the County owns the real property located in the City of Gunnison, Gunnison County, Colorado as more particularly described in Exhibit A, commonly known as 711 S. 10<sup>th</sup> Street and 725 S. 10<sup>th</sup> Street, Units A, A-1, B, C and D, Gunnison, CO 81230 (the "Building").
- B. The Building is located within an area directly adjacent to the Airport, sometimes referred to as a land-side property, and the County desires to lease a portion of the Building as more particularly described in Exhibit B, also known as 725 S. 10<sup>th</sup> Street, Unit D, Gunnison, CO 81230 (the "Leased Premises") to the Tenant.
- C. The Tenant desires to lease the Leased Premises from the County for the purpose of custom stone and other material countertops and related retail, design, fabrication, installation and material storage services and in accordance with the terms and provisions of the Lease and any applicable Airport regulations and the County desires to lease the Leased Premises to the Tenant.

### AGREEMENT

For and in consideration of the covenants and conditions set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the County and the Tenant agree as follows:

#### ARTICLE I. THE LEASED PREMISES

**Section 1.01** The Leased Premises. The County leases to the Tenant and the Tenant leases from County, upon the terms and provisions of this Lease and subject to the provisions of the applicable Airport regulations, including but not limited to Federal Aviation Regulations Part 77, exclusive use of the Leased Premises as shown on Exhibit B. The Tenant shall have non-exclusive access to shared parking directly in front of the Building fronting Railroad Ave. and behind the Building, off the alley between S. 9<sup>th</sup> St. and S. 10<sup>th</sup> St., all designated as common space equally shared by all tenants of the Building as shown on Exhibit B. **In no event shall any parking be permitted along either side of S. 10<sup>th</sup> Street along the side of the Building or against any of the Airport's runway fencing.** For purposes of clarity, this Lease does not permit the Tenant to use any portion of the Airport facility or property. Tenant, any of its employees, agents, guests, licensees or invitees must abide by all posted Airport signage and regulations.

**Section 1.02** Fixtures, Furniture and Equipment. As part of the Leased Premises, County includes fixtures, furniture and equipment as described in Exhibit C. Subject to prior written approval by the County, Tenant may purchase and install additional fixtures, furniture and equipment within the Leased Premises that it has exclusive use of. Any such purchase and installation shall be at the Tenant's own expense. The County and Tenant shall jointly verify the existing fixtures, furniture and equipment in Exhibit C as well as catalog any Tenant-provided fixtures, furniture and equipment.

**Section 1.03** Condition of Leased Premises. The Tenant has had an opportunity to inspect the Leased Premises and acknowledges that it is fit for Tenant's use and enjoyment. The taking of possession of the Leased Premises shall be deemed an acceptance of the same by the Tenant in its "AS IS" condition without any obligation whatsoever on the part of the County to repair, remodel, reconstruct or modify the Leased Premises for the Tenant. The Tenant has had an opportunity to inspect and measure the Leased Premises and acknowledges that the approximate square footage of the Leased Premises is **one thousand and two hundred (1,200)** square feet.

**Section 1.04** Permitted Use. The Tenant shall use the Leased Premises solely for the purpose(s) described above at D of the Recitals, as approved by the County and other related business purposes. No other use shall be permitted without the County's prior written consent.

**Section 1.05** No Hazardous Use, Nuisance or Waste Permitted on Leased Premises. The Tenant shall not use or permit the Leased Premises to be used for any business or purpose deemed by the County to be hazardous, or in any manner as to constitute a violation of any federal, state, county, and local laws, rules, regulations, requirements or orders of any lawful governmental or public authority relating to the Leased Premises. Tenant covenants and agrees at its sole cost and expense to fully and promptly comply with all such laws, regulations, ordinances and every order or regulation enacted by such authorities, including but not limited to, the United States, the County of Gunnison, the State of Colorado and the Federal Aviation Administration. The Tenant agrees that it shall not permit any noxious or offensive activity on the Leased Premises or allow any nuisance to exist on the Leased Premises which may cause disturbance to other tenants of the Building or to others on adjacent or nearby property. Further, the Tenant agrees that nothing shall be done or kept on the Leased Premises which might impair the value of the Leased Premises or which would constitute waste.

**Section 1.06** No Smoking, Vaping and E-Cigarettes. Smoking, vaping and the use of e-cigarettes is not permitted on the Leased Premises, in the Building or in any County building. The Tenant may, at the Tenant's discretion, permit its employees and invitees to smoke, vape or use e-cigarettes outside of the Leased Premises and Building; provided, however, that such activities must occur at a distance of at least twenty-five (25) feet from any entrance. Smoking, vaping and e-cigarette use is not permitted in any location where prohibited by law or regulations governing the Airport. The Tenant shall remove all smoking, vaping and e-cigarette debris (including wrappers, butts and matches) from the Leased Premises and Building at least twice per week. If this task is not performed to the satisfaction of the County, the County may

remove such debris and charge the cost of removal, plus an administrative fee of 50% of such cost, to the Tenant.

## ARTICLE II. TERM

**Section 2.01** Term. The term of this Lease shall be a period of one (1) year (the “Term”), commencing on **April 1, 2021** (the “Commencement Date”) and ending on **March 31, 2022** unless terminated earlier in accordance with the terms of this Lease.

**Section 2.02** Option to Extend. Upon expiration of the Term and provided that the Tenant is not in default of its obligations under this Lease, the Tenant may request an extension of this Lease for additional one (1) year periods (each an “Extended Term”), upon the same terms and conditions, but any such grant of an Extended Term shall solely be at the County’s discretion. The Tenant shall make any such request for an Extended Term by providing written notice to the County no later than sixty (60) days prior to the expiration of the Term or Extended Term and no earlier than six (6) months prior to the expiration of the Term or Extended Term. Rent, for each Extended Term, if granted, shall be adjusted as set forth in this Lease.

## ARTICLE III. RENT

**Section 3.01** Rent. The Tenant shall make annual rental payments (the “Annual Rent”) for the Premises of **seven thousand and two hundred and 00/100 U.S. Dollars (\$7,200.00)** payable in monthly installments in advance on the first day of each month of **six hundred and 00/100 U.S. Dollars (\$600.00)**. The Tenant shall pay as “Additional Rent” all other payments of whatever nature that Tenant has agreed to pay or assume under this Lease, Annual Rent and Additional Rent may be referred to collectively as “Rent.” The payment of Rent shall begin on the Commencement Date. without demand in accordance to the amounts set forth in the table below.

**Section 3.02** Extended Term Increased Annual Rent. Effective for any Extended Term, the Annual Rent shall be adjusted by the greater of either (1) the CPI Adjustment as described below, or (2) a flat three percent (3%) increase in the Annual Rent. The “CPI Adjustment” shall be calculated using the Bureau of Labor Statistics (BLS) CPI inflation calculator using the monthly installment of Annual Rent for the January of the expiring Term or Extended Term compared to the January of the year in which the Extended Term shall begin.

**Section 3.03** Security Deposit. The Tenant has previously paid, and the County continues to hold a security deposit in the amount of **one thousand and twenty-five and 00/100 U.S. Dollars (\$1,025.00)**. This security deposit will be held by the County to ensure the Tenant’s faithful performance of all of the terms, conditions and covenants of this Lease. The County may apply the security deposit to cure any default. The Tenant may not apply the security deposit to the payment of Annual Rent or for the performance of other obligations. The County will refund the security deposit within 30 days after termination of the Lease, less any deductions for past due amounts or damage to the Leased Premises.

**Section 3.04** Manner of Payment. All amounts due under this Lease shall be paid on the first of each month during the Term or any Extended Term and paid to the County at

Gunnison County Finance  
200 E. Virginia Ave.  
Gunnison, CO 81230  
Attn: Juan Guerra, Interim Finance Director

or at such place as County designates by proper notice as provided in Section 18.12. All checks shall be subject to collection and the Tenant shall pay all bank charges incurred by the County as a result of dishonor. Any Rent or fees not received by the County within five (5) days of the applicable date due shall incur a late fee of ten and 00/100 U.S. Dollars (\$10.00) per day until paid. The County shall apply all payments received first to past due amounts and second to current Rent and fees.

**Section 3.05** Proration. If the Term or Extended Term commences on a day other than the first calendar day of a month, then Tenant shall pay to County a prorated monthly installment of Annual Rent, calculated using the number of days that exist prior to the first day of the succeeding month, with a similar adjustment being made at the termination of the Lease.

#### **ARTICLE IV. MAINTENANCE; UTILITIES; INSEPCIONS**

**Section 4.01** Tenant Maintenance Obligations. Throughout the duration of the Lease, all repairs or maintenance to the Leased Premises shall be the obligation of the Tenant. The Tenant agrees to: (1) maintain the Leased Premises and all improvements, fixtures, furnishings and equipment in good working order and repair; (2) keep the interior of the Leased Premises painted, clean and sanitary, (3) keep shared parking areas, paved walkways leading to the Leased Premises clear of ice, snow, litter and debris, (4) perform routine maintenance of the Leased Premises, including, but not limited to, maintaining any landscaping adjacent to the Leased Premises, restroom plumbing, lighting, ballasts, doors and locks. The Tenant shall not overload the floors or walls of the Leased Premises. The Tenant shall be responsible for janitorial services for the Leased Premises. For purposes of this Section 4.01, "routine maintenance" shall mean any repair or maintenance done in the ordinary course for the purpose of preserving machinery, equipment and improvements in good working order and condition and shall not include any extraordinary maintenance or repair.

**Section 4.02** Failure to Maintain. Should the Tenant fail to maintain the Leased Premises in a satisfactory manner according to the terms of this Lease, the County may conduct such maintenance on behalf of the Tenant, and the Tenant shall reimburse the County for all costs and expenses plus an administrative charge of 50% of such costs incurred in connection with such maintenance.

**Section 4.03** Service and Maintenance by Professionals. All Tenant maintenance obligations at the Leased Premises shall only be performed by qualified or licensed service professionals. Upon request by the County, Tenant shall promptly provide a list of all service agreements, a copy of any service agreements in place as well as contact information for personnel providing such services to Leased Premises. The County shall have the right to enter the Leased Premises as more specifically set forth in Section 4.07 below, to determine compliance with this Section 4 of the Lease.

**Section 4.04** Utilities. The Tenant shall be responsible for obtaining all utilities associated with the Leased Premises, including but not limited to, electricity, heat, internet service, telecommunications services, snow removal, trash removal and any other services not provided by the County to the Leased Premises at the Tenant's sole cost and expense. To the extent the provision of additional services to the Leased Premises requires alterations of the Building, the Tenant shall comply with the terms of Article V below. The disruption, failure, lack or shortage of any service or utility due to any cause whatsoever shall not affect any obligation of the Tenant hereunder, and the Tenant shall faithfully keep and observe all the terms, conditions and covenants of this Lease and pay all Rent due hereunder, all without diminution, credit or deduction. The County shall not be liable for any failure to make any repairs or to perform any maintenance to utilities unless such failure shall persist for an unreasonable time after written notice of the need of such repairs or maintenance is given to the County by the Tenant. If any maintenance or repair is necessitated due to the acts or omissions of the Tenant, its employees, agents or invitees, the Tenant shall pay the costs of such repairs or maintenance to the County within thirty (30) days after receipt of an invoice, together with an administrative charge in the amount equal to fifteen percent (15%) of the cost of the repairs. The County shall not be liable to Tenant for any interruption of Tenant's business or inconvenience caused due to any work performed within the Leased Premises or Building. To the extent allowed by law, the Tenant waives the right to make repairs at the County's expense under any law, statute or ordinance now or hereafter in effect.

**Section 4.05** County Provided Services. Notwithstanding the above, the County shall provide to the Tenant during the Lease, as part of the rental consideration, the following services: **water and sewer**

**Section 4.06** Inspection of Leased Premises. The Tenant will permit the County, its representatives or agents to make inspection of the Leased Premises at any time to confirm compliance with the terms of this Lease. If there is a potential (based upon reasonable facts or circumstances) or an actual material breach or violation of this Lease, or if an emergency exists which necessitates the County's access to the Leased Premises in the County's sole discretion, the County shall have the right to enter upon and inspect the Leased Premises and to do any reasonable act or thing in order to enforce its rights and obligations under this Lease. In all cases except an emergency, the County shall give the Tenant twenty-four (24) hours prior written notice, which shall specify the particular purpose for entering onto the Leased Premises.

**Section 4.07** Accident Reports. In the case of an accident or emergency, Tenant agrees to cooperate with the County in the formulation of an action plan and any response to media inquiries. All accidents, significant occurrences, incidents, situations requiring official reporting or action, including law enforcement response, shall be reported to the County as soon as possible but no later than the next business day. Reports provided must include the name, address, telephone number for any injured persons and any witnesses, any statements collected, a description of the accident including when, where and how it occurred, a

description of any bodily injury or property damage and the action taken by Tenant or other persons.

## **ARTICLE V. IMPROVEMENTS; ALTERATIONS; ADDITIONS**

**Section 5.01** Requirements for Improvements; Alterations; Additions. No improvements, alterations or additions (“Alterations”) shall be made to the Leased Premises by the Tenant without prior written consent of the County, including but not limited to, Alterations of Building walls, roofs, support, finishes, any mechanical, electrical or plumbing system, carpet, paint, interior remodel of spaces and any exterior alterations. In such event, any permitted Alterations shall be performed subject to the following conditions.

- (a) Prior to the construction of any Alterations, the Tenant shall submit Detailed Plans and Specifications to the County for approval. “Detailed Plans and Specifications” means drawings, maps or plans depicting the location, character, dimension and details of the Leased Premises and all improvements the Tenants desires to make to the Leased Premises. The Detailed Plans and Specifications may include, without limitation, construction details, fire protection systems, lighting, utilities, architectural drawings, layout and colors, containment areas for construction equipment and materials, building footprint, fencing and gates and any other information which may reasonably be required by the County to assess the plans.
- (b) The Tenant shall be responsible for obtaining all applicable planning and zoning approval, building permits and other required governmental authorizations, including but not limited to, any necessary Federal Aviation Administration approvals, for the Alterations with copies of all permits and authorizations provided to County prior to commencement of any Alteration.
- (c) The Tenant shall execute a contract for construction with a provision naming the County as a third-party beneficiary, with a copy of this provided to the County.
- (d) The Tenant shall provide proof of surety bonds in a form acceptable to the County covering the Alterations.
- (e) All Alterations shall be done in a good and workmanlike manner in compliance with all applicable laws, ordinances, rules and regulations and subject to the County’s reasonable acceptance. If Alterations are not done in a good and workmanlike manner and in accordance with all applicable authorities, the County shall have the right to correct such Alterations and the Tenant shall pay the cost and expense of such correction to the County immediately upon demand by the County, plus an amount equal to the County’s cost of overhead expense attributable to the making of such repairs (to be reasonably determined by the County).
- (f) All work done in connection with Alterations shall be at the Tenant’s sole cost and expense and Tenant shall be wholly responsible to all contractors, subcontractors, laborers and materialmen.
- (g) The Tenant shall ensure that at no time shall any mechanic’s lien or lien for work connected to Alterations be asserted against the Leased Premises or any part of the Building. If such a lien or encumbrance is filed or recorded against the Leased Premises or Building, the Tenant shall promptly discharge said lien or encumbrance. If any such lien or encumbrance has not been removed within thirty (30) days from the date it is filed or recorded, the Tenant shall deposit with the County an amount in cash equal to one

hundred fifty percent (150%) of the amount of the lien filed or post a bond in form reasonably satisfactory to the County until said lien or encumbrance is discharged. If the Tenant fails, neglects or refuses to satisfy any such lien or encumbrance or refuses to secure the County as provided above, then the County shall have the option, but not the obligation, to satisfy such lien or encumbrance and any amounts paid by the County shall be promptly reimbursed by the Tenant.

- (h) The Tenant shall diligently pursue construction of any approved Alterations until completion.
- (i) Upon completion of work on any Alterations, the Tenant shall be responsible for restoring all areas disturbed by construction activities, whether or not such areas are located outside the Leased Premises, to the general condition existing prior to construction.
- (j) Approved Alterations shall not be removed, expanded or materially altered without the prior written consent of the County, which consent shall not be unreasonably withheld or delayed.
- (k) Approved Alterations constructed in accordance with this process shall be permanently attached to the Premises and at the termination of this Lease shall not be removed, altered or changed by the Tenant in any way.
- (l) In no case shall any Alterations constitute grounds for extending the term of this Lease.

#### **ARTICLE VI. SIGNAGE**

**Section 6.01** Signage. The Tenant shall not install any new sign, lettering, advertisement or posting in, upon or around the Leased Premises or Building without the prior written consent of the County. The Tenant shall pay for all costs in connection with the posting of a sign approved by the County, including, but not limited to, artwork, application, permits, installation and maintenance. The County shall have absolute discretion in approving any such sign. The Tenant shall pay for costs of removal of signs from the Leased Premises and Building upon termination of the Lease and the Tenant shall pay the costs of repair if any damage is caused by such removal.

#### **ARTICLE VII. INSURANCE; INDEMNIFICATION; DAMAGE**

**Section 7.01** Insurance. During the Term and any Extended Term of this Lease, the Tenant shall carry and maintain in full force and effect and at its sole cost and expense, the following insurance policies, which limits can be met with a combination of primary and excess/umbrella policies. Within thirty (30) days of the execution of this Lease, Tenant will provide insurance certificates to the County, listing the County as an additional insured for all liability insurances, for the coverages required herein. Any such policies shall not be materially changed or cancelled without thirty (30) days advance written notice to the County.

- (a) Comprehensive General Liability Insurance, or the equivalent, in the minimum amount of one million ninety-three thousand and no/100 U.S. Dollars (\$1,093,000.00) per occurrence or as a combined single limit each occurrence.
- (b) Fire or Extended Coverage Insurance in an amount sufficient to fully cover replacement costs for Tenant's improvements, fixtures, furnishings, equipment and any other personal property of Tenant's kept or maintained at the Leased Premises.
- (c) Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Tenant during the term of this Agreement.
- (d) Automobile Insurance on all vehicles used by Tenant in the course of business related to this Lease, including but not limited to, any storage or operation of owned or hired vehicles on the Leased Premises or Building, in the minimum amount of one million ninety-three thousand and no/100 U.S. Dollars (\$1,093,000.00) per occurrence or as a combined single limit each occurrence.

**Section 7.02** County Rights. If the Tenant fails to obtain and maintain insurance, the County may obtain insurance coverage on behalf of the Tenant, and the amount of any premium paid by the County for such insurance shall be immediately payable by the Tenant to the County. The County may also treat the failure of the Tenant to obtain insurance as a default under this Lease and may proceed with any remedy available to it.

**Section 7.03** Additional Insurance. The Tenant may insure the Premises in such additional amounts and for such other risks as the Tenant deems appropriate or as may be required by the County.

**Section 7.04** Waiver of Subrogation. The Tenant agrees to waive all rights of recovery against the County if any damage, claim, loss or liability sustained by Tenant is covered and paid for by insurance to the extent of the insurance coverage. Tenant shall give notice to its insurance carrier(s) that a waiver of subrogation is contained in this Lease and all policies required shall contain a waiver of subrogation endorsement naming the County.

**Section 7.05** Indemnification. The Tenant shall indemnify, defend and hold the County, its elected officials, officers, employees and agents harmless from and against any and all claims, losses, liabilities and expenses (including reasonable attorneys' fees) in connection with: (1) the Tenant's failure to perform its obligations under this Lease, and (2) the acts and omissions of Tenant, its officers, employees, agents and invitees that occur on or about the Airport, Building and Leased Premises during the term of this Lease. The indemnities set forth in the paragraph shall survive the termination or expiration of this Lease.

**Section 7.06** Risk of Loss. The Tenant assumes the risk of loss or damage to the contents of the Leased Premises, whether from fire, theft, accident, earthquake, snow, water damage or any other cause whatsoever. The Tenant assumes all risk of loss to personal property located on the Leased Premises, and the County shall not be liable for any damage to, or loss of, such property, or for damage or loss suffered by Tenant in connection with any act or omission of a third party. The County shall not be liable for damage or loss resulting from: (1) bursting, overflowing or leaking water, (2) sewer or steam pipes, (3) heating or plumbing fixtures, (4) electrical wiring, (5) gases or odors or (6) or any other loss or damage that would otherwise

have been avoided if Tenant had obtained appropriate insurance that insured against such loss or damage.

**Section 7.07** Casualty Damage.

- (a) In the case where the Leased Premises shall be rendered untenable by fire, explosion or other casualty, which is not the fault of the Tenant, and the Leased Premises cannot be restored within 180 days after such occurrence, the County or the Tenant may, at their option, terminate this Lease. The Tenant shall pay all amounts due and accruing through such date of termination, and the parties shall be discharged of all further obligations under this Lease.
- (b) If the Leased Premises are damaged, without fault of the Tenant, in such a way as to make the Leased Premises unfit for occupancy, the Tenant's obligation to pay Rent shall be abated until such damage is repaired and the Leased Premises are again fit for occupancy. If such damage can be repaired within a reasonable period of time by the County's estimation, then the County shall repair such damage with all reasonable speed and Rent shall be abated for the period during which the Tenant is deprived of the use and occupancy of the Leased Premises.
- (c) If the Leased Premises, without fault of the Tenant, receives only minor damage but such damage does not render the Leased Premises unfit for occupancy, the County, upon receipt of notice of the occurrence of such event, shall repair such damage with reasonable promptness; provided, however, that there shall be no abatement of Rent.
- (d) If the Leased Premises are damaged or destroyed by the Tenant, its employees, invitees or agents, the Tenant shall be liable for all costs and expenses to repair the Leased Premises and Building to substantially the same condition that existed prior to the casualty, and the Tenant shall continue to pay Rent during the pendency of any such repairs. The Tenant agrees to commence any remedial work within 15 days after written notice by the County and to complete all remedial work required in the reasonable opinion of the County to restore the Leased Premises and Building to its original condition, within the number of days specified in the written notice provided such work can be reasonably performed within such number of days. If remedial work is not undertaken and completed in the specified time frame, the County may undertake and complete the work or contract to complete the remedial work and shall be reimbursed by the Tenant for any and all reasonable costs incurred by the County in performing such repairs, including any overhead costs reasonably allocable to the performance thereof. The remedies in this section are cumulative to any other remedies provided in this Lease.

**Section 7.08** Environmental Matters. If the Tenant stores, spills or releases any hazardous or toxic substance or material (including any substance that could constitute a hazardous waste or environmental condition) on, near, in or at the Leased Premises or Building (each, an "Incident"), the Tenant shall immediately notify the County and any other governmental authority with jurisdiction (such as the Environmental Protection Agency) and shall promptly take all action necessary to remediate the Incident and restore the affected area in accordance with applicable law. The remediation and restoration of any such area shall not adversely affect

the maintenance, operations or future development of the adjacent Airport. The Tenant agrees to release, hold harmless and indemnify the County, its officials, employees, officers and agents from and against any and all fines, suits, claims, losses, demands, penalties, liabilities, costs or expenses (including reasonable attorney's fees), settlements, remedial action requirements, enforcement actions, administrative proceedings and any other action of any kind or nature, including personal injury, wrongful death or property damage arising out of, or in connection with, the discovery, remediation or disposal of any hazardous waste or environmental condition existing on, in, under or about the Leased Premises, Building or the Airport caused directly or indirectly by an act or omission of the Tenant or its officers, employees, agents, contractors, invitees, successors, predecessors, sublessees, or assigns. As used in this Lease, the terms "hazardous waste" and "environmental condition" shall mean (a) any "hazardous waste" as defined in the Solid Waste Disposal Act (as amended by the Resource Conservation and Recovery Act of 1976, as amended) and the regulations promulgated thereunder; (b) any "Hazardous Substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and the regulations promulgated thereunder; (c) any oil, petroleum products or by-products; (d) asbestos or asbestos-containing substances; and (e) any Hazardous Substance, toxic substance, toxic pollutant, or any substance whose release, disposal, generation, storage or emission is regulated by federal, state or local law.

