AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Commercial Lease Agrmt; Oxbow Mining LLC

Action Requested: Other BOCC Review; Sheriff's Signature

Parties to the Agreement: Sheriff's Office & Oxbow Mining

Term Begins: **Term Ends:** 9/1/2019 **Grant Contract #:**

Summary:

This is for the use of office space for the Gunnison County Sheriff's Office Sub-Station on the Marble/Somerset side of the county

Fiscal Impact:

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

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, has increased by $200/yr from previous agreement. Can be covered in the 2019 adopted budget. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 8/9/2019

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

Comments:
ok db 8/15/19

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 8/15/2019 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 8/15/2019

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

Agenda Date: 8/20/2019

Revised April 2015

COMMERCIAL LEASE AGREEMENT

This LEASE AGREEMENT is entered into as of the 1st day of September, 2019, by and between OXBOW MINING, LLC, a Delaware limited liability company, whose address is 3737 Highway 133, Somerset, Colorado 81434 (hereinafter referred to as "**LANDLORD**"), and GUNNISON COUNTY SHERIFF'S OFFICE, whose address is 510 W. Bidwell, Gunnison, CO 81230 (the "**TENANT**").

ARTICLE I – PREMISES

The leased space herein is defined as the "**Premises**" and consists of one (1) office identified on the Site Plan attached hereto as Exhibit A, located at 3737 Highway 133, Somerset, Colorado.

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises. Landlord reserves the right to assign a different office space, by providing Tenant with 10 days advanced notice.

Landlord is not responsible for service outages that may disable Tenant's telephone communications or Internet connection.

ARTICLE II – TERM

The lease shall commence on September 1, 2019, and continue until terminated by either party by providing the other party with 60-days' advance written notice.

ARTICLE III - RENT

Tenant agrees to pay to Landlord as rent for the use of the Premises during the term of this Lease, the sum of **Two Thousand Dollars ($2,000.00**) per year which includes utilities, payable in 12 equal monthly payments of **One Hundred Sixty-Six and 67/100 Dollars** ($**166.67)** each.

The rent amount shall be paid monthly in advance commencing on the 1st day of every month at the office of Oxbow Mining, LLC, or by wire, or at such other place as the Landlord may designate in writing. The rental rate shall be increased by 3% on each 12 month anniversary of the Lease commencement date.

ARTICLE IV - SECURITY DEPOSIT

None.

ARTICLE V - PROPERTY MAINTENANCE,

Tenant agrees to pay all taxes levied upon Tenant's personal property, if any, located in or on the Premises. Tenant agrees to keep the Premises clean.

ARTICLE VI - USE OF PREMISES

Tenant shall use the Premises as a Sheriff's administrative office. If Tenant engages in any activity which would cause Landlord's fire and extended coverage insurance to be canceled, or the rate thereof to be increased, Landlord may do either of the following:

(a) Terminate this lease forthwith at which time Tenant shall surrender and vacate the Premises, or
(b) Tenant will pay the amount of such increase promptly upon Landlord's written Demand.

ARTICLE VII - SERVICES

Tenant shall provide and pay for its own Internet access, and its own computer hardware, copier/fax/scanner machine(s), telephones and office supplies required for its Premises. Tenant shall not install any equipment in the Premises requiring special circuits, voltage, ventilation, cooling, or abnormal amount of current without the prior written consent of Landlord. Such consent shall not be withheld if arrangements satisfactory to the Landlord have been agreed upon regarding installation responsibility and costs, and the additional monthly charge to be paid by the Tenant.

No slowdown, interruption, or malfunction of any services identified in this Article shall constitute an eviction or disturbance of Tenant's use and possession of the Premises or a breach by Landlord of any of its obligations under this Lease, nor render Landlord liable for damage or entitle Tenant to be relieved from any of its obligations under this Lease. In the event of any such interruption, however, Landlord shall use reasonable diligence to restore such service. Landlord shall not be liable for any damages for any such discontinuance.

ARTICLE VIII - ADDITIONS AND FIXTURES

Tenant will make no alteration, change, improvement, repair, replacement or addition to the Premises without prior written consent of the Landlord.

ARTICLE IX - MECHANIC'S LIEN

Tenant shall keep Premises free from liens pursuant to labor and materials furnished and Tenant shall indemnify Landlord from all costs thereof, including Landlord's attorney's fees in the defense thereof Tenant shall give Landlord written notice at least ten (10) business days prior to commencement of any alteration or addition to Premises.

ARTICLE X - ACCESS BY LANDLORD

Landlord, and its agents and employees, shall have the right to enter the Premises during normal business hours, or at any time there is an emergency to examine the same and to make such repairs as Landlord may deem necessary or desirable, by providing Tenant notice. Within 45 days of expiration of the term of this lease, Landlord and its agents are further granted permission to show the Premises at any reasonable time to prospective tenants, mortgages, purchasers or lessees of the property, or other persons with a business interest therein.

ARTICLE XI - SUBORDINATION

This Lease is subordinate to any encumbrances now or hereafter affecting the property. Tenant will execute and deliver upon Landlord's demand any instrument necessary to confirm this subordination.

ARTICLE XII - DAMAGE, DESTRUCTION, OR CONDEMNATION

If the Premises are partially damaged by fire or other cause without the fault or neglect of Tenant or someone for whom Tenant is responsible, the damages shall be repaired by and at the expense of the Landlord, and the rent until such repairs are completed shall equitably abate in proportion to the portion of the Premises which is rendered unusable. If, however, such partial damage is due to the fault or neglect of Tenant or someone for whom Tenant is responsible, there shall be no abatement of rent.

ARTICLE XIII - LIABILITY AND INDEMNITY

Tenant agrees to indemnify, defend and save harmless Landlord and its agents from and against any and all suits, actions, claims, damages or costs (including attorney's fees) regardless of the basis of such suit, action, claim, damage or cost, including but not limited to, suits, actions, claims damages or costs: (1) arising out of loss of or damage to the property of any person or persons whomsoever (including all materials, supplies, equipment or other property of Tenant); or (2) arising out of injury to or death of Tenant's employees, agents, contractors, licensees, or invitees. Tenant agrees that Landlord shall not be responsible to Tenant or the above-described parties for bodily injury or property damage caused by acts of other third parties. Tenant releases Landlord and its agents from all claims that are or would be covered by Tenant's insurance required by this Lease. In no event shall Landlord's liability exceed the damages cap established by Colorado statute. Both landlord and tenant are responsible for their own intentional acts of negligence.

ARTICLE XIV – INSURANCE

During the term of this Lease, Tenant shall, at its sole cost and expense, carry, and maintain the following types of insurance:

- Property insurance covering all of Tenant's personal property located within the