#### **ARTICLE VIII.      DISCLAIMER OF LIABILITY**

THE COUNTY HEREBY DISCLAIMS, AND THE TENANT HEREBY RELEASES THE COUNTY AND ITS EMPLOYEES, AGENTS OR REPRESENTATIVES, FROM ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE AND NUISANCE), FOR ANY LOSS, DAMAGE, OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY THE TENANT, ITS EMPLOYEES, AGENTS, OR INVITEES DURING THE TERM OF THIS LEASE OR ANY EXTENSION THEREOF INCLUDING, WITHOUT LIMITATION, LOSS, DAMAGE OR INJURY TO THE IMPROVEMENTS OR PERSONAL PROPERTY OF TENANT OR TENANT'S BUSINESS INVITEES THAT MIGHT BE LOCATED OR STORED ON THE LEASED PREMISES OR BUILDING, UNLESS SUCH LOSS, DAMAGE OR INJURY IS CAUSED BY THE COUNTY'S NEGLIGENCE OR WILLFUL MISCONDUCT, OR IS CAUSED BY THE COUNTY'S BREACH OF ITS OBLIGATIONS UNDER THIS LEASE. THE PARTIES HERETO EXPRESSLY AGREE THAT UNDER NO CIRCUMSTANCES SHALL THE COUNTY BE LIABLE FOR SPECIAL OR EXEMPLARY DAMAGES, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE, AND NUISANCE), SUCH AS, WITHOUT LIMITATION, PUNITIVE DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT BE CONSTRUED TO CONSTITUTE AN AGREEMENT BY THE TENANT TO INDEMNIFY THE COUNTY FOR THE COUNTY'S NEGLIGENT, WILLFUL OR INTENTIONAL ACTS.

#### **ARTICLE IX.      LIENS AND BANKRUPTCY**

**Section 9.01**    Liens Prohibited. The Tenant shall not permit any lien or encumbrance to be placed upon the Leased Premises. If a lien or encumbrance is placed upon the Leased Premises, the County may satisfy such lien or encumbrance, and the Tenant shall reimburse the County

in full at the next rent payment date. If the Tenant fails to reimburse the County by the next rent due date, amounts remaining past due shall bear interest at the lesser of: (1) the maximum rate permitted by law or (2) 18% per annum until paid and the County may pursue any other remedy available to it.

**Section 9.02** Bankruptcy. If Tenant is unable to pay its debts when due, files for bankruptcy, seeks relief from creditors or has a receiver appointed on its behalf, the County may terminate this Lease, except to the extent such termination may be avoided by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect regarding creditors' rights generally or principles governing the availability of equitable remedies. Nevertheless, the County shall have a claim in such bankruptcy or receivership proceeding in an amount equal to the aggregate amount of Rent due and payable from the date such proceeding commenced through the remainder of the Term (and any renewal or extension thereof). The amount of such damages may be satisfied by the County out of monies or assets deposited by the Tenant under this Lease as security for payment of its obligations.

#### **ARTICLE X. REPRESENTATIONS & WARRANTIES**

**Section 10.01** Representations & Warranties. The Tenant represents and warrants to the County as follows:

- (a) The Tenant is lawfully existing entity or individual that is qualified to conduct business in Colorado.
- (b) The Tenant has all requisite power and authority to enter into, and perform its obligations under, this Lease.
- (c) All requisite entity action authorizing the Tenant to enter into, and perform its obligations under this Lease have been duly taken and approved.
- (d) The execution, delivery and performance of this Lease by the Tenant does not and will not: (1) require the consent of any person or entity, (2) violate any legal requirement, (3) conflict with or constitute a breach or violation of (a) the Tenant's articles of organization, or (b) the terms or provisions of any other agreement, instrument or understanding by which the Tenant is bound or affected.
- (e) The Tenant understands and shall comply with Colorado Revised Statutes §18-8-301, et seq. (Bribery and Corrupt Influences) and Colorado Revised Statutes §18-8-401, et seq. (Abuse of Public Office) and that no violation of such statutes has occurred or is occurring.
- (f) No officer or employee of the County has any personal, financial or beneficial interest whatsoever in this Lease or in any operations to be conducted by the Tenant upon the Leased Premises.

#### **ARTICLE XI. DEFAULT AND REMEDIES.**

**Section 11.01** Events of Default. Any one or more of the following events shall be an “Event of Default”:

- (a) The failure of the Tenant to make any payment of Rent or any other payment required to be paid by the Tenant under this Lease when and as the same shall become due and payable, if such failure continues for a period of ten (10) days after written notice thereof from the County to the Tenant;
- (b) The Tenant shall vacate or abandon the Leased Premises; however, as long as no monetary default exists, Rent is being paid and the Tenant is maintaining the insurance described in Article VII above, vacation or abandonment of the Leased Premises shall not constitute a default;
- (c) The Tenant shall fail to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease other than those referred to in the foregoing Sections 11.01(a) and (b), and the Tenant fails to remedy the same within thirty (30) days after the County has given the Tenant written notice specifying such default or such additional period, if any, as may be reasonably required to cure the failure if the failure reasonably cannot be cured within a thirty (30) day period, provided the Tenant commences to cure such default within thirty (30) days after receipt of notice and thereafter diligently pursues such cure to completion;
- (d) The Tenant fails to vacate the Leased Premises upon the termination of a hold-over term in accordance with Section 11.03 of this Lease; or
- (e) The making by the Tenant of any general arrangement or assignment for the benefit of creditors; (ii) the filing by the Tenant of a voluntary petition in bankruptcy under Title 11 U.S.C. or the filing of an involuntary petition against the Tenant which remains uncontested for a period of sixty (60) days; (iii) the appointment of a trustee or receiver to take possession of substantially all of the Tenant’s assets located at the Leased Premises or of the Tenant’s interest in this Lease; or (iv) the attachment, execution or other judicial seizure of substantially all of the Tenant’s assets located at the Leased Premises or of the Tenant’s interest in this Lease, provided, however, in the event that any provisions of this Section 11.01(e) is contrary to any applicable law, such provision shall be of no force or effect.

**Section 11.02** Remedies. Upon the occurrence of an Event of Default, the County shall have the option to (i) institute suit against the Tenant to collect Rent or other sum as it becomes due or to enforce any obligation under this Lease, (ii) terminate this Lease, (iii) terminate the Tenant’s right to possession without terminating this Lease, or (iv) cure the Event of Default on behalf of the Tenant. If County cures an Event of Default on behalf of the Tenant, the Tenant shall, on demand and as Additional Rent, reimburse the County for the County’s expenses incurred thereby including the costs of removing and storing the Tenant’s or any other occupant’s property. All past due payments required of the Tenant hereunder shall bear interest from the date due until paid at the lesser of ten percent (10%) per annum or the maximum lawful rate of interest. If the County terminates either this Lease or the Tenant’s right to possession of the Leased Premises, the Tenant will immediately surrender the Leased

Premises to the County. If the Tenant fails to surrender the Leased Premises, the County may enter upon and take possession of the Leased Premises and expel or remove the Tenant and any other person who may be occupying the Leased Premises or any part thereof. Any termination only of the Tenant's right to possession of the Leased Premises will not relieve the Tenant of the Tenant's obligation to pay the Rent under this Lease. The County shall use reasonable efforts to mitigate any damages incurred by the County and to re-let the Leased Premises. In determining the amount of loss which the County suffers by reason of termination of this Lease, allowance shall be made for the expense of repossession and any necessary repairs, but not for any remodeling undertaken by the County following repossession. Except as provided otherwise in this Lease, the County shall have the option to terminate all or a portion of this Lease upon default by the Tenant, and in addition to, or in lieu thereof, the County may seek any relief available to it at law or in equity. Nothing in this Lease shall be deemed a restriction or waiver of any right or remedy that either party may have at law or equity for any breach or default by either party.

**Section 11.03 Surrender and Holding Over.** Upon the expiration or earlier termination of this Lease, the Tenant shall quit and surrender the Leased Premises in generally good and serviceable condition, reasonable wear and tear excepted. Thereafter, the County shall have the right to enter and take possession of the Leased Premises, with or without process of law and without liability for trespass. Holding over or failure to vacate the Leased Premises at the end of the initial Term or any Extended Term shall not be construed to be the granting or exercise of any additional term. Any holding over after the expiration of the initial Term or any Extended Term without the written consent of the County shall be construed to be a month-to-month tenancy at sufferance, at 150% of the Annual Rent payable during the last month of the Term or the Extended Term thereof, whichever is applicable (prorated on a monthly basis, the "Holdover Rent"), but shall otherwise be subject to all of the terms and conditions of this Lease. Notwithstanding anything to the contrary contained in this Section, the Tenant shall not be deemed to be holding over the Premises in the event that both parties are engaged in good faith negotiations to extend the term of the Lease. The County and the Tenant each agree to give the other party written notice at least thirty (30) days prior to the last day of a monthly term to terminate this holdover tenancy. In the event the Tenant does not vacate the Premises thirty (30) days after County's notice terminating the holdover tenancy and the County re-lets the Leased Premises to a new tenant with a lease term commencing after the date the Tenant is required to vacate the Leased Premises, such failure shall be an Event of Default under Section 11.01 of this Lease.

**Section 11.04 Performance of Covenants.** If the Tenant is in default in the performance of any covenant or condition required to be performed by it, the County may, without notice, perform such covenant or condition for the account and at the expense of the Tenant. Such expense may include reasonable attorney's fees in prosecuting or defending any action or proceeding instituted by reason of default of the Tenant, and the Tenant shall promptly reimburse the County for the amount of such expense.

**Section 11.05 Title to Leased Premises & Improvements.** Any fixtures or improvements erected or constructed on the Leased Premises shall be permanently and inseparably attached to the Premises and shall not be removed without prior written consent of the County. Title to the Leased Premises and improvements is and shall remain vested in the County. All of the

Tenant's moveable personal property located in or on the Leased Premises shall remain the property of the Tenant. The Tenant shall have the right at any time during the term of this Lease and upon expiration or termination, to remove all such equipment and property; provided that the Tenant is not in default of its obligations under the Lease. If the Tenant has been provided with notice of default or breach under this Section 11, the Tenant shall not be entitled to remove any of the Tenant's personal property from the Leased Premises until such default has been cured. Any property affixed to the Leased Premises so that the same may not be removed without material damage to the Leased Premises shall not be removed by the Tenant at any time, but shall become the property of the County upon expiration or earlier termination of this Lease.

**Section 11.06** Payments Received After Termination. No payment received by the County from the Tenant after the termination of this Lease or after the giving of a notice of termination, shall reinstate, continue or extend the Term or any Renewal Term or affect any prior termination notice delivered to the Tenant. The parties agree that after (1) delivery of a notice of termination, (2) commencement of an action for repossession or (3) final judgment that grants the County possession of the Leased Premises, the County may receive and collect any amounts past due and owing under the terms of this Lease, and the collection of such amounts shall not waive any notice previously given or waive such action or judgment.

## **ARTICLE XII. ASSIGNMENT AND SUBLETTING**

**Section 12.01** Transfers and Assignments by the Tenant. Except as provided below, the Tenant shall not, without the prior written consent of the County: (a) assign, transfer, or encumber this Lease or any estate or interest herein, whether directly or by operation of law; (b) permit any other person or entity to become the Tenant hereunder by merger, consolidation or other reorganization; (c) if the Tenant is an entity other than a corporation whose stock is public traded, permit the transfer of an ownership interest in the Tenant that results in a change in current control of the Tenant; (d) grant any license, concession, or other right of occupancy of any portion of the Leased Premises; or (e) use or permit the use of the Leased Premises by any parties other than the Tenant (any of the prior described events in Section 12.01 (a to e) being a "Transfer"). Any Transfer of this Lease shall require that the Transfer is to (i) a transferee who is commercially reasonable and acceptable to the County; and (ii) the use and occupancy of the Leased Premises and any improvement following the Transfer remains substantially the same as contemplated by this Lease. The Tenant shall provide copies to the County of any and all documents or instruments that effect a Transfer of the Premises. No Transfer shall release the Tenant from its obligations under this Lease, but rather the Tenant and the transferee shall be jointly and severally liable.

**Section 12.02** Subleasing. The Tenant shall not have the right to sublease property within the Leased Premises without the written consent of the County.

**Section 12.03** Successors to County. The rights and obligations of the County under this Lease may be assigned by the County at its option and without the consent of the Tenant.

### **ARTICLE XIII. ABANDONMENT**

**Section 13.01** Abandonment/Vacation of the Premises. If Tenant abandons or vacates the Leased Premises before the end of the Term (or any renewal or extension thereof), the County may enter the Leased Premises, remove fixtures and personal property of the Tenant and re-let the Leased Premises as it sees fit without terminating this Lease. In addition, the County may make any repairs, changes, alterations or additions to the Leased Premises as may be necessary or desirable for the purpose of re-letting. If the County cannot obtain rent from such re-letting (after payment of all costs and expenses, including payment of Rent accruing from the date of abandonment) in an amount equivalent to the Rent, then Tenant shall be liable for any such deficiency. If the Tenant neglects to retrieve its personal property from Leased Premises upon abandonment or upon termination or expiration of the Lease, the County may remove and store such personal property (without liability to the Tenant for risk of loss), and the Tenant agrees to reimburse the County on demand, for any and all expenses incurred in such removal and storage, including court costs, attorney's fees and storage charges for the period of time such property remains in storage. The County may, after 30 days' notice to the Tenant, sell such property, in whole or in part, at private sale and without legal process, and apply the proceeds of such sale towards any amounts due from the Tenant to the County and render the surplus, if any, to the Tenant.

### **ARTICLE XIV. OBLIGATIONS OF THE COUNTY**

**Section 14.01** Quiet Enjoyment. The Tenant shall be entitled to quiet enjoyment of the Leased Premises and County will not interfere with that right, as long as the Tenant pays Rent in a timely manner and performs all other obligations under this Lease. The Tenant acknowledges that its right to enjoy the Leased Premises is subject to the use of the surrounding property for industrial, commercial and airport purposes with the accompanying industrial, commercial and airport noises, odors, smoke, sonic booms and low-flying aircraft and the danger and nuisance thereof.

### **ARTICLE XV. EMINENT DOMAIN; CONDEMNATION**

**Section 15.01** General. If the Leased Premises (or a substantial part thereof) are taken in eminent domain, or are conveyed under threat of condemnation proceedings ("a Taking"), then this Lease shall forthwith terminate upon such taking as if the Term expired at the time of such Taking; provided that Rent and any other amounts due under this Lease shall be paid to the County by the Tenant as of the date of such taking.

**Section 15.02** Partial Taking – Tenant's Rights. If any part of the Leased Premises becomes subject to a Taking and such Taking will prevent the Tenant from conducting its business in the Leased Premises in a manner reasonably comparable to that conducted immediately before such Taking for a period of more than 180 days, then the Tenant may terminate this Lease as of the date of such Taking by giving written notice to the County within 30 days after the Taking, and Rent shall be apportioned as of the date of such Taking. If the Tenant does not

terminate this Lease, then Rent shall be abated on a reasonable basis as to that portion of the Leased Premises rendered untenable by the Taking.

**Section 15.03** Partial Taking – County’s Rights. If any material portion, but less than all, of the Building becomes subject to a Taking, then the County may terminate this Lease by delivering written notice thereof to the Tenant within 30 days after such Taking, and Rent shall be apportioned as of the date of such Taking. If the County does not terminate this Lease, then Rent shall be abated on a reasonable basis as to that portion of the Leased Premises rendered untenable by the Taking.

**Section 15.04** Award. If an award is made for a taking of the Leased Premises in condemnation proceedings, the County is entitled to all amounts awarded or paid for such Taking; provided, however, the Tenant may separately pursue a claim (to the extent it will not reduce the County’s award) against the condemner for the value of the Tenant’s personal property which the Tenant is entitled to remove under this Lease, moving costs, loss of business and other claims it may have.

## **ARTICLE XVI. COMPLIANCE WITH LAWS; ADDITIONAL RULES**

**Section 16.01** Compliance with Laws. Both parties hereto shall observe and comply with all applicable laws, including but not limited to federal, state and local laws, regulations, rules, ordinances, policies, and standards, including but not limited to, any County land development regulations, zoning regulations and Airport requirements, all as may be amended from time to time.

**Section 16.02** Additional Rules. The Tenant, its officers, employees, agents and invitees shall comply with the following:

- (a) Sidewalks, entries, passages and stairways shall not be obstructed in any manner, this shall include prompt removal of all snow from any walkways, drives, porches, sidewalks and parking areas that serve the Leased Premises.
- (b) The Leased Premises shall be maintained at all times in a clean, sanitary and attractive condition with all rubbish, garbage and other waste properly contained and disposed of to appropriate refuse facilities.
- (c) Items, which may constitute a hazard or danger to the any person or property, shall not be moved into the Leased Premises.
- (d) Antennas, satellite dishes and other equipment may not be erected or installed on the Leased Premises without the prior written consent of the County.
- (e) All appliances, utilities and fixtures shall be properly operated and used, restrooms are not to be used for any purpose other than that for which they are intended, and any damage resulting to any appliance, utility or fixture from the Tenant’s misuse shall be paid by the Tenant.
- (f) Animals, except qualified services animals, are prohibited in the Leased Premises and in

the Building.

- (g) The Tenant shall not play loud music or cause other nuisances that disturb the occupants or adjoining tenants or other parties in the Building.
- (h) The Tenant shall obtain the written consent of the County prior to installing or changing locks on doors of the Leased Premises. If locks are changed or installed, it shall be accomplished at the Tenant's sole expense, the Tenant shall provide copies of new keys to the County.
- (i) The Tenant must obtain the prior written consent of the County for installation of, change to or temporary installation of any objects along the exterior of the Leased Premises or Building, all such exterior changes are subject to any applicable pre-notice or approval regulations given the designation as a land-side property, including but not limited to the Federal Aviation Regulations Part 77.
- (j) Tenant shall not deface the walls, ceilings, partitions or floors of the Leased Premises or of the Building. The Tenant shall pay for any defacement, damage or injury caused by the Tenant, its agents, employees or invitees.
- (k) The County may institute such other rules and regulations as in its reasonable judgment may be necessary or desirable for the safety, care and preservation of the Leased Premises and the Building.

## **ARTICLE XVII. COMPLIANCE WITH LAWS; AIRPORT CONSTRUCTION**

**Section 17.01** Taxes. The Tenant is responsible for all taxes assessed against the Tenant's personal property located upon the Leased Premises during the term of this Lease and any sales or other taxes that may be assessed in connection with Tenant's use of the Leased Premises.

**Section 17.02** Non-Discrimination. The Tenant and its successor and assigns shall comply with pertinent statutes, executive orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, religion, sexual orientation, political affiliation or disability be excluded from participating in any activity conducted that is directly or indirectly related to this Lease. The Tenant shall use the Leased Premises in compliance with all requirements imposed by or pursuant to Title 49, Part 21 of the Regulations of the Office of the Secretary of Transportation, the Colorado Anti-Discrimination Act of 1957 and any other laws and regulations respecting discrimination, all as may be amended from time to time. The Tenant and County shall comply with any enforcement procedures as may be demanded by any authority for the purposes of complying with such laws and regulations.

**Section 17.03** Agreements with Other Governmental Authorities. This Lease shall be subject to the provisions and requirements of any existing or future agreement between the County and the United States, the Federal Aviation Administration or the State of Colorado.

**Section 17.04** Energy Conservation Requirements. The Tenant agrees to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy

conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 et seq).

**Section 17.05** Fair Labor Standards Act Requirements. The Tenant shall comply with the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (“FLSA”), with the same force and effect as if given in full text herein. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The Tenant has full responsibility to monitor compliance to the referenced statute or regulation. The Tenant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

**Section 17.06** Occupational Safety and Health Act of 1970 Requirements. The Tenant shall comply with the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The Tenant must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Tenant retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The Tenant must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

**Section 17.07** Clean Air and Water Pollution Control Requirements. The Tenant agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Tenant agrees to report any violation to the County immediately upon discovery. The County assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration. The Tenant must include this requirement in all contracts and subcontracts relating to the Leased Premises that exceeds \$150,000.

**Section 17.08** Airspace Above Premises. The County reserves for itself and for the use and benefit of the public, and the Tenant acknowledges and accepts the Leased Premises subject to, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises, together with the right to cause in said airspace such noise, vibration, exhaust and fumes as may be inherent in the operation of aircraft now known or hereafter used for landing upon, taking off from, or operating on, the Airport.

**Section 17.09** Interference with Aircraft. The Tenant shall not erect or permit the erection of any structure or object on the Leased Premises above the elevations established by the Airport. The Tenant shall not make use of the Leased Premises in any manner that might interfere with the landing, taking off, or operation of aircraft upon the Airport nor create any hazard at the Airport. If the Tenant fails to comply with this Section, the County reserves the right to enter upon the Leased Premises and remove any offending structure or object, or cause the abatement of any interference or hazard, at the sole cost and expense of the Tenant.

**Section 17.10** Construction by the County. From time to time, it may be necessary for the County to carry out extensive programs of construction, reconstruction, expansion, relocation, maintenance and repair to the Building and adjacent County Buildings, including but not

limited to the Airport, which programs may inconvenience or temporarily interrupt the Tenant's operations. The County shall give the Tenant at least seven (7) days' notice prior to commencement of such construction only in the event that such construction must necessarily commence in seven (7) days due to the emergency nature of the situation; in all other cases, the County must give the Tenant not less than thirty (30) days prior notice. The County shall use commercially reasonable efforts to minimize any interruption of the Tenant's use of the Leased Premises as permitted under this Lease. The Tenant acknowledges and agrees that such construction may require the Tenant to take a longer route to its Leased Premises during construction.

## **ARTICLE XVIII. MISCELLANEOUS**

**Section 18.01** County Representative. The Airport Manager and the County Manager, as appointed by the Gunnison Board of County Commissioners, each acting independent of the other, shall be a County Representative for purposes of this Lease.

**Section 18.02** Force Majeure. A party shall not be deemed in violation of this Lease (excluding payment obligations) if such party is prevented from performing any of its obligations by reason of, boycott, embargo, act of nature, act of God, pending litigation or legal proceedings or any other circumstance which is beyond its reasonable control and conditioned on the other party providing reasonable written notice to the other of the circumstance and taking commercially reasonable actions to mitigate any such impact.

**Section 18.03** Brokerage. Neither the County nor the Tenant has dealt with any broker or agent in connection with the negotiation or execution of this Lease. The Tenant shall indemnify, defend and hold the County harmless from and against all costs, expenses, attorneys' fees, liens and other liability for commissions or compensation claimed by any broker or agent claiming the same, by, through or under the Tenant. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

**Section 18.04** Headings. The Section headings contained in this Lease are for convenience in reference and are not intended to define or limit the scope of any provision.

**Section 18.05** Time of Essence. Time is of the essence in this Lease.

**Section 18.06** Attorneys' Fees. In the event any action or proceeding is brought to take possession of the Leased Premises, breach of any provision of this Lease or to enforce compliance with this Lease for failure to observe any of a party's covenants, the prevailing party shall be awarded reasonable attorneys' fees, expenses and costs.

**Section 18.07** Waiver. Waiver by a party of, or the failure of a party to insist upon, the strict performance of any provision of this Lease shall not constitute a waiver of such party's right or prevent such party from requiring the strict performance of any such provision in the future. Any waiver of an obligation, right, term or provision contained in this Lease must be in writing and signed by the party against whom enforcement is sought.

**Section 18.08** Limitation of Benefit. There are no third-party beneficiaries of this Lease. Without limiting the generality of the preceding sentence, this Lease does not create in or

bestow upon any other person or entity not an express party to this Lease any right, privilege or benefit unless expressly provided in this Lease. This Lease does not in any way represent, nor should it be deemed to imply, any standard of conduct to which the parties expect to conform their operations in relation to any person or entity not an express party to this Lease.

**Section 18.09** Severability. If any provision of this Lease is held invalid, illegal or unenforceable by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, and this Lease shall be construed as if such invalid, illegal or unenforceable provision had not been contained in this Lease.

**Section 18.10** Successors. The terms and provisions in this Lease shall extend to and bind the permitted successors and assigns of each party.

**Section 18.11** Non-Exclusive Right. Nothing contained in this Lease shall be construed to grant or authorize the granting of an exclusive right. The County reserves the right to grant to others the privilege and right of conducting activities at the Building. The County reserves the right, during the term hereof, to reduce and reallocate space leased for the exclusive use of the Tenant in any case where the failure to do so might reasonably constitute the granting by the County to the Tenant of an exclusive right. Notwithstanding anything contained herein, this Section shall not be construed to permit the interference with the Tenant's right to the undisturbed, peaceful and quiet enjoyment of the Leased Premises throughout the Term of this Lease.

**Section 18.12** Notices. All notices required under this Lease shall be in writing and delivered personally, by email or by first class certified mail, return receipt. If delivered personally, notice shall be deemed given when actually received. If delivered email, notice shall be deemed given upon full transmission of such notice and confirmation of receipt during regular business hours. If delivered by mail, notice shall be deemed given at the date and time indicated on the return receipt. Notice shall be delivered to:

If to Tenant:

Beleza, Inc.  
Attn: Tom Anderson  
PO Box 7191  
Gunnison, CO 81230  
Email: \_\_\_\_\_

If to the County:

Gunnison-Crested Butte Regional Airport  
Attn: Rick Lamport, Airport Manager  
519 W. Rio Grande  
Gunnison, CO 81230  
Email: [rlamport@gunnisoncounty.org](mailto:rlamport@gunnisoncounty.org)

County Manager's Office  
Attn: Matthew Birnie, County Manager  
200 E. Virginia Ave.  
Gunnison, CO 81230

with a copy to:

Gunnison County Attorney's Office  
200 E. Virginia Ave.  
Gunnison, CO 81230  
Email: mhoyt@gunnisoncounty.org

or to such other address or addresses as the parties may designate in writing.

**Section 18.13** Governing Law; Jurisdiction. This Lease shall be governed by, and construed in accordance with, the laws of the State of Colorado without regard to its conflicts of law provisions. The parties submit this Lease and any dispute arising under this lease to the sole and exclusive jurisdiction of the courts in and for Gunnison County, Colorado. Any action to enforce or interpret the provisions of this Lease shall be brought in a court in and for Gunnison County, Colorado.

**Section 18.14** Incorporation of Exhibits, Other Documents. The Exhibits and any applicable Airport regulations are incorporated by reference into this Lease and made a part of this Lease. In the event of a conflict between this Lease and the applicable Airport Regulations, the Airport regulations shall control.

**Section 18.15** Entire Agreement. This Lease embodies the entire agreement between the parties concerning the subject matter and supersedes all prior written or oral conversations, proposals, negotiations, understandings and agreements. This Lease may not be altered or modified in any manner whatsoever except by a writing signed by the parties.

**Section 18.16** Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties as creating a relationship of principal and agent, partners, joint venturers or any other relationship. It is understood and agreed that neither the method of computation of fees, nor any other provision contained herein, nor any act of a party creates a relationship other than the relationship of County and the Tenant.

**Section 18.17** No Waiver of Immunity. Nothing in this Lease shall be deemed a waiver of any protections available to the County under the Colorado Governmental Immunity Act, or any similar statutory provision.

**Section 18.18** Counterparts. This Lease may be executed in counterparts, each of which will be deemed an original. Delivery of an executed signature page of this Lease by facsimile or email transmission will constitute effective and binding execution and delivery of this Lease. The County and the Tenant agree to allow the use of electronic signatures for execution of this

Lease. All documents must be properly notarized, if applicable. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24-71.3-101 to -121.

*[Signatures appear on following page.]*

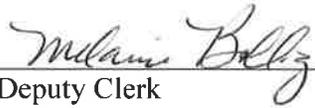
The parties have executed this Commercial Lease Agreement as of the Effective Date listed above.

**LANDLORD:**

BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF GUNNISON,

By:   
Jonathan Houck, Chairperson

ATTEST:

  
Deputy Clerk



**TENANT:**

TOM ANDERSON D/B/A BELEZA, INC.,

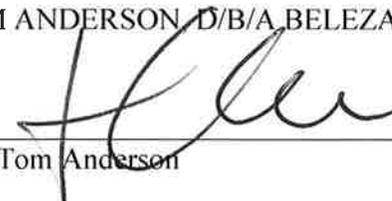
By:   
Tom Anderson

EXHIBIT A

LEGAL DESCRIPTION OF BUILDING

Lots 16 through 26, Block 11, RIO GRANDE ADDITION, according to the plat recorded April 14, 1961 as Reception No. 247973, TOGETHER WITH the E 15' of the vacated north-south alley adjacent to Lots 16 through 22, said Block 11,

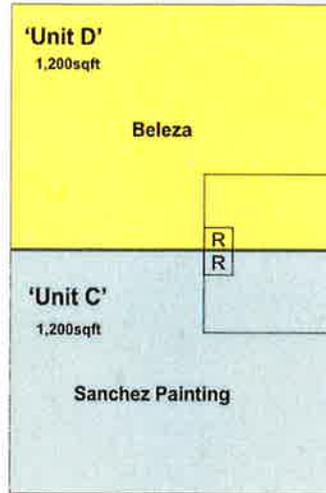
City of Gunnison  
County of Gunnison  
State of Colorado;

known as 725 S. 10<sup>th</sup> Street, Units A, A-1, B, C, D and 711 S. 10<sup>th</sup> Street, Gunnison, CO 81230, consisting of three buildings, together with all appurtenances.

EXHIBIT B

LEASED PREMISES DESCRIPTION

**Gunnison County  
10th Street Leases**



10th Street

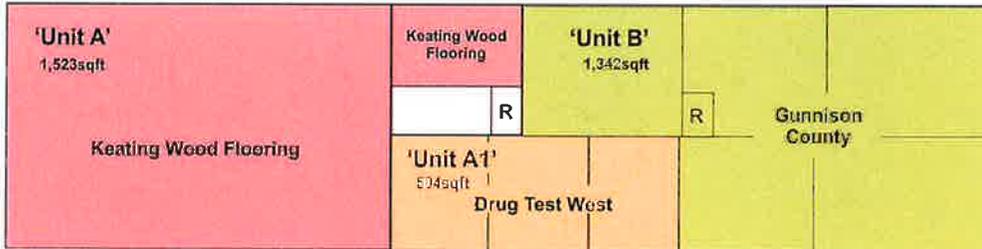


EXHIBIT C

EXISTING FIXTURES, FURNISHINGS, EQUIPMENT

- None

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

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**Agenda Item:** Reassignment of Ground Lease Agreement; Aldo Water

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**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:** Gunnison County, Aldo Waters, and Michael Hicks

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

**Summary:**

Aldo Water, Leisure Time Properties Inc. desires to re-assign the ground lease agreement to Michael Hicks, Reactive Holdings Inc.

**Fiscal Impact:**

**Submitted by:** Stephanie Petsch **Submitter's Email Address:** spetsch@gunnisoncounty.org

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**Finance Review:**  Required  Not Required

Comments:

Reviewed by:

Discharge Date:

---

**County Attorney Review:**  Required  Not Required

**Comments:**

Appears legally sufficient. BOCC may want to ask why hangar purchase will take until July to complete. MRH

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 4/28/2022

Certificate of Insurance Required

Yes  No

---

**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 4/28/2022

Consent Agenda  Regular Agenda  Worksession

Time Allotted: \_\_\_\_\_

Agenda Date: 5/3/2022

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**AGREEMENT REGARDING ASSIGNMENT OF GROUND LEASE AGREEMENT**

THIS AGREEMENT REGARDING ASSIGNMENT OF GROUND LEASE AGREEMENT is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2022 and is among:

Aldo Waters, Leisure Time Properties Inc, \_\_\_\_\_ ("Seller"), and

Michael Hicks, Reactive Holdings Inc. \_\_\_\_\_ ("Buyer"), and

The Board of County Commissioners of Gunnison County, Colorado ("Gunnison County").

WHEREAS, a 20-year initial term Ground Lease Agreement with Gunnison County, dated July 10 2006 for ground space and the construction and use of an aviation hangar ("Hangar") as more fully described in the Lease; attached hereto and incorporated herein as Exhibit "A", was re-assigned to the Seller on 18 September 2018, and

WHEREAS, Seller desires to sell and Buyer desires to purchase all of Seller's interests in the Hangar and to re-assign the Lease to Buyer as contemplated in Paragraph 12 of the Lease; and

WHEREAS, Gunnison County desires to approve such assignment of the Lease to Buyer contingent upon the purchase of the Hangar by Buyer; and

NOW, THEREFORE, in consideration of the premises and mutual agreements set forth herein, the parties hereto agree:

1. Approval By Gunnison County. The Assignment of the Lease from Seller to Buyer is hereby approved by Gunnison County, expressly contingent upon the purchase of the Hangar by Buyer and such purchase is completed by July 1<sup>st</sup>, 2022 or such approval of assignment of lease shall be null and void.

2. Notices To Buyer. All notices to Buyer pursuant to the Lease shall be addressed to the following individuals at the following addresses:

Michael Hicks  
3306 Cunningham Rd,  
Wallis TX 77485

3. Lease Remains In Full Force And Effect. Unless expressly modified herein, all provisions of the Lease remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the

day and year first above set forth.

SELLER

Aldo Waters

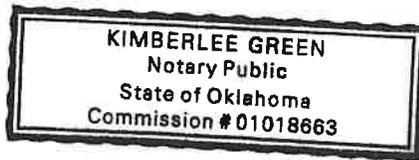
[Signature] President

Name, Title

STATE OF ~~COLORADO~~ <sup>Oklahoma</sup> )

COUNTY OF ~~GUNNISON~~ <sup>Johnston</sup> )

The foregoing Agreement Regarding Assignment of Ground Lease Agreement was acknowledged before me this 22nd day of April, 2022, by Aldo Waters



Witness my hand and official seal. My commission expires: 11/8/2025

[Signature]  
Notary Public

BUYER

Michael Hicks

[Signature] President

Name, Title

STATE OF COLORADO ~~TEXAS~~ )

COUNTY OF GUNNISON ~~AUSTIN~~ )

The foregoing Agreement Regarding Assignment of Ground Lease Agreement was acknowledged before me this 25 day of April, 2022, by Michael Hicks



Witness my hand and official seal. My commission expires:

[Signature]  
Notary Public

BOARD OF COUNTY COMMISSIONERS  
OF GUNNISON COUNTY, COLORADO

By: \_\_\_\_\_  
Jonathan Houck, Chairperson

ATTEST:

\_\_\_\_\_  
Deputy Clerk

**AGREEMENT REGARDING ASSIGNMENT OF GROUND LEASE AGREEMENT**

THIS AGREEMENT REGARDING ASSIGNMENT OF GROUND LEASE AGREEMENT is made and entered into as of this 18<sup>th</sup> day of September, 2018 and is among:

Julee C. Nelson ("Seller"), and

Aldo Waters, Leisure Time Properties Inc ("Buyer"), and

The Board of County Commissioners of Gunnison County, Colorado ("Gunnison County").

WHEREAS, Seller is the Lessee under a 20-year Ground Lease Agreement with Gunnison County dated July 10, 2006 attached hereto and incorporated herein as Exhibit "A" for ground space and the construction and use of an aviation hangar ("Hangar") as more fully described in the Lease; and

WHEREAS, Seller desires to sell and Buyer desires to purchase all of Seller's interests in the Hangar and to assign the Lease to Buyer as contemplated in Paragraph 12 of the Lease; and

WHEREAS, Gunnison County desires to approve such assignment of the Lease to Buyer contingent upon the purchase of the Hangar by Buyer; and

NOW, THEREFORE, in consideration of the premises and mutual agreements set forth herein, the parties hereto agree:

1. Approval By Gunnison County. The Assignment of the Lease from Seller to Buyer is hereby approved by Gunnison County, expressly contingent upon the purchase of the Hangar by Buyer and such purchase is completed by September 30<sup>th</sup>, 2018 or such approval of assignment of lease shall be null and void.

2. Notices To Buyer. All notices to Buyer pursuant to the Lease shall be addressed to the following individuals at the following addresses:

Aldo Waters  
PO Box 1116,  
Ardmore, OK 73402

3. Lease Remains In Full Force And Effect. Unless expressly modified herein, all provisions of the Lease remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above set forth.

**SELLER**

Julee C. Nelson

Julee C. Nelson, Seller  
Name, Title

STATE OF COLORADO )  
 )  
COUNTY OF GUNNISON )

The foregoing Agreement Regarding Assignment of Ground Lease Agreement was acknowledged before me this 29<sup>th</sup> day of AUGUST, 2018, by.



Witness my hand and official seal.  
My commission expires: 12.12.2021

[Signature]  
Notary Public

**BUYER**

Aldo Waters

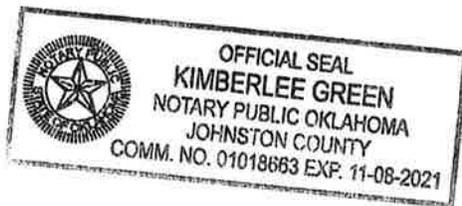
[Signature] President  
Name, Title

Oklahoma  
STATE OF COLORADO )  
 )  
COUNTY OF ~~GUNNISON~~ )  
Johnston

The foregoing Agreement Regarding Assignment of Ground Lease Agreement was acknowledged before me this 5<sup>th</sup> day of September, 2018, by Aldo Waters.

Witness my hand and official seal.  
My commission expires:

[Signature]  
Notary Public



*County Manager Matthew Birnie for the*  
BOARD OF COUNTY COMMISSIONER  
OF GUNNISON COUNTY, COLORADO

By: *[Signature]*

~~Phil Chamberland, Chairperson~~  
*Matthew Birnie, County Manager*

ATTEST:

*[Signature]*

Deputy Clerk



**Exhibit A**

**GROUND LEASE AGREEMENT  
Between the County of Gunnison  
and  
Douglas T. and Julee C. Nelson**

## GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT is made and entered into effective July 10, 2006, by and between Gunnison County, Gunnison Colorado, ("Gunnison" or "Lessor"), and Douglas T. and Julee C. Nelson ("Lessee").

### RECITALS

WHEREAS, Lessor owns and operates the Gunnison/Crested Butte Regional Airport ("Airport") in Gunnison County, Colorado; and

WHEREAS, Lessee desires to lease from Lessor certain land located at the Airport;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, the parties agree as follows:

1. Grant of Lease. Lessor hereby leases ( the "Lease") to Lessee, its heirs, successors and assigns, that certain land located at the Airport and identified on Exhibit A attached hereto and integrated herein and more particularly described on Exhibit B attached hereto and incorporated herein (the "Premises"). The Lease shall include all rights normally incident to the use and enjoyment of the Premises for the intended purpose, including the right to enter upon Airport Premises to access the Premises during the normal hours of operation at the Gunnison/Crested Butte Airport. In addition, subject to the provisions hereof, Lessee shall be entitled to use all other existing and future Airport facilities on the same basis as such facilities are made available to private aviation generally. The Premises shall be used and occupied by Lessee exclusively for the construction at the Airport of the Improvements (the "Hangar") described on Exhibit B.

2. Lease Term. The Lease pursuant to this Agreement shall commence upon mutual execution hereof by both Lessor and Lessee, beginning the date this agreement is made and entered into. The Lease shall continue for 20 years (the "Lease Term") unless sooner terminated as provided herein. So long as the Lessee is in full compliance with the terms of the Lease, and the Lessor has determined in its reasonable discretion that the Hangar is in good repair, the Lessee may extend the term of this Lease one time for an additional twenty (20) year period ("Twenty-Year Extension") that will commence, if at all, at the termination of the original Lease Term described above. This Lease will terminate automatically at the end of the original Lease Term or at the end of the Twenty-Year Extension if Lessee exercises that option. If Lessee holds over and remains in possession of the Premises with the consent of Lessor after expiration of the Lease Term or the Twenty-Year Extension, such holding over shall not be construed as a renewal of the Lease Term or any further extension of the Lessee's right to possession, but instead shall constitute a month to month Lease ("Month-to-Month Holdover") with rent payable to Lessor at 150% of the Lease rate then in effect, otherwise subject to all of the terms and conditions of this Agreement. The Month-to-Month Holdover is revocable by either party by giving notice of termination at least ten days prior to the end of any month.

3. Ground Rent. Lessee shall pay to Lessor ground rent ("Ground Rent") for use of the Premises. Ground Rent in the amount of \$.26 per square foot per annum based on the floor area of the hanger to be built. Ground Rent for the first year shall be payable in advance and shall be due upon the issuance of a building permit for the Hangar and prorated from the date the building permit is issued to December 31, 2006. Subsequent annual Ground Rent shall be adjusted annually by the Denver/Boulder CPI. Ground Rent shall be due and payable, whether or not Lessee receives a bill. Ground Rent shall be prorated on a daily basis for the portion of the first calendar year that Lessee begins construction of the Premises and the Lessor shall return any prepaid rent to the Lessee for any portion of a year that the Ground Lease is not in effect. Ground Rent shall be made payable to Gunnison County and shall be delivered to the County's Finance Director at Gunnison County Courthouse, 200 E. Virginia, Gunnison, CO 81230, or such other address as the County may designate in writing from time to time. Ground Rent shall be paid annually, in one lump sum, in advance, on January 1<sup>st</sup> of the calendar year the Ground Rent is due. Lessor shall attempt to notify Lessee by December 1<sup>st</sup> of every calendar year of the Ground Rent payable January 1<sup>st</sup> of the following calendar year. Any portion of the Ground Rent not paid when due shall bear interest from the due date until paid at the rate of 15% per annum. Failure of the County to notify Lessee by December 1<sup>st</sup>, or by any other date, of the Ground Rent due on January 1<sup>st</sup> shall not waive the obligation for payment, nor shall such failure delay the due date for payment of the Ground Rent. Failure to timely pay the Ground Rent shall be a default event.

4. Inconvenience During Construction. Lessee recognizes that from time to time during the term of this Lease it may be necessary for the County to initiate and carry forward extensive programs of construction, reconstruction, expansion, relocation, maintenance and repair in order that the Gunnison/Crested Butte Airport and its facilities may be suitable for volume and character of air traffic and flight activity which will require accommodation and that such construction, reconstruction, expansion, relocation, maintenance, and repair may inconvenience Lessee in its operation at the Airport. Lessee agrees that no liability shall attach to the County, its officers, agents, employees, contractors, subcontractors and representatives by reason of such inconvenience or interruption; provided, however, Lessor agrees to use its best efforts to perform such activities in a manner and at such times that will minimize interference with Lessee's use and enjoyment of the Premises.

5. Certain Obligations of Lessee.

(a) Construction of the Hangar. Lessee agrees to begin construction no later than the issuance date of the Building Permit and to complete the construction within 120 days after the date construction begins. In the event Lessee fails to begin and complete construction within the period specified above, the County shall have the right to terminate this lease pursuant to the provisions of paragraph 7. The Hangar described in Exhibit B, will be built at Lessee's sole expense and in accordance with the Gunnison/Crested Butte Regional Airport Northwest General Aviation Development Plan for Aeronautical Land use at the Airport, and Construction Guide at the Gunnison Crested Butte Regional Airport in accordance with the specifications described in Exhibit C attached hereto and incorporated herein. The hangar must meet ARIS standards. Any amendment to the construction specifications on Exhibit C shall require the prior written consent of Lessor which may be withheld in "Lessors" reasonable discretion.

(b) Approval of Plans. Lessee covenants and agrees that prior to the preparation of detailed construction plans, specifications and architectural renderings of any such building, structure, roadway, utility line, addition or improvement and their locations, relative to the Leased Premises including location of drainage, utilities and roadways will be submitted to the County's Airport Manager for approval. Lessee's plans shall meet all requirements/limitations imposed by the Federal Aviation Administration (FAA) for the type of development proposed. Lessee covenants and agrees that prior to the installation or construction of any such building, roadway, structure, utility line, addition or improvement on the Leased Premises, it shall first submit to the County for approval, final detailed construction plans and specifications and architectural renderings prepared by registered architects and engineers, and that all construction will be in accordance with such plans and specifications and the current land use development criteria established by Gunnison County, Colorado and all requirements/limitations imposed by the FAA.

(c) As-Build Drawings. Within thirty (30) days following completion of the initial construction and any subsequent additions, alterations or improvements, Lessee shall present to the County a complete set of reproducible drawings including, but not limited to, specifications and shop drawings.

(d) Maintenance of Hangar and Premises. From and after the date construction is completed on the Hangar, Lessee shall maintain the Hangar and Premises, including the roof and structural components of the Hangar, at Lessee's sole expense in a neat, clean and safe condition and in good repair, normal wear and tear excepted. Lessee shall not make structural alterations to the Hangar and/or Premises without making application, and receiving from, the Airport Manager approval in the County's reasonable discretion for such proposed structural alteration. All alterations shall be at Lessee's sole expense. In the event Lessee fails to commence any repair or maintenance of the Hangar and/or Premises required pursuant to this Agreement within thirty (30) days after written notice from Lessor requesting the repair or maintenance in question, Lessor may undertake the specified repair or maintenance for the account of Lessee, and Lessee shall promptly reimburse Lessor's actual costs and expenses incurred in connection therewith. Lessee shall follow all local, state and federal life and fire safety and environmental and other applicable codes and regulations and minimum standards. Lessee shall notify the County of all construction, reconstruction, repair, or any work whatsoever related to the Hangar and/or Premises, the name of the contractors or subcontractors performing such work, and shall defend, indemnify and hold the County Harmless at Lessee's sole expense from any claims whatsoever concerning the Hangar and/or Premises except those caused by Lessor's negligence or willful misconduct.

(e) Use of Premises. The Lessee shall use the Hangar and Premises exclusively for the storage and protection of aircraft, aircraft parts and other activities generally carried on at aircraft hangars by the Gunnison County minimum standards. Lessee may also store personal vehicles or other miscellaneous personal items owned by the Lessee. Notwithstanding anything in this Agreement to the contrary, the Lessee shall not carry on any commercial activity whatever with respect to the Hangar or Premises. The Lessee shall not use the Hangar or Premises for any activities in competition with normal fixed base operation activities conducted at the Airport by

or under concession with Lessor unless Lessee enters into a separate operating agreement with the Airport and the activity is in compliance with the Airport minimum standards. However this will not prevent the Lessee from leasing hangar space on a short term or long term basis for storage of aircraft. Lessee shall not install, operate or permit to be used at the Hangar or Premises any signs or similar advertising devices without the written approval of the Airport Manager. Additionally, Lessee shall have a fire extinguisher and any other equipment on the Hangar and Premises at all times in accordance with the appropriate life and fire safety codes.

(f) Laws and Regulations. In using the Premises, the Hangar and the Airport, Lessee shall comply with all applicable laws, regulations and rules of general applicability that may be in effect from time to time, including without limitation rules of federal, state, county and municipal governments and all applicable life, fire and safety codes. Lessee shall also fully and promptly comply with the Rules and Regulations and Minimum Standards of the Gunnison/Crested Butte Regional Airport, existing, amended or future.

(g) Utilities. Lessee shall be responsible for all utility charges, including connection fees incurred after the date hereof for utility service to the Premises. Any future utilities shall be underground, within 60 days pavement or ground disturbed in the process returned to its original condition.

(h) Insurance for Hangar and Premises. Throughout the term of the Lease, Lessee shall maintain property insurance in the amount of \$40,000 covering the Hangar and Lessee's interest in the Premises and shall provide insurance protection from fire and such other casualties as Lessor may determine, which insurance shall be in the amount of the reasonably anticipated replacement costs of the Hangar. The County shall be named as an additional insured under any insurance policy issued to Lessee at Lessee's sole cost, if any. In the event of damage or destruction to the Hangar, the proceeds of such insurance shall be applied to the repairs and/or replacement, and any excess shall be payable to Lessee. In no event shall the County be obligated to repair or replace the Hangar after damage or destruction. In any event, Lessee shall be obligated to repair and replace the Hangar after damage or destruction unless the County agrees otherwise.

(i) Ownership. Lessee shall own the Hangar

(j) Construction By County. There are no facilities to be constructed by County under this Lease. All construction will be made by Lessee.

(k) Encumbrance. Lessor's interest in the Premises may not be encumbered by Lessee and shall not be subject to any mechanic's, materialmen's or similar liens with respect to Lessee's interest in the Hangar. If any such liens are asserted against Lessor's interest in the Premises, Lessee shall promptly cause the same to be removed or shall provide Lessor with adequate security therefore. Lessee shall not encumber Lessee's interest in the Premises except in accordance with the provisions of this Lease. Any encumbrance of Lessee's interest in the Hangar permitted pursuant to this Lease shall expressly exclude any interest of Lessor in the Hangar.

(l) Taxes. The Lessee shall pay all real and personal property and other taxes that are assessed against the Hangar and/or Premises.

(m) Financing.

(i) Lessee's Right to Finance. Lessee may, at any time or from time to time mortgage the leasehold estate, so long as Lessee is in compliance with all terms, conditions, and provisions of this Lease. Such right of Lessee to mortgage the Hangar leasehold estate shall be a continuing right and shall not be deemed to be exhausted by the exercise thereof on one or more occasions. Any such mortgage shall be expressly subject to the provisions of this Lease, and only with prior written notice to Lessor and only with the consent of the Lessor which Lessor will not reasonably be withheld. No mortgage shall to any extent encumber all or any portion of Lessor's fee simple interest in the Premises.

(ii) Mortgagee's General Cure Rights. Lessor, prior to terminating this Lease or exercising any other right or remedy hereunder for a default by Lessee (as defined below), shall give each holder of a deed of trust or mortgage encumbering the Hangar leasehold estate created hereby ("Leasehold Mortgagee") written notice of the pertinent default by Lessee and thirty (30) days thereafter in which to cure the same, or, if the subject default by Lessee is of such a nature that the same cannot reasonably be cured within said thirty (30) day period, then the Leasehold Mortgagee's cure period shall be extended for so long as the Leasehold Mortgagee diligently pursues the cure to completion. Furthermore, if such default requires the Leasehold Mortgagee to be in possession to affect a cure, Leasehold Mortgagee's cure period shall be extended to afford Leasehold Mortgagee time to obtain possession of the Premises. In the event this Lease is terminated in accordance with this Lease or by provision of Law, or in the event Lessor dispossesses Lessee, Lessor shall give each Leasehold Mortgagee written notice thereof within ten (10) days after the termination or dispossession. Lessor and Lessee agree that any mutual termination, cancellation or rescission of this Lease by Lessor and Lessee shall be effective only if the same is given the prior written approval of any Leasehold Mortgagee. Provided, however, Leasehold Mortgagee shall be deemed to have approved of any mutual termination, cancellation, or rescission, if Leasehold Mortgagee has failed to approve or disapprove of said termination, cancellation, or rescission within 30 of the actual receipt of notice of the parties' intent to terminate, cancel, or rescind the Lease.

(iii) New Lease. If Lessor terminates this Lease, Lessor agrees to enter into a new lease for the Premises with any Leasehold Mortgagee or its designee, for the remainder of the term of this Lease, effective as of the date of such termination at the same rent, and otherwise upon the same terms, covenants and conditions contained herein, provided that (i) such Leasehold Mortgagee shall make written request for such new lease within thirty (30) days after the date of such termination, and (ii) such mortgagee will pay or cause to be paid to Lessor within the same period as in (i) above all sums unpaid which at such time would have

been payable under this Lease but for such termination, and shall cure all defaults of Lessee under this Lease which remain uncured as of that date to the extent the same can be reasonably cured, all other non-monetary defaults being waived by Lessor, (iii) such Leasehold Mortgagee shall pay or cause to be paid to Lessor on that date all expenses, including reasonable attorney's fees, court costs, and disbursements reasonably incurred by Lessor in connection with any such default any termination as well as in connection with the execution and delivery of such new lease, and (iv) such lease shall be made without any warranty to the Leasehold Mortgagee as to rights Lessee may continue to have or assert as to the Premises. If more than one Leasehold Mortgagee shall desire to enter into such new lease under the circumstances outlined hereinabove, the Leasehold Mortgagees in the order of the priority of their mortgages (i.e., first mortgage, second mortgage) shall have the first opportunity to do so. However, irrespective of any other provisions in this Lease to the contrary, if a Leasehold Mortgagee does not exercise its right to enter into a new lease with Lessor within the time periods and in accordance with the provisions set forth hereinabove, such Leasehold Mortgagee shall not thereafter have any rights whatsoever in this Lease or in the Premises, all interest therein having reverted to Lessor as a result of the termination of this Lease.

(iv) Casualty. In case any leasehold mortgage made by Lessee shall be in force at the time of any damage to or destruction by fire or otherwise of the Hangar, then the Leasehold Mortgagee is hereby authorized, at its sole expense, to repair or restore the Hangar or to replace the hangar under the same terms and conditions of this Lease as would be applicable in the case of a repairing, restoring or replacement by Lessee. The Leasehold Mortgagee so repairing, restoring or replacing any part of said Hangar shall, subject to compliance with all the conditions contained in this section, be subrogated to the rights of Lessee to all the insurance proceeds payable as a result of the damage or destruction, and shall be entitled to have all said insurance proceeds paid out upon architect's certificates in the same manner in every respect as if said Leasehold Mortgagee were Lessee under this Lease.

(n) Security. Lessee shall have entrances and gates to the Air Operations Area and agrees to comply with the FAA regulations, 49 CFR Part 1542, as may be amended from time to time, and TSA regulations as may be amended from time to time, which requires Lessee to control and regulate any doors, openings or entrances to the Air Operations Area. Lessee shall comply with all applicable regulations required by the federal Department of Homeland Security.

#### 6. Conditions of Use.

(a) Lessee shall not store gasoline, solvents, explosives, flammable paints, other flammables, or other hazardous materials in the Hangar or on the premises without the prior written approval of the Airport Manager. However it is recognized and understood that fuel contained in the fuel tanks of aircraft and vehicles is permitted. The parties understand that the Airport Manager is authorized by this provision to require safety containers or other safety

measures are followed by Lessee as a condition of such approval. Written approval of the Airport Manager shall not be required for the storage of less than a total of five gallons of engine oil or other engine lubricants, hydraulic fluids, and cleaning fluids necessary and incidental to the normal use of private aircraft.

(b) Lessee shall control the conduct and demeanor of its employees, guests, and invitees in and around the Hangar and Premises and shall take all steps necessary to remove persons whom Lessor may, for good and sufficient cause, deem objectionable.

(c) Lessee shall keep the Hangar and Premises clean and free of debris at all times, and Lessee shall not place any trash or debris on the airport grounds except in containers provided for trash by the Lessor.

(d) Lessee shall not use any high wattage electrical equipment, heat lamps, or machinery in or about the Hangar. Any modification to existing wiring or the installation of additional outlets or fixtures must be in compliance with current codes. Any device the use of which requires modification to the capacity of the existing electrical system shall be deemed to be high wattage.

(e) Lessee shall not attach any hoisting or holding mechanism to any part of the Hangar or Premises or pass any mechanism over the struts or braces therein without the prior written permission of the Airport Manager, which permission shall only be granted after Lessee provides written evidence from a Colorado licensed Professional Engineer that such activity will cause no damage to the structure. For purposes of this Agreement, a hoisting or holding mechanism shall be deemed to include, but shall not be limited to, a chain-ball, block and tackle, or other hoisting or winching device. Lessee shall be responsible for any and all damage to the Hangar and Premises occasioned by such conduct, whether or not Lessee obtains the permission of the Airport Manager.

(f) Lessee shall not paint, remove, deface, modify, bend, drill, cut or otherwise alter or modify any part of the Premises or Hangar without the prior written permission of the Airport Manager, which permission shall only be granted after Lessee provides written evidence from a Colorado licensed Professional Engineer that such activity will cause no damage to the structure.

(g) Lessee shall not park or leave Aircraft or vehicles on the taxilane or on the pavement adjacent to the Hangar door in a manner that unduly interferes with or obstructs access to adjacent Hangars. Aircraft parked for more than 30 minutes in the taxilane area shall constitute an obstruction.

(h) In utilizing the Hangar and Premises, Lessee agrees to and shall comply with all applicable ordinances, resolutions, rules regulations and minimum standards established by any federal, state or local government agency.

7. Termination. Either party shall have the right to terminate the Lease in its entirety if the other party breaches any provision of this Agreement or fails to perform any obligation hereunder and if such breach or failure continues for a period of thirty (30) days after

receipt by notice from the other party specifying the breach or failure to perform in question. In the event of a non-monetary default, if it is not possible to cure the breach within thirty (30) days, the breaching party must commence work to cure the breach within thirty (30) days of receiving notice, and must diligently pursue work to cure the breach. Failure to diligently pursue curing the breach shall be grounds for termination.

8. Certain Rights and Obligations on Termination. Upon expiration or earlier termination of this Lease, Lessor shall be deemed the owner of the Hangar and any and all alterations, additions or fixtures installed in or on the Premises by Lessee, except for those which Lessor requires to be removed at the end of the Lease term. Lessee shall remove all such alterations, additions or fixtures at the end of the Lease term unless Lessor conditioned its consent upon Lessee leaving a specified alteration, addition or fixture in or on the Hangar and or Premises, in which case Lessee shall not remove such alteration, addition or fixture. Lessee shall immediately repair any damage to the Hangar and Premises caused by such removal.

9. Inspection. County's authorized representatives shall be allowed access to the Hangar and/or Premises at all reasonable times, for the purpose of examining and inspecting the Hangar and/or Premises. Except in cases of emergency, no inspection shall be made without reasonable prior notice to the Lessee. At all times, Lessee shall provide and Lessor shall have means of access to the interior of the Hangar Lessee's Hangar Complex (i.e. Key, lock combination, etc.).

10. Ingress- Egress. Lessee, its agents and servants, patrons and invitees, and its suppliers of service and furnishers of materials shall have the right of reasonable ingress to and egress from the Hangar or Premises, subject to generally applicable rules and regulations governing use of the Airport in effect from time to time.

11. Utilities. Lessee shall have the right at its sole cost to install utility and related facilities at the Airport to provide utility services to the Hangar and shall have the right to access all utilities servicing the Airport at Lessee's expense and with Lessor's permission. Lessee shall give Lessor at least thirty days prior written notice of any proposed construction together with a construction plan showing any areas outside of interior of the Hangar that may be affected by such construction. Airport Manager shall have ten days to approve or deny the construction plan based on the anticipated disruption to the current or reasonably anticipated use of the Airport, which approval shall not be unreasonably denied. If and when a construction plan is agreed upon between the Lessee and the Airport Manager, any such construction shall be conducted in a reasonable manner and in compliance with the construction plan so as to minimize the disruption of normal Airport operations. After construction, Lessee shall restore the construction site to its condition prior to construction. In exercising its rights hereunder, Lessee agrees to avoid areas which are paved or otherwise improved, whenever possible.

12. Assignment, Subletting, Change of Ownership.

(a) Lessee may, upon prior written approval of the County, which approval shall not be unreasonably withheld, assign use of Lessee's rights and obligations arising under this Agreement if Lessee transfers its ownership in the Hangar to that same party.

(b) Lessee may sublease all of or a portion of the Hangar; provided, however, the Lessee shall be obligated to notify the Airport Manager of any sublease and of the name of the sublessee and the owner, make, model, and tail number of any aircraft stored in the hangar on a monthly or longer basis. Failure to notify the Airport Manager of all subleases, the name(s) of the sublessee(s), the owner(s), make, model, and tail number of any Aircraft stored in the hangar at any time shall constitute an event of default under this Lease. The parking of Aircraft not owned by or leased by Lessee within the Hangar shall constitute a sublease except an Aircraft titled in the name of a corporation or other entity controlled by lessee shall not constitute a sublease. Any transferee, assignee, sublessee, or any person or owner of an Aircraft stored in the Hangar shall be subject to and bound by all the provisions of this Agreement.

(c) The following events shall be referred to herein as a "Transfer": (i) a transfer or conveyance of title (or any portion thereof, legal or equitable) of the Premises (or any part thereof or interest therein), (ii) the execution of a contract or agreement creating a right to title (or any portion thereof, legal or equitable) in the Premises (or any part thereof or interest therein), (iii) or an agreement granting a possessory right in the Premises (or any portion thereof), in excess of three (3) years, (iv) a sale or transfer of, or in the execution of a contract or agreement creating a right to acquire or receive, more than fifty percent (50%) of the controlling interest or more than fifty percent (50%) of the beneficial interest in the Lessee, (v) the reorganization, liquidation or dissolution of the Lessee. The County shall not consider a transfer by devise, descent or by operation of the law upon the death of a joint tenant as a Transfer.

13. Nondiscrimination and FAA Requirements. This Agreement involves the use of or access to space on, over or under real property acquired or improved pursuant to the Airport Development Aid Program and agreements with the Federal Aviation Administration and, therefore, involves activities that serve the public. Accordingly, Lessee agrees that (1) no person shall be excluded from participation in, denied benefits of, or otherwise be subjected to discrimination in the use of the Premises on the grounds of race, color, physical or mental handicap or national origin; (2) that in constructing any improvements or furnishings services at the Premises, no person shall be excluded from participation in, denied benefits of, or otherwise be subjected to discrimination on the grounds of race, color or national origin; and (3) that Lessee shall use Premises in compliance with all other requirements imposed by or pursuant to applicable Department of Transportation regulations. The failure to remedy any breaches of any of the above non-discrimination covenants shall constitute cause for Lessor to terminate this Agreement under the provisions of paragraph 7.

14. Non-Waiver. Failure or delay on the part of either party to complain of any action or non-action on the part of the other shall not be deemed to be a waiver of their respective rights hereunder. The consent or approval by either party to or of any action by the other requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar action. All waivers must be in writing and signed by the party against whom such waiver is sought to be enforced.

15. Notices. Notices to Lessor provided for herein shall be deemed received when actually received by the following individuals:

Airport Manager  
Gunnison/Crested Butte Regional Airport  
519 W. Rio Grande  
Gunnison, CO 81230

and

County Manager  
Gunnison County  
200 E. Virginia  
Gunnison, CO 81230

Notices to the Lessee will be deemed received:

(a) if personally received by the individual named below, or

(b) three days after being sent by certified mail, postage prepaid, addressed to:

Douglas and Julee Nelson  
317 S. Colorado  
Gunnison, Colorado 81230

or to such other addresses as the Lessee may designate in writing from time to time.

16. Paragraph Headings. The paragraph headings contained herein are for convenience of reference and are not intended to define or limit the scope of any provision of this Agreement.

17. Invalid Provisions. In the event any covenant, condition or provision contained herein is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained; provided that the invalidity of such covenant, condition or provision does not materially prejudice either Lessor or Lessee in their respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

18. Attorneys' Fees. In the event of litigation or other proceedings to enforce or interpret this Agreement, each party shall be required to pay its own fees and costs and expenses, including its own attorneys' fees, and there shall be no award of fees to the putative "prevailing party."

19. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, legal representatives and assigns.

20. Estoppel Certificate. At any time and from time to time either party shall execute, acknowledge and deliver to the other a written statement certifying that this Agreement is in effect without modification of the provisions hereof (or if there have been modifications, a statement thereof), and that neither party is in default hereunder (or if any such default exists, a description thereof). Any such certificate shall be delivered within ten days after request is made therefore.

21. Miscellaneous. In this Agreement, the singular shall include the plural; the singular in reference to one gender shall include the other and the neuter, as appropriate. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Any action concerning this Agreement may be brought in Gunnison County, Colorado.

22. Airport Closure – Mandatory Buyback Schedule. In the event the Lessor permanently terminates the use of the Airport for general aviation purposes with no intent to reopen the Airport for general aviation purposes, the parties agree that the Lessee shall sell and the Lessor shall buy the Hangar from the owner based on the following formula:

The Fair Market Value of the Hanger on the date of receiving the Certificate of Occupancy shall constitute the Purchase Price and will be multiplied by a fraction, the numerator of which is the number of years remaining on the Ground Lease (assuming a Twenty-year lease), and the denominator of which is 20.

For example, if the Initial Purchase Price were \$200,000, and the County closed the Airport with 10 years remaining on the 20-year lease, the Lessee would be required to sell and the County would be required to buy the Hangar for \$100,000 ( $\$200,000 \times 10 \div 20 = \$100,000$ ).

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed under their respective seals on the day and year first written above.

LESSOR:

GUNNISON COUNTY,



ATTEST Kelly Balch  
Kelly Balch, Deputy

By: [Signature]  
Jim Starf, Chairperson  
Airport Manager

LESSEE:

By: [Signature]  
Douglas T. Nelson

By: [Signature]  
Julie C. Nelson

ATTEST:

Victoria Roach Archuleta



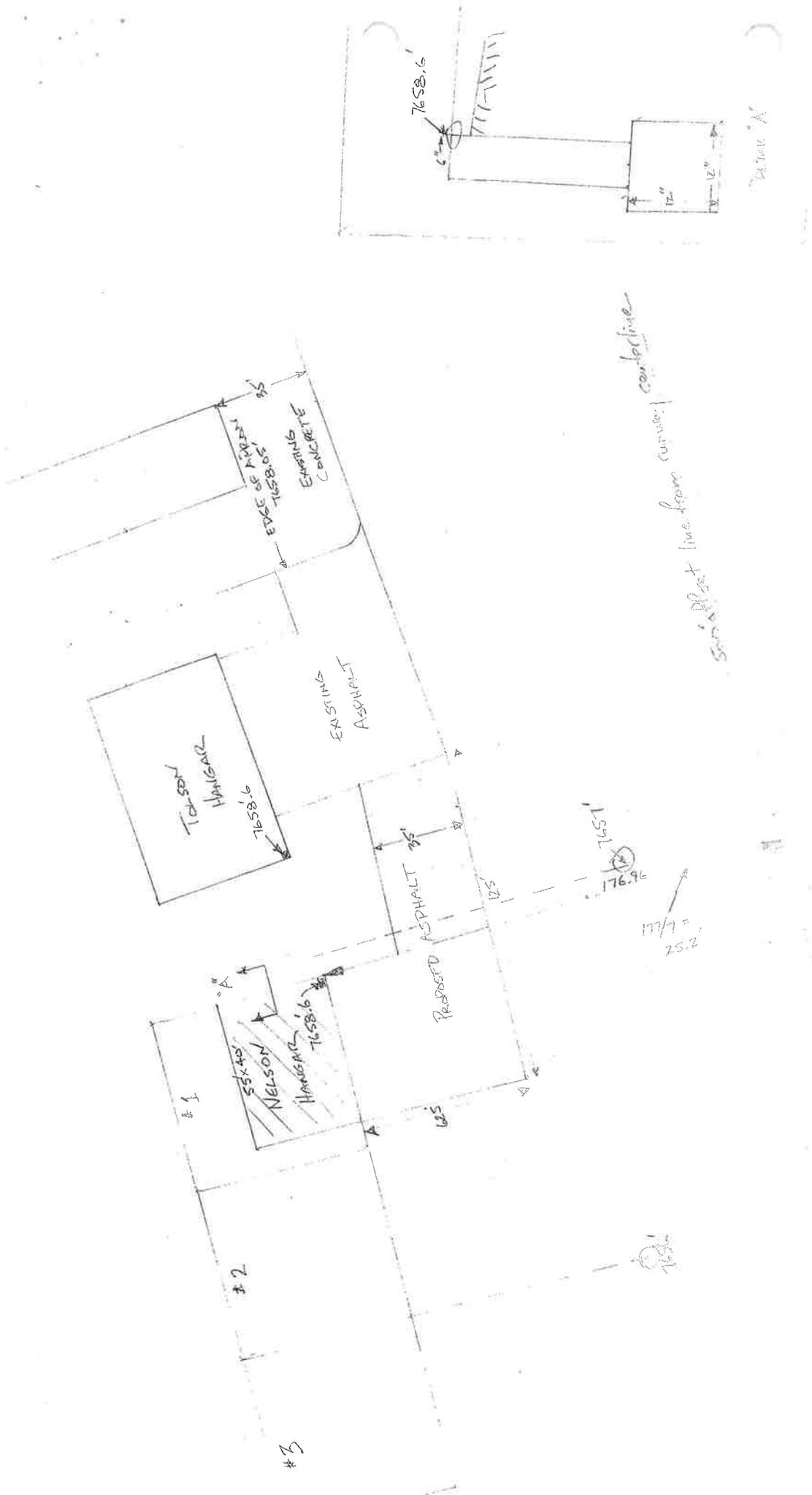


EXHIBIT B  
 Nelson Ground Lease Agreement

EXHIBIT C

HANGAR SPECIFICATIONS

Hangar Size: 55' x 40'

Building Manufactured by: ATY Building Systems, Inc.  
7076 S. Alton Way Unit #G1  
Englewood, CO 80112

Snow Load: 57.14 psf

Wind Velocity: 100 mph

Color:

Hangar: Roof: Galvaume  
Walls: Oldtown Gray  
Trim: Oldtown Gray

Hangar Number: 10 (Ten) Located with Airport approval

## GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT is made and entered into effective July 10, 2006, by and between Gunnison County, Gunnison Colorado, ("Gunnison" or "Lessor"), and Douglas T. and Julee C. Nelson ("Lessee").

### RECITALS

WHEREAS, Lessor owns and operates the Gunnison/Crested Butte Regional Airport ("Airport") in Gunnison County, Colorado; and

WHEREAS, Lessee desires to lease from Lessor certain land located at the Airport;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, the parties agree as follows:

1. Grant of Lease. Lessor hereby leases ( the "Lease") to Lessee, its heirs, successors and assigns, that certain land located at the Airport and identified on Exhibit A attached hereto and integrated herein and more particularly described on Exhibit B attached hereto and incorporated herein (the "Premises"). The Lease shall include all rights normally incident to the use and enjoyment of the Premises for the intended purpose, including the right to enter upon Airport Premises to access the Premises during the normal hours of operation at the Gunnison/Crested Butte Airport. In addition, subject to the provisions hereof, Lessee shall be entitled to use all other existing and future Airport facilities on the same basis as such facilities are made available to private aviation generally. The Premises shall be used and occupied by Lessee exclusively for the construction at the Airport of the Improvements (the "Hangar") described on Exhibit B.

2. Lease Term. The Lease pursuant to this Agreement shall commence upon mutual execution hereof by both Lessor and Lessee, beginning the date this agreement is made and entered into. The Lease shall continue for 20 years (the "Lease Term") unless sooner terminated as provided herein. So long as the Lessee is in full compliance with the terms of the Lease, and the Lessor has determined in its reasonable discretion that the Hangar is in good repair, the Lessee may extend the term of this Lease one time for an additional twenty (20) year period ("Twenty-Year Extension") that will commence, if at all, at the termination of the original Lease Term described above. This Lease will terminate automatically at the end of the original Lease Term or at the end of the Twenty-Year Extension if Lessee exercises that option. If Lessee holds over and remains in possession of the Premises with the consent of Lessor after expiration of the Lease Term or the Twenty-Year Extension, such holding over shall not be construed as a renewal of the Lease Term or any further extension of the Lessee's right to possession, but instead shall constitute a month to month Lease ("Month-to-Month Holdover") with rent payable to Lessor at 150% of the Lease rate then in effect, otherwise subject to all of the terms and conditions of this Agreement. The Month-to-Month Holdover is revocable by either party by giving notice of termination at least ten days prior to the end of any month.

3. Ground Rent. Lessee shall pay to Lessor ground rent ("Ground Rent") for use of the Premises. Ground Rent in the amount of \$.26 per square foot per annum based on the floor area of the hanger to be built. Ground Rent for the first year shall be payable in advance and shall be due upon the issuance of a building permit for the Hangar and prorated from the date the building permit is issued to December 31, 2006. Subsequent annual Ground Rent shall be adjusted annually by the Denver/Boulder CPI. Ground Rent shall be due and payable, whether or not Lessee receives a bill. Ground Rent shall be prorated on a daily basis for the portion of the first calendar year that Lessee begins construction of the Premises and the Lessor shall return any prepaid rent to the Lessee for any portion of a year that the Ground Lease is not in effect. Ground Rent shall be made payable to Gunnison County and shall be delivered to the County's Finance Director at Gunnison County Courthouse, 200 E. Virginia, Gunnison, CO 81230, or such other address as the County may designate in writing from time to time. Ground Rent shall be paid annually, in one lump sum, in advance, on January 1<sup>st</sup> of the calendar year the Ground Rent is due. Lessor shall attempt to notify Lessee by December 1<sup>st</sup> of every calendar year of the Ground Rent payable January 1<sup>st</sup> of the following calendar year. Any portion of the Ground Rent not paid when due shall bear interest from the due date until paid at the rate of 15% per annum. Failure of the County to notify Lessee by December 1<sup>st</sup>, or by any other date, of the Ground Rent due on January 1<sup>st</sup> shall not waive the obligation for payment, nor shall such failure delay the due date for payment of the Ground Rent. Failure to timely pay the Ground Rent shall be a default event.

4. Inconvenience During Construction. Lessee recognizes that from time to time during the term of this Lease it may be necessary for the County to initiate and carry forward extensive programs of construction, reconstruction, expansion, relocation, maintenance and repair in order that the Gunnison/Crested Butte Airport and its facilities may be suitable for volume and character of air traffic and flight activity which will require accommodation and that such construction, reconstruction, expansion, relocation, maintenance, and repair may inconvenience Lessee in its operation at the Airport. Lessee agrees that no liability shall attach to the County, its officers, agents, employees, contractors, subcontractors and representatives by reason of such inconvenience or interruption; provided, however, Lessor agrees to use its best efforts to perform such activities in a manner and at such times that will minimize interference with Lessee's use and enjoyment of the Premises.

5. Certain Obligations of Lessee.

(a) Construction of the Hangar. Lessee agrees to begin construction no later than the issuance date of the Building Permit and to complete the construction within 120 days after the date construction begins. In the event Lessee fails to begin and complete construction within the period specified above, the County shall have the right to terminate this lease pursuant to the provisions of paragraph 7. The Hangar described in Exhibit B, will be built at Lessee's sole expense and in accordance with the Gunnison/Crested Butte Regional Airport Northwest General Aviation Development Plan for Aeronautical Land use at the Airport, and Construction Guide at the Gunnison Crested Butte Regional Airport in accordance with the specifications described in Exhibit C attached hereto and incorporated herein. The hangar must meet ARIS standards. Any amendment to the construction specifications on Exhibit C shall require the prior written consent of Lessor which may be withheld in "Lessors" reasonable discretion.

(b) Approval of Plans. Lessee covenants and agrees that prior to the preparation of detailed construction plans, specifications and architectural renderings of any such building, structure, roadway, utility line, addition or improvement and their locations, relative to the Leased Premises including location of drainage, utilities and roadways will be submitted to the County's Airport Manager for approval. Lessee's plans shall meet all requirements/limitations imposed by the Federal Aviation Administration (FAA) for the type of development proposed. Lessee covenants and agrees that prior to the installation or construction of any such building, roadway, structure, utility line, addition or improvement on the Leased Premises, it shall first submit to the County for approval, final detailed construction plans and specifications and architectural renderings prepared by registered architects and engineers, and that all construction will be in accordance with such plans and specifications and the current land use development criteria established by Gunnison County, Colorado and all requirements/limitations imposed by the FAA.

(c) As-Build Drawings. Within thirty (30) days following completion of the initial construction and any subsequent additions, alterations or improvements, Lessee shall present to the County a complete set of reproducible drawings including, but not limited to, specifications and shop drawings.

(d) Maintenance of Hangar and Premises. From and after the date construction is completed on the Hangar, Lessee shall maintain the Hangar and Premises, including the roof and structural components of the Hangar, at Lessee's sole expense in a neat, clean and safe condition and in good repair, normal wear and tear excepted. Lessee shall not make structural alterations to the Hangar and/or Premises without making application, and receiving from, the Airport Manager approval in the County's reasonable discretion for such proposed structural alteration. All alterations shall be at Lessee's sole expense. In the event Lessee fails to commence any repair or maintenance of the Hangar and/or Premises required pursuant to this Agreement within thirty (30) days after written notice from Lessor requesting the repair or maintenance in question, Lessor may undertake the specified repair or maintenance for the account of Lessee, and Lessee shall promptly reimburse Lessor's actual costs and expenses incurred in connection therewith. Lessee shall follow all local, state and federal life and fire safety and environmental and other applicable codes and regulations and minimum standards. Lessee shall notify the County of all construction, reconstruction, repair, or any work whatsoever related to the Hangar and/or Premises, the name of the contractors or subcontractors performing such work, and shall defend, indemnify and hold the County Harmless at Lessee's sole expense from any claims whatsoever concerning the Hangar and/or Premises except those caused by Lessor's negligence or willful misconduct.

(e) Use of Premises. The Lessee shall use the Hangar and Premises exclusively for the storage and protection of aircraft, aircraft parts and other activities generally carried on at aircraft hangars by the Gunnison County minimum standards. Lessee may also store personal vehicles or other miscellaneous personal items owned by the Lessee. Notwithstanding anything in this Agreement to the contrary, the Lessee shall not carry on any commercial activity whatever with respect to the Hangar or Premises. The Lessee shall not use the Hangar or Premises for any activities in competition with normal fixed base operation activities conducted at the Airport by

or under concession with Lessor unless Lessee enters into a separate operating agreement with the Airport and the activity is in compliance with the Airport minimum standards. However this will not prevent the Lessee from leasing hangar space on a short term or long term basis for storage of aircraft. Lessee shall not install, operate or permit to be used at the Hangar or Premises any signs or similar advertising devices without the written approval of the Airport Manager. Additionally, Lessee shall have a fire extinguisher and any other equipment on the Hangar and Premises at all times in accordance with the appropriate life and fire safety codes.

(f) Laws and Regulations. In using the Premises, the Hangar and the Airport, Lessee shall comply with all applicable laws, regulations and rules of general applicability that may be in effect from time to time, including without limitation rules of federal, state, county and municipal governments and all applicable life, fire and safety codes. Lessee shall also fully and promptly comply with the Rules and Regulations and Minimum Standards of the Gunnison/Crested Butte Regional Airport, existing, amended or future.

(g) Utilities. Lessee shall be responsible for all utility charges, including connection fees incurred after the date hereof for utility service to the Premises. Any future utilities shall be underground, within 60 days pavement or ground disturbed in the process returned to its original condition.

(h) Insurance for Hangar and Premises. Throughout the term of the Lease, Lessee shall maintain property insurance in the amount of \$40,000 covering the Hangar and Lessee's interest in the Premises and shall provide insurance protection from fire and such other casualties as Lessor may determine, which insurance shall be in the amount of the reasonably anticipated replacement costs of the Hangar. The County shall be named as an additional insured under any insurance policy issued to Lessee at Lessee's sole cost, if any. In the event of damage or destruction to the Hangar, the proceeds of such insurance shall be applied to the repairs and/or replacement, and any excess shall be payable to Lessee. In no event shall the County be obligated to repair or replace the Hangar after damage or destruction. In any event, Lessee shall be obligated to repair and replace the Hangar after damage or destruction unless the County agrees otherwise.

(i) Ownership. Lessee shall own the Hangar

(j) Construction By County. There are no facilities to be constructed by County under this Lease. All construction will be made by Lessee.

(k) Encumbrance. Lessor's interest in the Premises may not be encumbered by Lessee and shall not be subject to any mechanic's, materialmen's or similar liens with respect to Lessee's interest in the Hangar. If any such liens are asserted against Lessor's interest in the Premises, Lessee shall promptly cause the same to be removed or shall provide Lessor with adequate security therefore. Lessee shall not encumber Lessee's interest in the Premises except in accordance with the provisions of this Lease. Any encumbrance of Lessee's interest in the Hangar permitted pursuant to this Lease shall expressly exclude any interest of Lessor in the Hangar.

(l) Taxes. The Lessee shall pay all real and personal property and other taxes that are assessed against the Hangar and/or Premises.

(m) Financing.

(i) Lessee's Right to Finance. Lessee may, at any time or from time to time mortgage the leasehold estate, so long as Lessee is in compliance with all terms, conditions, and provisions of this Lease. Such right of Lessee to mortgage the Hangar leasehold estate shall be a continuing right and shall not be deemed to be exhausted by the exercise thereof on one or more occasions. Any such mortgage shall be expressly subject to the provisions of this Lease, and only with prior written notice to Lessor and only with the consent of the Lessor which Lessor will not reasonably be withheld. No mortgage shall to any extent encumber all or any portion of Lessor's fee simple interest in the Premises.

(ii) Mortgagee's General Cure Rights. Lessor, prior to terminating this Lease or exercising any other right or remedy hereunder for a default by Lessee (as defined below), shall give each holder of a deed of trust or mortgage encumbering the Hangar leasehold estate created hereby ("Leasehold Mortgagee") written notice of the pertinent default by Lessee and thirty (30) days thereafter in which to cure the same, or, if the subject default by Lessee is of such a nature that the same cannot reasonably be cured within said thirty (30) day period, then the Leasehold Mortgagee's cure period shall be extended for so long as the Leasehold Mortgagee diligently pursues the cure to completion. Furthermore, if such default requires the Leasehold Mortgagee to be in possession to affect a cure, Leasehold Mortgagee's cure period shall be extended to afford Leasehold Mortgagee time to obtain possession of the Premises. In the event this Lease is terminated in accordance with this Lease or by provision of Law, or in the event Lessor dispossesses Lessee, Lessor shall give each Leasehold Mortgagee written notice thereof within ten (10) days after the termination or dispossession. Lessor and Lessee agree that any mutual termination, cancellation or rescission of this Lease by Lessor and Lessee shall be effective only if the same is given the prior written approval of any Leasehold Mortgagee. Provided, however, Leasehold Mortgagee shall be deemed to have approved of any mutual termination, cancellation, or rescission, if Leasehold Mortgagee has failed to approve or disapprove of said termination, cancellation, or rescission within 30 of the actual receipt of notice of the parties' intent to terminate, cancel, or rescind the Lease.

(iii) New Lease. If Lessor terminates this Lease, Lessor agrees to enter into a new lease for the Premises with any Leasehold Mortgagee or its designee, for the remainder of the term of this Lease, effective as of the date of such termination at the same rent, and otherwise upon the same terms, covenants and conditions contained herein, provided that (i) such Leasehold Mortgagee shall make written request for such new lease within thirty (30) days after the date of such termination, and (ii) such mortgagee will pay or cause to be paid to Lessor within the same period as in (i) above all sums unpaid which at such time would have

been payable under this Lease but for such termination, and shall cure all defaults of Lessee under this Lease which remain uncured as of that date to the extent the same can be reasonably cured, all other non-monetary defaults being waived by Lessor, (iii) such Leasehold Mortgagee shall pay or cause to be paid to Lessor on that date all expenses, including reasonable attorney's fees, court costs, and disbursements reasonably incurred by Lessor in connection with any such default any termination as well as in connection with the execution and delivery of such new lease, and (iv) such lease shall be made without any warranty to the Leasehold Mortgagee as to rights Lessee may continue to have or assert as to the Premises. If more than one Leasehold Mortgagee shall desire to enter into such new lease under the circumstances outlined hereinabove, the Leasehold Mortgagees in the order of the priority of their mortgages (i.e., first mortgage, second mortgage) shall have the first opportunity to do so. However, irrespective of any other provisions in this Lease to the contrary, if a Leasehold Mortgagee does not exercise its right to enter into a new lease with Lessor within the time periods and in accordance with the provisions set forth hereinabove, such Leasehold Mortgagee shall not thereafter have any rights whatsoever in this Lease or in the Premises, all interest therein having reverted to Lessor as a result of the termination of this Lease.

(iv) Casualty. In case any leasehold mortgage made by Lessee shall be in force at the time of any damage to or destruction by fire or otherwise of the Hangar, then the Leasehold Mortgagee is hereby authorized, at its sole expense, to repair or restore the Hanger or to replace the hangar under the same terms and conditions of this Lease as would be applicable in the case of a repairing, restoring or replacement by Lessee. The Leasehold Mortgagee so repairing, restoring or replacing any part of said Hangar shall, subject to compliance with all the conditions contained in this section, be subrogated to the rights of Lessee to all the insurance proceeds payable as a result of the damage or destruction, and shall be entitled to have all said insurance proceeds paid out upon architect's certificates in the same manner in every respect as if said Leasehold Mortgagee were Lessee under this Lease.

(n) Security. Lessee shall have entrances and gates to the Air Operations Area and agrees to comply with the FAA regulations, 49 CFR Part 1542, as may be amended from time to time, and TSA regulations as may be amended from time to time, which requires Lessee to control and regulate any doors, openings or entrances to the Air Operations Area. Lessee shall comply with all applicable regulations required by the federal Department of Homeland Security.

6. Conditions of Use.

(a) Lessee shall not store gasoline, solvents, explosives, flammable paints, other flammables, or other hazardous materials in the Hangar or on the premises without the prior written approval of the Airport Manager. However it is recognized and understood that fuel contained in the fuel tanks of aircraft and vehicles is permitted. The parties understand that the Airport Manager is authorized by this provision to require safety containers or other safety

measures are followed by Lessee as a condition of such approval. Written approval of the Airport Manager shall not be required for the storage of less than a total of five gallons of engine oil or other engine lubricants, hydraulic fluids, and cleaning fluids necessary and incidental to the normal use of private aircraft.

(b) Lessee shall control the conduct and demeanor of its employees, guests, and invitees in and around the Hangar and Premises and shall take all steps necessary to remove persons whom Lessor may, for good and sufficient cause, deem objectionable.

(c) Lessee shall keep the Hangar and Premises clean and free of debris at all times, and Lessee shall not place any trash or debris on the airport grounds except in containers provided for trash by the Lessor.

(d) Lessee shall not use any high wattage electrical equipment, heat lamps, or machinery in or about the Hangar. Any modification to existing wiring or the installation of additional outlets or fixtures must be in compliance with current codes. Any device the use of which requires modification to the capacity of the existing electrical system shall be deemed to be high wattage.

(e) Lessee shall not attach any hoisting or holding mechanism to any part of the Hangar or Premises or pass any mechanism over the struts or braces therein without the prior written permission of the Airport Manager, which permission shall only be granted after Lessee provides written evidence from a Colorado licensed Professional Engineer that such activity will cause no damage to the structure. For purposes of this Agreement, a hoisting or holding mechanism shall be deemed to include, but shall not be limited to, a chain-ball, block and tackle, or other hoisting or winching device. Lessee shall be responsible for any and all damage to the Hangar and Premises occasioned by such conduct, whether or not Lessee obtains the permission of the Airport Manager.

(f) Lessee shall not paint, remove, deface, modify, bend, drill, cut or otherwise alter or modify any part of the Premises or Hangar without the prior written permission of the Airport Manager, which permission shall only be granted after Lessee provides written evidence from a Colorado licensed Professional Engineer that such activity will cause no damage to the structure.

(g) Lessee shall not park or leave Aircraft or vehicles on the taxiway or on the pavement adjacent to the Hangar door in a manner that unduly interferes with or obstructs access to adjacent Hangars. Aircraft parked for more than 30 minutes in the taxiway area shall constitute an obstruction.

(h) In utilizing the Hangar and Premises, Lessee agrees to and shall comply with all applicable ordinances, resolutions, rules regulations and minimum standards established by any federal, state or local government agency.

7. Termination. Either party shall have the right to terminate the Lease in its entirety if the other party breaches any provision of this Agreement or fails to perform any obligation hereunder and if such breach or failure continues for a period of thirty (30) days after

receipt by notice from the other party specifying the breach or failure to perform in question. In the event of a non-monetary default, if it is not possible to cure the breach within thirty (30) days, the breaching party must commence work to cure the breach within thirty (30) days of receiving notice, and must diligently pursue work to cure the breach. Failure to diligently pursue curing the breach shall be grounds for termination.

8. Certain Rights and Obligations on Termination. Upon expiration or earlier termination of this Lease, Lessor shall be deemed the owner of the Hangar and any and all alterations, additions or fixtures installed in or on the Premises by Lessee, except for those which Lessor requires to be removed at the end of the Lease term. Lessee shall remove all such alterations, additions or fixtures at the end of the Lease term unless Lessor conditioned its consent upon Lessee leaving a specified alteration, addition or fixture in or on the Hangar and or Premises, in which case Lessee shall not remove such alteration, addition or fixture. Lessee shall immediately repair any damage to the Hangar and Premises caused by such removal.

9. Inspection. County's authorized representatives shall be allowed access to the Hangar and/or Premises at all reasonable times, for the purpose of examining and inspecting the Hangar and/or Premises. Except in cases of emergency, no inspection shall be made without reasonable prior notice to the Lessee. At all times, Lessee shall provide and Lessor shall have means of access to the interior of the Hangar Lessee's Hangar Complex (i.e. Key, lock combination, etc.).

10. Ingress- Egress. Lessee, its agents and servants, patrons and invitees, and its suppliers of service and furnishers of materials shall have the right of reasonable ingress to and egress from the Hangar or Premises, subject to generally applicable rules and regulations governing use of the Airport in effect from time to time.

11. Utilities. Lessee shall have the right at its sole cost to install utility and related facilities at the Airport to provide utility services to the Hangar and shall have the right to access all utilities servicing the Airport at Lessee's expense and with Lessor's permission. Lessee shall give Lessor at least thirty days prior written notice of any proposed construction together with a construction plan showing any areas outside of interior of the Hangar that may be affected by such construction. Airport Manager shall have ten days to approve or deny the construction plan based on the anticipated disruption to the current or reasonably anticipated use of the Airport, which approval shall not be unreasonably denied. If and when a construction plan is agreed upon between the Lessee and the Airport Manager, any such construction shall be conducted in a reasonable manner and in compliance with the construction plan so as to minimize the disruption of normal Airport operations. After construction, Lessee shall restore the construction site to its condition prior to construction. In exercising its rights hereunder, Lessee agrees to avoid areas which are paved or otherwise improved, whenever possible.

12. Assignment, Subletting, Change of Ownership.

(a) Lessee may, upon prior written approval of the County, which approval shall not be unreasonably withheld, assign use of Lessee's rights and obligations arising under this Agreement if Lessee transfers its ownership in the Hangar to that same party.

(b) Lessee may sublease all of or a portion of the Hangar; provided, however, the Lessee shall be obligated to notify the Airport Manager of any sublease and of the name of the sublessee and the owner, make, model, and tail number of any aircraft stored in the hangar on a monthly or longer basis. Failure to notify the Airport Manager of all subleases, the name(s) of the sublessee(s), the owner(s), make, model, and tail number of any Aircraft stored in the hangar at any time shall constitute an event of default under this Lease. The parking of Aircraft not owned by or leased by Lessee within the Hangar shall constitute a sublease except an Aircraft titled in the name of a corporation or other entity controlled by lessee shall not constitute a sublease. Any transferee, assignee, sublessee, or any person or owner of an Aircraft stored in the Hangar shall be subject to and bound by all the provisions of this Agreement.

(c) The following events shall be referred to herein as a "Transfer": (i) a transfer or conveyance of title (or any portion thereof, legal or equitable) of the Premises (or any part thereof or interest therein), (ii) the execution of a contract or agreement creating a right to title (or any portion thereof, legal or equitable) in the Premises (or any part thereof or interest therein), (iii) or an agreement granting a possessory right in the Premises (or any portion thereof), in excess of three (3) years, (iv) a sale or transfer of, or in the execution of a contract or agreement creating a right to acquire or receive, more than fifty percent (50%) of the controlling interest or more than fifty percent (50%) of the beneficial interest in the Lessee, (v) the reorganization, liquidation or dissolution of the Lessee. The County shall not consider a transfer by devise, descent or by operation of the law upon the death of a joint tenant as a Transfer.

13. Nondiscrimination and FAA Requirements. This Agreement involves the use of or access to space on, over or under real property acquired or improved pursuant to the Airport Development Aid Program and agreements with the Federal Aviation Administration and, therefore, involves activities that serve the public. Accordingly, Lessee agrees that (1) no person shall be excluded from participation in, denied benefits of, or otherwise be subjected to discrimination in the use of the Premises on the grounds of race, color, physical or mental handicap or national origin; (2) that in constructing any improvements or furnishings services at the Premises, no person shall be excluded from participation in, denied benefits of, or otherwise be subjected to discrimination on the grounds of race, color or national origin; and (3) that Lessee shall use Premises in compliance with all other requirements imposed by or pursuant to applicable Department of Transportation regulations. The failure to remedy any breaches of any of the above non-discrimination covenants shall constitute cause for Lessor to terminate this Agreement under the provisions of paragraph 7.

14. Non-Waiver. Failure or delay on the part of either party to complain of any action or non-action on the part of the other shall not be deemed to be a waiver of their respective rights hereunder. The consent or approval by either party to or of any action by the other requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar action. All waivers must be in writing and signed by the party against whom such waiver is sought to be enforced.

15. Notices. Notices to Lessor provided for herein shall be deemed received when actually received by the following individuals:

Airport Manager  
Gunnison/Crested Butte Regional Airport  
519 W. Rio Grande  
Gunnison, CO 81230

and

County Manager  
Gunnison County  
200 E. Virginia  
Gunnison, CO 81230

Notices to the Lessee will be deemed received:

(a) if personally received by the individual named below, or

(b) three days after being sent by certified mail, postage prepaid, addressed to:

Douglas and Julee Nelson  
317 S. Colorado  
Gunnison, Colorado 81230

or to such other addresses as the Lessee may designate in writing from time to time.

16. Paragraph Headings. The paragraph headings contained herein are for convenience of reference and are not intended to define or limit the scope of any provision of this Agreement.

17. Invalid Provisions. In the event any covenant, condition or provision contained herein is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained; provided that the invalidity of such covenant, condition or provision does not materially prejudice either Lessor or Lessee in their respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

18. Attorneys' Fees. In the event of litigation or other proceedings to enforce or interpret this Agreement, each party shall be required to pay its own fees and costs and expenses, including its own attorneys' fees, and there shall be no award of fees to the putative "prevailing party."

19. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, heirs, legal representatives and assigns.

20. Estoppel Certificate. At any time and from time to time either party shall execute, acknowledge and deliver to the other a written statement certifying that this Agreement is in effect without modification of the provisions hereof (or if there have been modifications, a statement thereof), and that neither party is in default hereunder (or if any such default exists, a description thereof). Any such certificate shall be delivered within ten days after request is made therefore.

21. Miscellaneous. In this Agreement, the singular shall include the plural; the singular in reference to one gender shall include the other and the neuter, as appropriate. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Any action concerning this Agreement may be brought in Gunnison County, Colorado.

22. Airport Closure – Mandatory Buyback Schedule. In the event the Lessor permanently terminates the use of the Airport for general aviation purposes with no intent to reopen the Airport for general aviation purposes, the parties agree that the Lessee shall sell and the Lessor shall buy the Hangar from the owner based on the following formula:

The Fair Market Value of the Hanger on the date of receiving the Certificate of Occupancy shall constitute the Purchase Price and will be multiplied by a fraction, the numerator of which is the number of years remaining on the Ground Lease (assuming a Twenty-year lease), and the denominator of which is 20.

For example, if the Initial Purchase Price were \$200,000, and the County closed the Airport with 10 years remaining on the 20-year lease, the Lessee would be required to sell and the County would be required to buy the Hangar for \$100,000 ( $\$200,000 \times 10 \div 20 = \$100,000$ ).

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed under their respective seals on the day and year first written above.

LESSOR:



ATTEST Kelly Balch  
Kelly Balch, Deputy Clerk

GUNNISON COUNTY,

By:

[Signature]  
Jim Starr, Chairperson  
Airport Manager

LESSEE:

By:

[Signature]  
Douglas T. Nelson

By:

[Signature]  
Julie C. Nelson

ATTEST:

Victoria Roach Archuleta



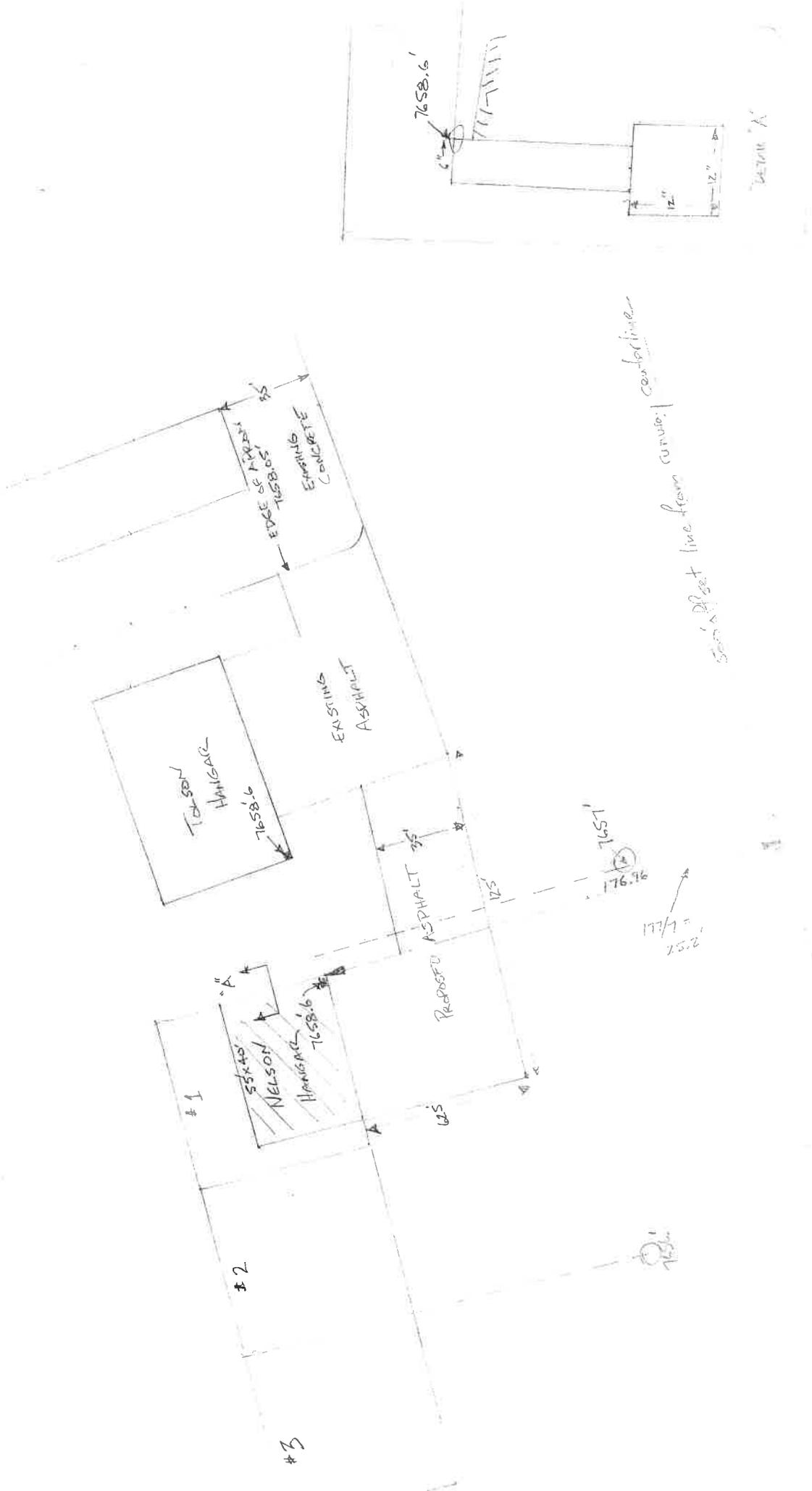


EXHIBIT B  
 Nelson Ground Lease Agreement

EXHIBIT C

HANGAR SPECIFICATIONS

Hangar Size: 55' x 40'

Building Manufactured by: ATY Building Systems, Inc.  
7076 S. Alton Way Unit #G1  
Englewood, CO 80112

Snow Load: 57.14 psf

Wind Velocity: 100 mph

Color:

Hangar: Roof: Galvaume  
Walls: Oldtown Gray  
Trim: Oldtown Gray

Hangar Number: 10 (Ten) Located with Airport approval

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

**Agenda Item:** Contract for legal services with Sherman & Howard

**Action Requested:** Motion

**Parties to the Agreement:**

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

Contract for legal services with Sherman & Howard LLC related to potential equipment lease-purchase agreement

**Fiscal Impact:**

**Submitted by:** Donita Bishop

**Submitter's Email Address:** dbishop@gunnisoncounty.org

**Finance Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\jguerra

Discharge Date: 5/2/2022

**County Attorney Review:**

Required

Not Required

Comments:

Reviewed by:

Discharge Date: 5/2/2022

Certificate of Insurance Required

Yes  No

**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 5/2/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted:

Agenda Date: 5/3/2022

# Sherman & Howard

675 Fifteenth Street, Suite 2300, Denver, Colorado 80202  
Telephone: 303.297.2900 [shermanhoward.com](http://shermanhoward.com)

**David K. Lucas**  
**Direct Dial Number: (303) 299-8134**  
**E-mail: [dlucas@shermanhoward.com](mailto:dlucas@shermanhoward.com)**

May 2, 2022

County of Gunnison, Colorado  
200 East Virginia Avenue  
Gunnison, Colorado 81230

Attention: Matthew Birnie

Re: Tax-Exempt Master Equipment Lease Purchase Agreement with Holman Capital Corporation

Dear Members of the Board:

We are pleased to confirm our engagement as special counsel to the County of Gunnison, Colorado (the "County"). We appreciate your confidence in us and will do our best to continue to merit it.

As you know, we have performed bond counsel services for you for many years. Nevertheless, in establishing our attorney-client relationship for this new transaction, current practice standards dictate that we set forth in writing (and in some detail) the elements of our mutual understanding. While some of the matters covered in this engagement letter will never be relevant or of concern between us, we hope you will understand that as attorneys and counselors it is our natural function to try to make communication clear and complete, and to anticipate and resolve questions before they arise. We also believe that the performance of our services may require your effort and cooperation. Consequently, the better we each understand our respective roles, responsibilities and contributions, the more efficient, effective and economical our work for you can be.

## **Personnel**

This letter sets forth the role we propose to serve and the responsibilities we propose to assume as special counsel to the County in connection with a Master Equipment Lease-Purchase Agreement (the "Lease") with Holman Capital Corporation (the "Company") to finance certain equipment denoted in Exhibit A to the Lease. We understand that the Board of County Commissioners has authorized the execution of this letter. David Lucas will be principally responsible for the work performed by Sherman & Howard L.L.C. on your behalf. Where appropriate, certain tasks may be performed by other attorneys or paralegals, including

Luke O’Keefe. At all times, however, David Lucas will coordinate, review, and approve all work completed for the County.

### **Scope of Employment**

As your bond counsel, we will: examine applicable law; consult with the parties to the transaction prior to the execution of the Lease; and review all documentation prepared by the Company with respect to the Lease. **We understand that we are not being asked to render an opinion regarding the validity of the Lease or the exclusion of interest on the Lease from federal gross income.**

Our services are limited to those contracted for explicitly herein; the County’s execution of this letter constitutes an acknowledgment of those limitations. Specifically, but without implied limitation, our responsibilities do not include any representation by Sherman & Howard L.L.C. in connection with any IRS audit or any litigation involving the County or the Lease, or any other matter. Neither do we assume responsibility for the preparation of any collateral documents (*e.g.*, environmental impact statements) which are to be filed with any state, federal or other regulatory agency. Nor do our services include financial advice (including financial advice about the structure of the Lease) or advice on the investment of funds related to the Lease.

### **Representation of the County**

In performing our services, the County will be our client and an attorney-client relationship will exist between us. We will represent the interests of the County rather than the Board of County Commissioners or its individual members, or the County’s employees. We will work closely with the County’s general counsel and will rely on the opinion of the general counsel with regard to specific matters, including pending litigation. We assume that other parties to the transaction will retain such counsel as they deem necessary and appropriate to represent their interests in this transaction.

### **Conflicts of Interest**

As you may know, our firm regularly represents other issuers of municipal bonds or other securities as well as financial institutions such as underwriters, credit enhancers and banks that act as paying agents or trustees in other unrelated public finance transactions. Further, Sherman & Howard is a large firm with a broad transactional practice in business, real estate and finance matters. We do not believe that there is a significant risk that any of these representations will materially limit our ability to provide competent and diligent representation of the County in connection with the Lease, even though such representations may be characterized as adverse under the Colorado Rules of Professional Conduct (the “Rules”). In any event, during the term of our engagement hereunder, we will not accept a representation of any of these parties in any matter in which the County is an adverse party. However, pursuant to the Rules, we do ask that you consent to our representation of such parties in transactions that do not

directly or indirectly involve the County. Your execution of this letter will signify the County's prospective consent to such adverse representations in matters unrelated to the Lease while we are serving as the County's bond counsel hereunder. We appreciate your consideration of these issues and are available to discuss any questions with you.

### **Fee Arrangement**

We will perform our services hereunder at our standard hourly rates, subject to an overall cap of \$5,000. We will bill our services at completion (i.e., upon execution and delivery of the Lease); provided the Lease is executed and delivered by August 1, 2022. If the Lease is not executed and delivered by August 1, 2022, we will begin billing monthly up to the amount of our overall cap. Mr. Lucas' hourly rate is \$645 and Mr. O'Keefe's hourly rate is \$320.

### **Termination of Engagement**

Upon execution and delivery of the Lease, our responsibilities as bond counsel will terminate with respect to this financing, and our representation of the County and the attorney-client relationship created by this engagement letter will be concluded. Should the County seek the advice of bond counsel on a post-closing matter or seek other, additional legal services, we would be happy to discuss the nature and extent of our separate engagement at that time.

### **Document Retention**

At or within a reasonable period after Closing, we will review the file to determine what materials should be retained as a record of our representation and those that are no longer needed. We will provide you with a copy of the customary transcript of documents after Closing and will return any original documents obtained from you (if a copy is not included in the transcript). We will retain for several years a copy of the transcript and such other materials as correspondence, final substantive work product, documents obtained from you, and documents obtained from third parties. We will not retain such materials as duplicates of the above-described material, or drafts and notes that do not appear needed any longer.

Ordinarily the firm will keep the retained materials until seven years after the final maturity of the Lease. At the end of that time, unless you advise us in writing to the contrary, we will destroy the bulk of the file. If the file is especially voluminous, we may destroy all or portions of it earlier, as our storage facilities are limited. If you prefer other arrangements for retention or disposition of our files in this matter, please advise us in writing.

**Approval**

If the foregoing terms of this engagement are acceptable to you, please so indicate by returning the duplicate original of this letter signed by the officer so authorized, retaining the other original for your files.

We appreciate this opportunity to serve as your bond counsel and special counsel on this financing and look forward to a mutually satisfactory and beneficial relationship.

SHERMAN & HOWARD L.L.C.

By:  \_\_\_\_\_

ACCEPTED AND APPROVED:

COUNTY OF GUNNISON, COLORADO

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

cc: Matthew Hoyt, Esq.

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

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**Agenda Item:** Intergovernmental Agreement Regarding Undesirable Plant Management 2022

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**Action Requested:** Motion

**Parties to the Agreement:**

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

This is the standard agreement used with non-federal agencies. It was reviewed and edited by the County Attorney

**Fiscal Impact:**

**Submitted by:** Marlene D. Crosby

**Submitter's Email Address:** mcrosby@gunnisoncounty.org

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**Finance Review:**

Required

Not Required

Comments:

Reviewed by:

Discharge Date:

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**County Attorney Review:**

Required

Not Required

Comments:

Appears legally sufficient. ASFR 5.2.22

Reviewed by: GUNCOUNTY1\dbishop

Discharge Date: 5/2/2022

Certificate of Insurance Required

Yes  No

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**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 5/2/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted: DCM Report

Agenda Date: 5/3/2022

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**INTERGOVERNMENTAL AGREEMENT  
REGARDING UNDESIRABLE PLANT MANAGEMENT  
2022**

THIS AGREEMENT, made and entered this \_\_\_ day of \_\_\_\_\_, 2022, by and among the Board of County Commissioners of Gunnison County ("Gunnison County"), the Board of County Commissioners of Saguache County ("Saguache County"), the Board of County Commissioners of Hinsdale County ("Hinsdale County"), the Town of Crested Butte, the Town of Mt. Crested Butte, City of Gunnison, and the Town of Pitkin all of which are either a County, or a statutory or home rule city, or a statutory town or home rule town, or a territorial charter municipality, and all of which are organized under and by virtue of the laws of the State of Colorado,

WITNESSETH:

WHEREAS, each of the party counties is obligated pursuant to C.R.S. § 35-5.5-101 *et seq.* (hereinafter referred to as the "Act") to adopt a noxious weed management plan for all of the unincorporated lands within the respective counties; and

WHEREAS, each of the party cities and towns is obligated pursuant to the Act to adopt a noxious weed management plan for all lands within the territorial limits of the respective municipalities; and

WHEREAS, each of the parties has other specified powers, authorities and obligations pursuant to the Act including but not limited to formation of undesirable plant management advisory commissions; and

WHEREAS, pursuant to C.R.S. 29-1-201 *et seq.*, and C.R.S. § 29-20-101 *et seq.*, C.R.S. § 35-5.5-105(3) and C.R.S. § 35-5.5-106(3) and other applicable law, each of the parties herein may cooperate with another party herein or other parties herein for the exercise or satisfaction of any or all of the powers, authorities and obligations granted or imposed by C.R.S. § 35-5.5-101 *et seq.*; and

WHEREAS, it is to the mutual advantage and benefit of the parties hereto that the parties agree to cooperate among themselves for the exercise or satisfaction of any or all of the powers, authorities and obligations imposed by the Act;

NOW, THEREFORE, in consideration of their mutual covenants, the parties agree as follows:

1. This Intergovernmental Agreement shall govern the relationship between the parties for the management of undesirable plants within the entirety of the Gunnison River Basin Watershed as follows:
2. a. Each of the parties hereby jointly and severally appoints the Gunnison Watershed Weed Commission, a.k.a Gunnison Basin Weed Commission (hereinafter referred to as the "Commission") as the Commission required by the Act for the Gunnison River Basin Watershed.

b. Each of the parties hereby jointly and severally appoints the Board of County Commissioners of Gunnison County as the local authority required by the Act for the Gunnison River Basin Watershed.

c. The membership of the Commission shall be:

(i) Lorraine Rup (Gunnison County Representative);

(ii) \_\_\_\_\_ (Gunnison County Representative);

(iii) Tom Walker (Appointed by Gunnison County);

(iv) \_\_\_\_\_ (Vacancy, appointed by Gunnison County);

(v) Alice Curry (Hinsdale County Representative);

(vi) \_\_\_\_\_ (Saguache County Representative);

(vii) Ex-officio Representatives from:

Bureau of Land Management, US Forest Service, Natural Resource Conservation Service, National Park Service, City of Gunnison, Colorado Department of Parks & Wildlife, Town of Mt. Crested Butte, Town of Crested Butte, CSU Extension, CB Land Trust, Rocky Mountain Biological Lab, Gunnison Conservation District, and Colorado Department of Transportation.

Each Gunnison County representative may be succeeded by a Gunnison County representative; the Saguache County representative and the Hinsdale County representative may be succeeded by a representative from their respective county.

In the case of a tie vote, the issue shall be decided by the Board of County Commissioners of Gunnison County.

d. The Commission shall elect a Chairman and Secretary. A majority of the members of the Commission shall constitute a quorum for the conduct of business.

e. The Commission shall have all of the powers and duties specified in C.R.S. 35-5.5-107(4)(a), (b) and (c). In the event of any conflict between this Agreement and C.R.S. § 35-5.5-107, the latter shall control.

f. The Commission shall consult with and report to each of the parties regarding the annual budget required to perform this Intergovernmental Agreement, the management plan, management criteria, management practice and any other major decision or recommendation of the Commission. Such consultation and reporting shall not necessarily be in person but may be in writing or by telephone.

3. The parties hereto authorize Gunnison County to be the sole and final authority to approve, modify and supervise the day-to-day conduct and provision of services required by this Intergovernmental Agreement including, but not limited to, the authority to select, contract with, and compensate the personnel, including administrative personnel, public or private, who shall perform the work necessary to accomplish the ends of the Act. Each of the parties expressly authorizes Gunnison County to enter into such contracts and

provide such compensation on behalf of that respective party providing that such actions do not require expenditures exceeding the annual budget.

4. Gunnison County will furnish to each of the parties an annual report of activities, costs and expenses of personnel, including administrative personnel, who perform the work necessary to accomplish the ends of the Act.
5. Gunnison County will charge a rate of \$117.50/hour for noxious weed management, including all associated labor, equipment, materials, and administration. Each of the parties agrees to pay or to reimburse Gunnison County, no later than December 31, 2022, for a share of such activities, costs and expenses as follows:

Hinsdale County -	\$ 1,880.00 (16 hours)
Saguache County -	\$ 3,055.00 (26 hours)
Town of Crested Butte -	\$ 12,913.00 (110 hours)
Town of Mt. Crested Butte -	\$ 14,707.00 (126 hours)
City of Gunnison -	\$ 1,410.00 (12 hours)
Town of Pitkin -	\$ 353.00 (3 hours)

Each party shall be ultimately and solely responsible for all additional costs required for control of undesirable plants pursuant to C.R.S. 35-5.5-109 within the jurisdiction of that party. If scheduling allows, Gunnison County may be available for weed management work, in addition to the hours listed above, at the same hourly rate.

Payments to Gunnison County shall be in the form acceptable to Gunnison County.

6. No provision of this Agreement is or shall be construed to be a waiver of sovereign immunity pursuant to C.R.S. § 24-10-104. Each party hereto shall be responsible to defend itself, at its sole cost, in any action or claim arising from or under any activity pursuant to this Agreement. Neither Gunnison County nor any of its officers, employees or agents shall have any liability whatsoever under this Agreement different in any kind or nature whatsoever than any other party or officer, employee or agent of any other party.
7. The term of this Agreement shall be from January 1, 2022 through December 31, 2022, with work performed during May 1 through October 30, 2022. Any party may terminate its participation in this Agreement upon ninety (90) days written notice, by certified mail, to each of the other participating parties. Such termination shall require a cessation of activity under this Agreement within the jurisdiction of the terminating party but shall not require, in any circumstance, a return or reimbursement to the terminating party of moneys already paid pursuant to paragraph 5 above.
8. This Agreement may be signed in a series of originals; that is, not all of the parties are required to sign a single original. This Agreement becomes effective to a particular party upon its signature to an original.

**BOARD OF COUNTY COMMISSIONERS  
OF GUNNISON COUNTY**

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Deputy Clerk

Date: \_\_\_\_\_

**BOARD OF COUNTY COMMISSIONERS  
OF SAGUACHE COUNTY**

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Deputy Clerk

Date: \_\_\_\_\_

**TOWN OF MT. CRESTED BUTTE**

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Deputy Clerk

Date: \_\_\_\_\_

**TOWN OF PITKIN**

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Deputy Clerk

Date: \_\_\_\_\_

**BOARD OF COUNTY COMMISSIONERS  
OF HINSDALE COUNTY**

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Deputy Clerk

Date: \_\_\_\_\_

**TOWN OF CRESTED BUTTE**

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Deputy Clerk

Date: \_\_\_\_\_

**CITY OF GUNNISON**

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Deputy Clerk

Date: \_\_\_\_\_

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

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**Agenda Item:** Resolution; Further Extending Resolution No. 2021-

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**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:**

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

The Commissioners will consider an extension of the use of ATV/OHV/UTV's on a section of CR #3.

**Fiscal Impact:**

**Submitted by:** Marlene D. Crosby

**Submitter's Email Address:** mcrosby@gunnisoncounty.org

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**Finance Review:**

Required

Not Required

Comments:

Reviewed by:

Discharge Date:

---

**County Attorney Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 4/29/2022

Certificate of Insurance Required

Yes  No

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**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 4/29/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted: 20

Agenda Date: 5/3/2022

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BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF GUNNISON, COLORADO

RESOLUTION NO: 22-\_\_\_\_

A RESOLUTION FURTHER EXTENDING RESOLUTION NO. 21-12 AND  
AUTHORIZING ATV, OHV AND UTV USE ON A CERTAIN PORTION OF COUNTY  
ROAD #3 UNTIL \_\_\_\_\_, 2022

WHEREAS, the Board understands that the public has historically used all-terrain vehicles (“ATVs”), off-highway vehicles (“OHVs”) and utility terrain vehicles (“UTVs”) on that certain portion of County Road #3 a/k/a Marble Road, beginning at the town limits of the Town of Marble at Beaver Lake to the top of that area known as “Daniel’s Hill”, a distance of approximately one and a half (1.5) miles, and otherwise described as the intersection of Forest Service Roads 314 and 315; and

WHEREAS, on May 14, 2018, the Board of County Commissioners of the County of Gunnison, Colorado (“Board”) adopted Resolution No. 18-14, *A Resolution Repealing Resolution No. 15-15 and Approving Use of ATV’s, OHV’s and UTV’s on a Segment of County Road #3*; and

WHEREAS, Resolution No. 18-14 was recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on May 15, 2018, bearing Reception No.653186; and

WHEREAS, Resolution No. 18-14 provided that use of ATVs, OHVs and UTVs shall be and hereby is authorized on that certain portion of County Road #3 a/k/a Marble Road, beginning at the town limits of the Town of Marble at Beaver Lake to the bottom of that area known as “Daniel’s Hill”, otherwise described as the intersection of Forest Service Roads 314 and 315; and

WHEREAS, on May 18, 2021, the Board adopted Resolution No. 21-12, providing that use of ATVs, OHVs and UTVs shall be and hereby is authorized on that certain portion of County Road #3 a/k/a Marble Road, beginning at the municipal limits of the Town of Marble at Beaver Lake to the bottom of that area known as “Daniel’s Hill”, otherwise described as the intersection of Forest Service Roads 314 and 315; and

WHEREAS, by its express terms, Resolution No. 21-12 was set to expire on December 31, 2021; and

WHEREAS, on January 4, 2022, the Board adopted Resolution No. 22-1, which further extended Resolution No. 21-12 until May 3, 2022; and

WHEREAS, since the adoption of Resolution No. 21-12, the Board and the County have collaborated with the Town of Marble, motorized users, the United States Forest Service, proximate property owners and other stakeholders to analyze and address issues

surrounding the continued use of ATVs, OHVs and UTVs on that certain portion of County Road #3; and

WHEREAS, although progress has been made, the aforementioned collaboration remains incomplete; and

WHEREAS, upon any expiration of Resolution No. 21-12, ATVs, OHVs and UTVs will no longer be allowed on the subject County road; and

WHEREAS, the Board desires for the aforementioned process to continue into this year so that the Board may fully analyze and address that process and the efforts surrounding that process; and

WHEREAS, on December 21, 2021, the Board adopted Resolution No. 21-44, temporarily extending Resolution No. 21-12 until January 4, 2022;

WHEREAS, in light of the foregoing considerations and to afford the full Board an opportunity to consider the issues surrounding OHV use on County Road 3, the Board desires to further extend Resolution No. 21-12;

WHEREAS, Col. Rev. Stat. § 33-14.5-108(1)(f) prohibits the use of ATVs, OHVs and UTVs on County roads unless expressly authorized by the County; and

WHEREAS, pursuant to Col. Rev. Stat. §18-9-117(1)(f), the Board has the authority to adopt rules and regulations for use of ATVs, OHVs and UTVs as to place, time and manner of use; and

WHEREAS, continued use of ATVs, OHVs and UTVs on that certain portion of County Road #3 described in this Resolution remains in the best interests of the public; and

WHEREAS, the Board desires to clarify its longstanding intent to continue to permit use of ATVs, OHVs and UTVs to the top of Daniels Hill, at least during the term of this and previous Resolutions enacted by the Board; and

WHEREAS, the public is reminded to comply with all applicable Federal, state and local laws regarding the registration, licensing and use of ATVs, OHVs and UTVs in Colorado and particularly in Gunnison County; and

WHEREAS, the public is reminded and encouraged to operate ATVs, OHVs and UTVs in a legal, safe, courteous, and responsible manner; and

WHEREAS, in order to allow for continued, unimpeded access to residences along County Road 3, the public is reminded that the top of Daniels Hill lacks parking for motor vehicles and therefore users should not attempt to park automobiles (including snow-tracked vehicles) at that location;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of the County of Gunnison, Colorado, that:

1. Resolution No. 21-12, *A Resolution Repealing Resolution No. 18-14 and Approving Use of ATV's, OHV's and UTV's on a Segment of County Road #3* recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on May 18, 2021, shall be and hereby is amended and further extended to remain in full force and effect until midnight Mountain Time \_\_\_\_\_, as which point both that Resolution and this one shall expire and no longer remain in effect, unless extended by further Resolution of this Board; and

2. Subject to Paragraph 1 above, the use of ATVs, OHVs and UTVs is and continues to be authorized on that certain portion of County Road #3 a/k/a Marble Road, beginning at the town limits of the Town of Marble at Beaver Lake to the top of that area known as "Daniel's Hill", a distance of approximately 1.5 miles, and otherwise described as the intersection of Forest Service Roads 314 and 315 until midnight Mountain Time \_\_\_\_\_.

INTRODUCED by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF GUNNISON, COLORADO

By \_\_\_\_\_  
Jonathan Houck, Chairperson

By \_\_\_\_\_  
Roland Mason, Vice Chairperson

By \_\_\_\_\_  
Elizabeth Smith, Commissioner

ATTEST:

\_\_\_\_\_  
Deputy County Clerk

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

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**Agenda Item:** Community Development; Revisions to 2022 Fee Sched

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**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:**

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

Review and action of development review fees and associated resolution

**Fiscal Impact:**

**Submitted by:** Cathie Pagano

**Submitter's Email Address:** cpagano@gunnisoncounty.org

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**Finance Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\jguerra

Discharge Date: 4/28/2022

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**County Attorney Review:**

Required

Not Required

Comments:

Appears legally sufficient. MRH

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 4/27/2022

Certificate of Insurance Required

Yes  No

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**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 4/28/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted: 5

Agenda Date: 5/3/2022

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**GUNNISON COUNTY LAND USE CHANGE FEE SCHEDULE/ PERMIT FEES**  
**Adopted by the Gunnison County Board of Commissioners January 24, 2000, amended \_\_\_\_\_, 2022**  
**and adjusted annually per BOCC Resolution \_\_\_\_\_**  
**2022**

TYPE OF LAND USE	FEE
<p align="center">Website: <a href="https://www.gunnisoncounty.org/144/Community-and-Economic-Development">https://www.gunnisoncounty.org/144/Community-and-Economic-Development</a>                      Email: <a href="mailto:planning@gunnisoncounty.org">planning@gunnisoncounty.org</a></p> <p>*Not all permit applications are required to be reviewed by all agencies; unique circumstances of a parcel or of a proposed land use change or activity may require additional expert review; charges are imposed only when those reviews are required.</p>	
<b>ADMINISTRATIVE REVIEW</b>	<ul style="list-style-type: none"> <li>• \$1,018</li> <li>• Publication Fees for public notices (if required)</li> </ul>
<b>MINOR IMPACT:</b> Any or all of the following, as applicable: <ul style="list-style-type: none"> <li>• Public Works review:*</li> <li>• Environmental Health Office review:*</li> <li>• Colorado Geologic Survey Review:*</li>   <li>• Consulting engineer's review:*</li> </ul>	<ul style="list-style-type: none"> <li>• \$2,700</li>   <li>• \$679</li> <li>• \$110</li> <li>• Base fees + per hour fee as necessary, assessed by that agency</li> <li>• Base fees + per hour fee as necessary;</li> <li>• Publication Fees for public notices</li> </ul>
<ul style="list-style-type: none"> <li>• Minor subdivision:</li> </ul>	<ul style="list-style-type: none"> <li>• \$65/lot upon permit approval</li> <li>• Actual costs of plat recording</li> </ul>
<ul style="list-style-type: none"> <li>• Minor commercial or industrial space</li> </ul>	<ul style="list-style-type: none"> <li>• \$120/1,000 square feet of building; \$305/acre when no structure is involved</li> </ul>
<ul style="list-style-type: none"> <li>• Minor mining operation:</li> </ul>	<ul style="list-style-type: none"> <li>• \$305/affected acre + \$305/1,000 square feet of building space</li> </ul>
<ul style="list-style-type: none"> <li>• Road design to serve exempt subdivisions</li> </ul>	<ul style="list-style-type: none"> <li>• \$65/per dwelling unit to be served by the proposed road (If more than one dwelling unit is allowed by covenant or other similar means, total fee is based upon total #of dwelling units); additional fees may also be required for additional review by the Public Works Department</li> </ul>
<ul style="list-style-type: none"> <li>• Development Improvement Agreement*</li> </ul>	<ul style="list-style-type: none"> <li>• \$500</li> </ul>
<b>MAJOR IMPACT:</b>	
<b>SKETCH PLAN:</b> Payment is to be made at time of submittal: <ul style="list-style-type: none"> <li>• Major Impact Subdivision:</li>   <li>• Major Impact Commercial or Industrial space:</li> <li>• Major Mining operation:</li>   <li>• Public Works review:*</li> <li>• Environmental Health Office review:*</li>   <li>• Colorado Geologic Survey Review:*</li> <li>• Consulting engineer's review:*</li> </ul>	<ul style="list-style-type: none"> <li>• \$4,000</li>   <li>• + Publication Fees for public hearing(s) notice(s), and:</li> <li>• \$65/lot</li> <li>• \$120/1,000 square feet of building space; \$305/acre when no structure is involved</li> <li>• \$305/surface-disturbed acres + \$305/1,000 square feet of building space</li> <li>• \$882</li> <li>• \$110</li> <li>• Base fees + per hour fee as necessary, assessed by that agency + per hour</li> <li>• Base fees + per hour fee as necessary, assessed by</li> </ul>

Exhibit A

<p><b>PRELIMINARY PLAN:</b> Payment to be made at time of submittal:</p> <ul style="list-style-type: none"> <li>• Major Impact Subdivision:</li>   <li>• Major Impact Commercial or Industrial space:</li>   <li>• Major Mining operation:</li> </ul> <p>Additional fees, as required for specific plans:</p> <ul style="list-style-type: none"> <li>• Public Works review:*</li> <li>• Environmental Health Office review:*</li> <li>• Colorado Geologic Survey Review:*</li>   <li>• Consulting engineer's review:*</li> </ul>	<ul style="list-style-type: none"> <li>• \$5,400</li>   <li>• + Publication Fees for public hearing(s) notice(s) and: • \$120/lot</li>   <li>• \$245/1,000 square feet of building space; \$400/acre when no structure is involved</li>   <li>• \$420/surface-disturbed + \$305/1,000 square feet of building space</li>   <li>• \$1,696</li> <li>• \$305</li> <li>• Base fees + per hour fee as necessary, assessed by that agency</li> <li>• Base fees + per hour fee as necessary</li> </ul>
<p><b>FINAL PLANS:</b> Payment to be made at time of submittal:</p> <ul style="list-style-type: none"> <li>• Final plan that requires a Development Improvement agreement</li> <li>• Final plan that does not require a Development Improvement Agreement</li>   <li>• If subdivision, plat recording</li> </ul>	<ul style="list-style-type: none"> <li>• \$850</li>   <li>• \$500</li> <li>• \$480</li>   <li>• Actual costs of plat recording</li> </ul>
<p><b>Final plat, condominiums and townhomes:</b></p>	<ul style="list-style-type: none"> <li>• \$120 + costs of plat recording (no additional application submittal fee)</li> </ul>
<p><b>Minor amendments to previously approved Sketch or Preliminary plans</b>, including time extensions. If found to be a significant amendment, the fee will be applied toward the applicable new Sketch or Preliminary Plan fee.</p>	<ul style="list-style-type: none"> <li>• \$500</li> </ul>
<p><b>Appeal of Staff Decision to Planning Commission:</b></p>	<ul style="list-style-type: none"> <li>• \$500</li> </ul>
<b>OTHER RELATED GENERAL LAND USE FEES</b>	
<p><b>Lot Cluster Agreement</b></p>	<p>\$1,018 + costs of recording of agreement</p>
<p><b>Long Term Camping Permit</b></p>	<p>\$300</p>
<p><b>Outdoor Vending Permit</b></p>	<p>\$300</p>
<p><b>Street name change:</b></p>	<p>\$120 + actual costs of public hearing notice and replat recording</p>
<p><b>Special Events Permit:</b></p>	<p>\$200</p>
<p><b>Sign Permit</b></p>	<p>\$500</p>
<p><b>Sign Waiver Application</b></p>	<p>\$1,018</p>

Exhibit B

<b>Gunnison County Onsite Wastewater Treatment System Regulations                      Fee Schedule</b> Adopted by the Gunnison County Board of Commissioner on _____, 2022 at Resolution No. and adjusted annually per that Resolution.			
	NEW SYSTEM	REPAIR	ALTERATION OR EXPANSION
<b>THREE OR LESS BEDROOMS:</b>			
Single family residential	\$986, includes two inspections. Additional inspections \$210 each.	\$609, includes two inspections. Additional inspections \$210 each. \$345, tank repair/replacement only, includes one inspection.	\$763, includes two inspections. Additional inspections \$210 each.
<b>FOUR OR MORE BEDROOMS:</b>			
1. Single family residential 2. Multiple family residential	\$986, includes two inspections. Additional inspections \$210 each. \$986 per dwelling unit, includes two inspections. Additional inspections \$210 each.	\$609, includes two inspections. Additional inspections \$210 each.	\$763, includes two inspections. Additional inspections \$210 each.
<b>COMMERCIAL:</b>			
	\$1,085, includes two inspection. Additional Inspection \$210 each.	\$609, includes two inspections. Additional inspections \$210 each.	\$609, includes two inspections. Additional inspections \$210 each.
<b>OTHER:</b>			
Site inspection for Land Use Change Permit application review	\$235 per inspection, includes inspection and report.	N/A	N/A
Variance request and appeal of denial through Environmental Health Board review	\$1,447 per variance and appeal application	N/A	N/A
Review of Application for Transfer of Title Acceptance Document	\$60, if application is incomplete, fee will be charged again upon resubmission	N/A	N/A

Other Related Fees	
System Cleaner <i>New</i> license fee	\$60
System Cleaner Annual <i>Renewal</i> license fee	\$40
System Installer <i>New</i> license fee	\$100
System Installer Annual <i>Renewal</i> license fee	\$40
State Surcharge Fee At Issuance of Permit	\$20
Renewable Permit Fee	\$50

**BOARD OF COUNTY COMMISSIONERS  
OF GUNNISON COUNTY  
RESOLUTION NO. 22-\_\_\_**

**A RESOLUTION ADOPTING AN AMENDED SCHEDULE OF FEES FOR THE  
COMMUNITY DEVELOPMENT DEPARTMENT PERMIT APPLICATIONS**

**WHEREAS**, pursuant to the Gunnison County *Land Use Resolution*, the *International Building Code*, and the Gunnison County *Onsite Wastewater Treatment System Regulations*, the Board of County Commissioners is authorized to set and amend the Community Development Department's permit application fees in order to compensate the County for the cost of review and processing of permit applications;

**WHEREAS**, Community Development staff has provided the Board of County Commissioners a cost and revenue analysis in a report dated March 7, 2022 titled "Community Development Fees." The report includes analysis of the fees for land use change permits, building permits, and onsite wastewater treatment system permits;

**WHEREAS**; Section 3-109: C. *Application and Review Fees* of the Gunnison County *Land Use Resolution* states: "In order to compensate the County for the cost of reviewing and processing applications for land use change permits, each applicant shall pay the fees, as shown in a schedule of fees charged for permits issued by the Community Development Department, adopted and amended from time to time by the Board. The fee schedule is designed to make the amount of the fee proportional to the amount of expense likely to be incurred by the County in reviewing and processing the application[;]" and

**WHEREAS**, the Gunnison County Board of Commissioners in Resolution No. 17-23 recorded in the office of the Gunnison County Clerk and Recorder did adopt the 2015 editions of the "International Building Code," the "International Residential Code," the "International Mechanical Code," the "International Fuel Gas Code," and the "International Energy Conservation Code," with amendments including adoption of Section R108.3 Building Permit Valuations in the "International Residential Code" which enables the adoption of a regional permit fee multiplier based on local cost of construction.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Gunnison County, Colorado, that:

1. The Community Development Department amended Fee Schedule for specific land use change permit applications is hereby adopted and attached as Exhibit A hereto.
2. The Community Development Department amended Fee Schedule for onsite wastewater treatment systems regulations is hereby adopted and attached as Exhibit B hereto.
3. All Community Development Department fees shall be reviewed at the end of every three years by Community Development Department staff to ensure that the costs of development are adequately compensated by the Fee Schedule.

4. A regional cost multiplier as allowed and described by the adopted International Residential Code is adopted. The regional cost multiplier for Gunnison County is 2.8.
5. The regional cost multiplier for building permit fees shall be reviewed at the end of every three years to ensure that it is accurate and reflects current construction market conditions and development review costs.
6. The Community Development Department Fee Schedules for Land Use Change permit applications and onsite wastewater treatment permit applications shall be adjusted annually, based upon the for Denver-Aurora-Lakewood Consumer Price Index (CPI) as published by the U.S. Bureau of Labor Statistics or the cost of living allowance (COLA) increase administered by Gunnison County for staff compensation. The fees shall be modified by either CPI or COLA, whichever is greater.

**THIS RESOLUTION AND THE APPROVAL GRANTED HEREBY** shall not be effective unless and until a copy is recorded in the Office of the Clerk and Recorder of Gunnison County.

**INTRODUCED** by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_ and passed on this \_\_\_ day of \_\_\_\_\_, 2022.

**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
Jonathan Houck,  
Chairperson

\_\_\_\_\_  
Roland Mason,  
Commissioner

\_\_\_\_\_  
Elizabeth Smith,  
Commissioner

**ATTEST:**

**Gunnison County Clerk and Recorder**

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

**Agenda Item:** Amended Lot Designation; Boundary Line Adjustment

**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:**

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

Lot 9, Whetstone Industrial Park amended designation of lot & potential restriction of adjacent lots

**Fiscal Impact:**

**Submitted by:** Beth Baker

**Submitter's Email Address:** bbaker@gunnisoncounty.org

**Finance Review:**

Required

Not Required

Comments:

Reviewed by:

Discharge Date:

**County Attorney Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\asanfilippo-rosser

Discharge Date: 4/29/2022

Certificate of Insurance Required

Yes  No

**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 4/29/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted: 5

Agenda Date: 5/3/2022



Date: April 19, 2022

RE: Amended Lot Designation  
LUC-22-00006

The BOCC approved the Boundary Line adjustment plat for L & D Ranches, April 19, 2022. At that meeting attorney Jacob With, presented an amended lot designation request. He explained the reasons for the amended lot designation and the BOCC agreed to consider it on their next consent agenda. The document is attached here.

You may review the file:

<https://permitdb.gunnisoncounty.org/citizenaccess/>

projects

Search by application number- LUC-22-00006

Click on file

Attachments

View

Thanks,  
Beth Baker  
Gunnison County Community and Economic Development

**AMENDED DESIGNATION OF LOT  
AND  
POTENTIAL RESTRICTION ADJACENT LOTS**

This designation is for the following lots:

Lot 9, Whetstone Industrial Park according to the boundary line adjustment plat thereof recorded in the real property records of Gunnison County, Colorado at reception number \_\_\_\_\_,

(hereinafter, the “Designated Lot”).

The Designated Lot shall be limited to the following use: \_\_\_\_\_ Industrial  
  X   Light Industrial  
\_\_\_\_\_ Subordinate Residential  
(check or otherwise mark only one)

**This designation for the Designated Lot shall supersede and replace any prior designation for the Designated Lot.**

The Designated Lot is adjacent to the following lots:

Lot 8 and 10, Whetstone Industrial Park according to the plat thereof recorded in the real property records of Gunnison County, Colorado at reception number 654063, Gunnison County, Colorado

(the “Adjacent Lots”)

If the Designated Lot is designated as industrial, the Adjacent Lots may not be used for, nor designated as, Subordinate Residential. If the Designated Lot is designated for Subordinate Residential, the Adjacent Lots may not be used for, nor designated as, industrial (but may be designated as Light Industrial or Subordinate Residential). See article 6 of the covenants for the subdivision for more information.

This Amended Designation of Lot and Potential Restriction Adjacent Lots is adopted and agreed to by the owners of the Designated Lot, the owner of the Adjacent Lots, Whetstone Industrial Park Lot Owners Association, Inc., a Colorado nonprofit corporation, and Gunnison County.

**[SIGNATURES ON FOLLOWING PAGES]**









**APPROVED BY GUNNISON COUNTY BOARD OF COUNTY COMMISSIONERS:**

---

Jonathan Houck, Chairperson

Attest:

---

Deputy County Clerk

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

**Agenda Item:** Elcho Place Townhome Plat; Lot 9, Block 4; Crested

**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:**

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

TH Plat Elcho Pl. Lot 9 , Blk 4, CB So. 2nd filing

**Fiscal Impact:**

**Submitted by:** Beth Baker

**Submitter's Email Address:** bbaker@gunnisoncounty.org

**Finance Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\jguerra

Discharge Date: 4/26/2022

**County Attorney Review:**

Required

Not Required

Comments:

For County purposes, appears legally sufficient. MRH

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 4/27/2022

Certificate of Insurance Required

Yes  No

**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 4/28/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted: 5

Agenda Date: 5/3/2022



Date: April 26, 2022

RE: Elcho Place TH Plat  
LUC-22-00008

The applicants Tucumcari Partners, LLC, represented by attorney Jacob With, have applied for approval and recording of a townhouse plat.

The Count Attorney's Office has determined it legally sufficient for the BOCC review.

- Taxes are current
- All required signatures and notaries are on the plat
- HOA has approved plat

You may review the file:

[https://permitdb.gunnisoncounty.org/citizenaccess/  
projects](https://permitdb.gunnisoncounty.org/citizenaccess/projects)

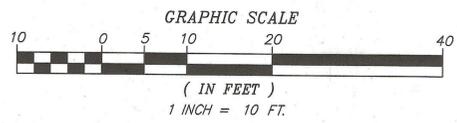
Search by application number- LUC-22-00008

Click on file

Attachments

View

Thanks,  
Beth Baker  
Gunnison County Community and Economic Development



**LEGEND**

Found No. 3 Rebar & Red Plastic Cap Monument, L.S. 5239	— E —	Underground Electric Line
Found Rebar & Aluminum Cap Monument, L.S. 23502	— G —	Underground Gas Line
Found Rebar & Plastic Cap Monument, L.S. 33647	— SEW —	Underground Sewer Line
Found Rebar & Plastic Cap Monument, L.S. 9476	— T —	Underground Telephone Conduit
Set No. 5 Rebar & Plastic Cap Monument, L.S. 38048	— C —	Underground Cable TV Line
CBS-SAR - Crested Butte South Special Area Regulations	— W —	Underground Water Line
Sewer Clean-out	— PL —	Boundary Line of Lot 9, Block 4
Electric Transformer	— PL —	Boundary Line Townhome Unit
Electric Meter and Panel		
Gas Meter		
Sewer Manhole		
Telephone Pedestal		
Water Valve, "Curb Stop"		
1.5" PVC Conduits, Future Use		
Structural Column, Typical		

**ATTORNEY'S OPINION**  
 I, Jacob A. With, an Attorney-at-Law duly licensed to practice in the State of Colorado, hereby certify that I have examined title to all lands herein dedicated and subdivided. Such title is vested in the Dedicator and is free and clear of all liens, defects, encumbrances, restrictions and reservations, except as follows:

- All matters shown hereon.
- Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
- Right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, and a right of way for ditches or canals constructed by the authority of the United States, as reserved in United States Patent recorded June 30, 1882 in Book 41 at page 494; and in Patent recorded August 12, 1901 in Book 101 at page 248; and in Patent recorded May 19, 1898 in Book 115 at page 303.
- Easement and right of way for cattle driveway as reserved in Warranty Deed recorded October 1, 1936 with the Clerk and Recorder of Gunnison County, Colorado in Book 245 at page 364, in which the specific location of the easement is not defined.
- Restrictive covenants and other matters as contained in Covenants and Restrictions of Crested Butte South recorded August 26, 1970, in Book 420 at page 404; in Crested Butte South Property Owners' Association Board of Directors concerning the amendment of the Covenants and Restrictions of Crested Butte South recorded January 21, 1983 in Book 589 at page 304; in Resolution concerning the installation and use of satellite dishes recorded December 8, 1988 in Book 661 at page 284; in Resolution concerning the use and installation of solid fuel burning devices recorded April 27, 1990 in Book 677 at page 578; in Resolution concerning dogs running at large recorded April 27, 1990 in Book 677 at page 581; in Resolution concerning impounded dogs recorded November 20, 1990 in Book 684 at page 901; in Resolution concerning individual wells and sewage disposal systems recorded June 8, 1993 in Book 725 at page 218; in Resolution amending the Covenants and Restrictions of Crested Butte South recorded October 22, 1993 in Book 733 at page 740; in Resolution concerning wells and individual sewer disposal systems recorded December 15, 1994 in Book 757 at page 223; in Amendment regarding regulation of modular or factory built structures recorded May 1, 1996 in Book 782 at page 202; in Amendment regarding the minimum size of multi-family structures recorded May 1, 1996 in Book 782 at page 203; in Amendment regarding residential uses on commercial property recorded May 1, 1996 in Book 782 at page 204; in Amendment regarding resubdivision recorded May 1, 1996 in Book 782 at page 205; in Notice of Amendment of Covenants and Restrictions of Crested Butte South recorded November 22, 1996 under Reception No. 472225; in Resolution concerning the provision of a legal survey as an architectural submittal requirement recorded March 27, 1998 under Reception No. 482581; in Resolution concerning setbacks for driveways, septic tanks and wells recorded April 30, 1998 under Reception No. 483318; in Resolution concerning lot appearance recorded October 19, 1998 under Reception No. 487930; in Resolution of rules and regulations regarding dogs recorded November 8, 1999 under Reception No. 497644; in Amended Resolution concerning building deposits recorded March 22, 2001 under Reception No. 509429; in Resolution regarding outdoor commercial vendors recorded September 25, 2001 under Reception No. 514482; in Resolution concerning the provision of the use of metal siding on the exterior of buildings in Crested Butte South recorded February 5, 2002 under Reception No. 517978; in Resolution regarding fines for violations of covenants recorded June 23, 2003 under Reception No. 531851; and in Amendment to Covenants and Restrictions of Crested Butte South recorded February 23, 2004 under Reception No. 539220; and in Resolution regarding the adoption of a short term rental policy by the Crested Butte South Property Owners Association, Inc. recorded May 22, 2018 under Reception No. 653309.
- Easements, conditions, covenants, restrictions, reservations and other matters on the Plat of Crested Butte South - Second Filing recorded September 24, 1970 under Reception No. 281588.
- Terms, conditions and provisions contained in Board of County Commissioners of Gunnison County Resolution No. 03-46 recorded September 25, 2003 under Reception No. 535203.
- Encroachment of sewer line 5.0' as disclosed on Warranty Deed recorded May 14, 2004 under Reception No. 542046.
- Terms, conditions, and provisions contained in Board of County Commissioners of Gunnison County Resolution No. 43, series 2004 recorded July 20, 2004, under Reception No. 544256.
- Easement to Crested Butte South Metropolitan District recorded November 15, 1985 in Book 623 at page 852.
- Terms, conditions, and provisions contained in Board of County Commissioners of the County of Gunnison, Colorado Resolution No. 2008-38 recorded September 3, 2008, under Reception No. 586264 and in Resolution No. 2017-5 amending Resolution No. 2008-38 recorded March 8, 2017 under Reception No. 645299.
- Terms, conditions, provisions and restrictions of Board of County Commissioners of Gunnison County Resolution No. 2017-6 recorded March 8, 2017 at Reception No. 645298.
- Matters disclosed on Improvement Location Certificate certified July 1, 2016 prepared by NCW & Associates, Inc., job #16108.00.
- Terms, conditions, provisions, burdens and obligations as set forth in Grant of Perpetual Nonexclusive Easement for sewer line recorded July 22, 2020 at Reception No. 667874.
- Terms, conditions and provisions of Resolution No. 14 series 2020 recorded September 1, 2020 at Reception No. 668955.
- The lien for 2022 and subsequent years' real property taxes.

Dated this 2<sup>nd</sup> day of March, 2022.  
 Jacob A. With, Registration No. 40546  
 For and on behalf of Law of the Rockies, LLC  
 525 N. Main Street  
 Gunnison, CO 81230

**PLAT NOTES**  
 1. Any person who acquires any interest in any of the real property dedicated on this Plat shall be deemed to have accepted the terms, conditions, exceptions, restrictions, limitations and definitions set forth herein and in the Declaration establishing ELCHO PLACE TOWNHOMES recorded as Reception No. \_\_\_\_\_  
 2. According to Colorado law you must commence legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based on any defect in this survey be commenced more than ten years from the date of the surveyor's certificate shown hereon.  
 3. Upon completion of the installation or maintenance of any utilities, the property disturbed or damaged by such installation or maintenance shall be restored as near as reasonably possible to its original condition.  
 4. Animals must be controlled by kenneling, leashing or other physical restraint. Any expense of enforcing domestic animal control restrictions by Gunnison County shall be at the expense of the individual unit owner.  
 5. C.R.S. Section 35-46-101 et. seq. requires the land owner to construct and maintain fencing to keep livestock off of the subject property.  
 6. An irrigation ditch owner has the right to enter the designated irrigation ditch maintenance easement, maintain the ditch and leave natural debris on the bank of the ditch.  
 7. Compliance with Certificate of Approval. The property described on this Plat is subject to all requirements, terms and conditions of Certificate of Administrative Review, Certification No. \_\_\_\_\_ Series 2022, recorded at Reception No. \_\_\_\_\_ of the records of the Clerk and Recorder of Gunnison County.

**SURVEY NOTES**  
 1. Boundaries are based upon the Plat of Crested Butte South - Second Filing, recorded 24 September 1970 at Reception No. 281588 of the records of Gunnison County, Colorado.  
 2. Distances and dimensions are in U.S. Survey Feet.  
 3. Restrictions, easements, and encumbrances are based on Land Title Guarantee's Title Commitment File No. GUL88003304-2 dated March 26, 2021.  
 4. Setbacks are based on the "Crested Butte South Special Area Regulations" dated April 7, 2020. Contact the Crested Butte South Property Owner's Assoc. for more details.  
 5. This Townhome Plat does not represent a title search by this surveyor. Additional easements and encumbrances may exist.

**DEDICATION**  
 Tucumcari Partners LLC, a Colorado limited liability company, being the owner of the land described as follows:  
 Lot 9, Block 4, Crested Butte South - Second Filing, according to the Plat thereof recorded September 24, 1970 under Reception No. 281588, County of Gunnison, State of Colorado.  
 1. Tucumcari Partners LLC, under the name of ELCHO PLACE TOWNHOMES, has laid out, platted and/or subdivided the same as shown on this Plat and do hereby permanently dedicate and convey to the owners of lots, tracts or parcels within this subdivision and their guests, but not to the public at large, the common right to use streets, alleys, roads and other areas as shown hereon and hereby permanently dedicate those portions of land labeled as easements for the installation and maintenance of public utilities as shown hereon.  
 2. Townhome Declaration. The real property laid out as ELCHO PLACE TOWNHOMES, County of Gunnison, State of Colorado, is platted and dedicated pursuant to the terms and conditions of the Declaration Establishing ELCHO PLACE TOWNHOMES dated \_\_\_\_\_, 2022 and recorded \_\_\_\_\_, 2022 as Reception No. \_\_\_\_\_ in the office of the Gunnison County Clerk and Recorder.  
 IN WITNESS WHEREOF, David Gross, Member of Tucumcari Partners LLC, a Colorado limited liability company has subscribed his name this 31<sup>st</sup> day of March, A.D. 2022.

David Gross, Member  
 Tucumcari Partners LLC, a Colorado limited liability company  
 STATE OF COLORADO )  
 ) ss.  
 COUNTY OF GUNNISON )  
 The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of March, 2022 by David Gross, Member of Tucumcari Partners LLC, a Colorado limited liability company.  
 Witness my hand and official seal. My commission expires: Jan. 23, 2026  
 Notary Public

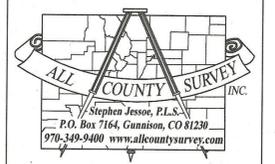
**MORTGAGEE AND LIENHOLDER CONSENT**  
 By: Mark Magnone  
 Name: Mark Magnone  
 Title: Vice President  
 STATE OF COLORADO )  
 ) ss.  
 COUNTY OF Pueblo )  
 The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of April, A.D. 2022 by Mark Magnone.  
 Witness my hand and official seal. My commission expires: 04-17-2025  
 Notary Public

**LAND SURVEYOR'S STATEMENT**  
 I, STEPHEN L. JESSOE, for and on behalf of All County Surveyors, Inc., being a Licensed Professional Land Surveyor in the State of Colorado, do hereby state that this Townhome Plat of ELCHO PLACE TOWNHOMES was prepared by me and under my responsible charge & supervision and is accurate to the best of my knowledge, information and belief, b) is in accordance with applicable standards of practice, and c) is not a guarantee or warranty either expressed or implied.  
 Basis of Bearing is based on a record bearing of N24°03'00"E from original red plastic cap monuments stamped "L.S. 5239" found at the northwesterly boundary corner of Lot 19, Block 4 and the northwesterly boundary corner of Lot 13, Block 4, Crested Butte South - Second Filing, as shown hereon.  
 Dated this 29<sup>th</sup> day of March, A.D. 2022.  
 Stephen L. Jessoe  
 Licensed Professional Land Surveyor No. 38048  
 For and on behalf of All County Surveyors, Inc.  
 P.O. Box 7164, Gunnison, CO 81230

**CRESTED BUTTE SOUTH PROPERTY OWNERS ASSOCIATION APPROVAL**  
 The within Townhome Plat of ELCHO PLACE TOWNHOMES is approved this 12<sup>th</sup> day of April, A.D. 2022.  
 By: Andrew Sandstrom  
 Andrew Sandstrom, President, Board of Directors  
 ATTEST:  
Andrew Sandstrom  
 Secretary

**BOARD OF COUNTY COMMISSIONERS APPROVAL**  
 The within Townhome Plat of ELCHO PLACE TOWNHOMES is approved this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2022, and the private dedication of roads and common areas is approved on the condition that such roads and common areas shall be maintained and snowplowed, by and at the expense of the lot owners and not by Gunnison County or any other public agency.  
 By: \_\_\_\_\_  
 Chairperson, Board of County Commissioners  
 ATTEST:  
 \_\_\_\_\_  
 Gunnison County Clerk and Recorder

**GUNNISON COUNTY CLERK AND RECORDER'S ACCEPTANCE**  
 This Townhome Plat was accepted for filing in the office of the Clerk and Recorder of Gunnison County, Colorado, on this \_\_\_\_\_ day of \_\_\_\_\_, 2022.  
 Reception Number \_\_\_\_\_ Time \_\_\_\_\_ Date \_\_\_\_\_  
 \_\_\_\_\_  
 Gunnison County Clerk and Recorder



**TOWNHOME PLAT OF ELCHO PLACE TOWNHOMES**  
**LOT 9, BLOCK 4, CRESTED BUTTE SOUTH - SECOND FILING**  
**LOCATED in NW 1/4 SEC. 27, T14S, R85W, 6th P.M.**  
**STATE OF COLORADO, COUNTY OF GUNNISON**

SCALE:	1" = 10'
According to Colorado Law, you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any legal action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.	
DATE:	29 March 2022
DRAWN BY:	ADJ
REVIEWED BY:	SLJ
REVISIONS:	1. 3/24/22 Edits per County
TOWNHOME PLAT of ELCHO PLACE TOWNHOMES LOT 9, BLOCK 4 CRESTED BUTTE SOUTH - SECOND FILING in NW/4 SEC. 27, T14S, R85W, 6th PM GUNNISON COUNTY, COLORADO	
PAGE 1 of 1	

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

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**Agenda Item:** 882 Cascadilla Townhome Plat; Lot 17, Block 21; Cr

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**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:**

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

Review and sign TH Plat for 882 Cascadilla Townhomes. L17, B21 CB So. 3rd Filing

**Fiscal Impact:**

**Submitted by:** Beth Baker

**Submitter's Email Address:** bbaker@gunnisoncounty.org

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**Finance Review:**

Required

Not Required

Comments:

Reviewed by:

Discharge Date:

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**County Attorney Review:**

Required

Not Required

Comments:

Appears legally sufficient for county purposes. MRH

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 4/28/2022

Certificate of Insurance Required

Yes  No

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**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 4/28/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted: 5

Agenda Date: 5/3/2022

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Date: April 27, 2022

RE: 882 Cascadilla TH Plat

LUC-22-00009

The County Attorney's office has reviewed the plat and application, determining it legally sufficient for BOCC review.

Applicants, 882 Cascadilla, LLC, have applied for BOCC approval and recordation of a townhome plat. Attorney Aaron Huckstep has submitted all required documentation. The plat has been signed and notarized.

You may review the file:

<https://permitdb.gunnisoncounty.org/citizenaccess/>

projects

Search by application number- LUC-22-00009

Click on file

Attachments

View

Thanks,

Beth Baker

Gunnison County Community and Economic Development

PLAT OF  
882 CASCADILLA TOWNHOMES

LOT 17, BLOCK 21 CRESTED BUTTE SOUTH -  
THIRD FILING SUBDIVISION

LOCATED WITHIN PORTIONS OF THE EAST 1/2 OF THE SOUTHEAST 1/4  
OF SECTION 21, AND THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 22,  
TOWNSHIP 14 SOUTH, RANGE 85 WEST, OF THE SIXTH PRINCIPAL MERIDIAN.  
GUNNISON COUNTY, COLORADO

882 CASCADILLA TOWNHOMES  
DEDICATION

KNOW ALL PEOPLE BY THESE PRESENTS: That 882 Cascadilla, LLC, being the owner of  
the following described real property, hereby declare and execute this Townhome Plat of the 882  
Cascadilla Townhomes, County of Gunnison, State of Colorado, as follows:

a. DESCRIPTION. The property description of the real property laid out and platted as 882  
CASCADILLA TOWNHOMES shown on this Plat is:

LOT 17, BLOCK 21, CRESTED BUTTE SOUTH - THIRD FILING, ACCORDING TO  
THE OFFICIAL PLAT THEREOF RECORDED JANUARY 8, 1971 AT RECEPTION  
NO. 282791,

COUNTY OF GUNNISON,  
STATE OF COLORADO,

b. TOWNHOME DECLARATION. The real property laid out as 882 CASCADILLA  
TOWNHOMES, Gunnison County, Colorado, is platted and dedicated pursuant to the  
terms and conditions of the TOWNHOUSE DECLARATION AND PARTY WALL  
AGREEMENT FOR 882 CASCADILLA TOWNHOMES dated  
20\_\_\_\_, and recorded \_\_\_\_\_, 20\_\_\_\_, as Reception No.  
\_\_\_\_\_ of the official records of Gunnison County, Colorado.

IN WITNESS WHEREOF, John Nichols and CB Exceptional Getaways, LLC, as Managing  
Members of 882 Cascadilla LLC have executed this dedication this 26<sup>th</sup> day of  
April, A.D. 2022

882 CASCADILLA, LLC, a Colorado  
limited liability company

BY: John Nichols  
BY: John Nichols, by Aaron J. Huckstep  
as his attorney-in-fact  
ITS: Manager

BY: CB Exceptional Getaways, LLC, a  
Colorado limited liability company

BY: Patrick S. Martin  
ITS: Manager  
BY: Lisa K. Martin  
ITS: Manager

State of Colorado )  
County of Gunnison ) ss.

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of April  
A.D. 2022, by John Nichols, by Aaron J. Huckstep as his attorney-in-fact,  
as Manager of 882 Cascadilla LLC.

Witness my hand and official seal.

KATLYN THERIAULT ARCHAMBAULT  
(SH) NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID# 2006434236  
MY COMMISSION EXPIRES NOVEMBER 9, 2023

BY: Katlyn Theriault Archambault  
Notary Public  
My commission expires: 11/9/2023

State of Wisconsin )  
County of Dane ) ss.

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of April  
A.D. 2022, by Patrick S. Martin and Lisa K. Martin, as Managers of CB Exceptional  
Getaways, LLC, which is a Manager of 882 Cascadilla LLC.

Witness my hand and official seal.

(SEAL)

BY: Meaghan Stehr  
Notary Public  
My commission expires: 11/27/2022

CRESTED BUTTE SOUTH PROPERTY OWNERS ASSOCIATION INC. APPROVAL

The within Townhome Plat of the 882 CASCADILLA TOWNHOMES is approved for filing  
this 25<sup>th</sup> day of April, A.D. 2022.

BY: Andrew Sandstrom  
Andrew Sandstrom, President of the Board of Directors  
Crested Butte South Property Owners' Association Inc.

Attest:

BY: Jessica Pleak  
Secretary

BOARD OF COUNTY COMMISSIONERS APPROVAL

The within Plat of 882 CASCADILLA TOWNHOMES is approved this \_\_\_\_\_ day of \_\_\_\_\_  
A.D. 20\_\_\_\_, and the private dedication of roads and common  
areas is approved on the condition that such roads and common areas shall be maintained and  
snowplowed, by and at the expense of the lot owners and not by Gunnison County or any other  
public agency.

BY: \_\_\_\_\_  
Chairperson, Board of County Commissioners

ATTEST:

Gunnison County Clerk and Recorder

GUNNISON COUNTY CLERK AND RECORDER'S ACCEPTANCE

This Plat was accepted for filing in the office of the Clerk and Recorder of Gunnison County,  
Colorado, on this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_,  
Reception Number \_\_\_\_\_, Time \_\_\_\_\_, Date \_\_\_\_\_.

Gunnison County Clerk and Recorder

ATTORNEY'S OPINION

I, Aaron J. Huckstep, being an Attorney-at-Law duly licensed to practice before courts of  
record in the State of Colorado, do hereby certify that I have examined the title to all lands herein  
dedicated and shown upon this Plat and title to such lands is in the dedicator free and clear of all  
liens, taxes and encumbrances, except as follows:

- The following reservation as contained in United States Patent recorded May 22,  
1918 in Book 184 at Page 136: a) A right of way for ditches or canals constructed by  
the authority of the United States.
- Easements and right of way for cattle driveway as reserved by Robert J. Oversteg and  
Bertha Oversteg in Warranty Deed recorded October 1, 1936 in Book 245 at Page  
364, in which the specific location of the easement is not defined.
- Restrictions, which do not contain a forfeiture or revertor clause, but omitting  
restrictions, if any, based on race, color, religion or national origin as contained in  
Covenants and Restrictions of Crested Butte South dated August 20, 1970, recorded  
August 26, 1970, in Book 420 at Page 404, and in the Resolution of the Crested  
Butte South Property Owners' Association Board of Directors concerning the  
amendment of the Covenants and Restrictions of Crested Butte South recorded  
January 21, 1983 in Book 589 at Page 304; Notices of Amendment of Covenants  
and Restrictions of Crested Butte South and Resolutions pertaining thereto recorded:  
December 8, 1988 in Book 661 at Page 284, April 27, 1990 in Book 677 at Page  
578, April 27, 1990 in Book 677 at Page 581, November 20, 1990 in Book 684 at  
Page 901, June 8, 1993 in Book 725 at Page 218, October 22, 1993 in Book 733  
Page 740, December 15, 1994 in Book 757 at Page 223, May 1, 1996 in Book 782  
at Page 202, Book 782 at page 203, Book 782 at page 204 and Book 782 at page  
205, November 22, 1996 at Reception No. 472225, March 27, 1998 at Reception  
No. 482581, April 30, 1998 at Reception No. 483318, October 19, 1998 at  
Reception No. 487930, November 8, 1999 at Reception No. 497644, March 22,  
2001 at Reception No. 509429, September 25, 2001 at Reception No. 514482,  
February 5, 2002 at Reception No. 517978, June 23, 2003 at Reception No. 531851,  
February 23, 2004 at Reception No. 539220, July 20, 2004 at Reception No. 544256  
and April 7, 2020 at Reception No. 665995; as amended and/or supplemented.
- Notes, easements, restrictions, reservations, densities, designated uses, setbacks,  
rights of way of a public, or private nature, and all other matters as disclosed on plats  
of said subdivision recorded January 8, 1971 at Reception No. 282791.
- Utility easement along the lot lines as reserved on the plat of Crested Butte South,  
Third Filing recorded January 8, 1971 at Reception No. 282791. NOTE: Easements  
shown on the plat are subject to relocation pursuant to provisions of "Covenants and  
Restrictions" recorded in Book 420 at Page 404.
- A non-exclusive easement and right of way for roads over the rights-of-way in  
Crested Butte South, all filings, for access to and from lands owned by Crested Butte  
Highlands, Inc., as granted by instrument recorded May 12, 1977 in Book 502 at Page  
237.
- Terms, conditions, provisions, agreements and obligations specified under the  
Resolution by the Board of Directors of Crested Butte South Metropolitan District,  
governing the installation of individual well and sewage disposal systems within the  
boundaries of the District, recorded June 8, 1993 in Book 725 at Page 218.
- Any lien or right to a lien by reason of inclusion within the Crested Butte South  
Metropolitan District and/or the Crested Butte South Property Owners Association.
- The effect of Resolution No. 03-46 by the Board of County Commissioners of  
Gunnison County, identifying the proposed Crested Butte South Special Area,  
recorded September 25, 2003 at Reception No. 535203.
- The effect of Resolution No. 43 Series 2004 by the Board of County  
Commissioners of Gunnison County, A Resolution Establishing the Process for  
Conversion of Existing Multi-Family Dwelling Units to Townhome Units on  
Improved Lots in Crested Butte South, recorded July 20, 2004 at Reception No.  
544256.
- The effect of Certificate of Administrative Review, Certification No. 136, Series  
2020, An Action Approving Land Use Change Permit, recorded September 14, 2020  
at Reception No. 669304.
- Those provisions, covenants and conditions, easements and restrictions, which are a  
burden to the Townhome Units identified on this Plat, but omitting any covenants or  
restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial  
status, marital status, disability, handicap, national origin, ancestry, or source of  
income, as set forth in applicable state or federal laws, except to the extent that said  
covenant or restriction is permitted by applicable law, as contained in the Townhome  
Declaration and Party Wall Agreement for 882 Cascadilla Townhomes  
recorded \_\_\_\_\_  
20\_\_\_\_, at Reception No. \_\_\_\_\_.

Dated this 26<sup>th</sup> day of April, 2022.

BY: Aaron J. Huckstep  
Aaron J. Huckstep, Atty. No. 30898

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	20.94'	60.00'	20°00'00"	N 10°00'37" W	20.84'

Lot 18

EAST  
120.00'

Lot 17A  
AKA: 882 Cascadilla Unit A  
6462.9 Sq. Feet  
0.148 Acres

Lot 17B  
AKA: 882 Cascadilla Unit B  
7226.0 Sq. Feet  
0.166 Acres

Lot 16

GENERAL NOTES:

- MATHEMATICAL AND EASEMENT INFORMATION WAS OBTAINED FROM THE RECORD PLAT OF  
"CRESTED BUTTE SOUTH-THIRD FILING" SUBDIVISION, AT RECEPTION NUMBER 282791,  
GUNNISON COUNTY RECORDS.
- I ACCEPTED THE LOCATION OF THE FUREY PINS AS SHOWN. THE FOUND HARDIN  
CAP IS AT S 12D 43' W, 1.5' AWAY, AND DOES NOT FIT RELATIVE TO NEARBY HARDIN CAPS.

I hereby certify that this Survey and Plat of 882 Cascadilla  
Townhomes were made by me and or under my direct supervision and  
checking, and that both are true and correct to the best of my  
knowledge.

Dated this 30<sup>th</sup> day of MARCH, 2022



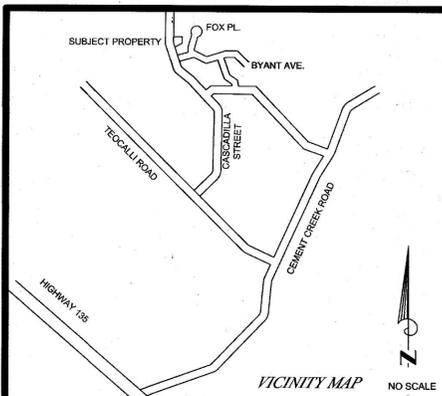
notice: According to Colorado law you must commence any legal action based upon any  
defect in this Survey within three (3) years after you first discover such defect.  
In no event may any action based upon any defect in this Survey be commenced upon  
more than ten (10) years from the date of certification shown hereon

LEGEND

These standard symbols will  
be found in the drawing.

- ⊕ Found cap stamped: L.S. #11250 Furey
- ◇ Found Hardin cap
- Set 1 1/2" diameter plastic cap stamped: L.S. #35576
- Property line
- - - Easement line

Scale 1" = 10'



VICINITY MAP  
NO SCALE

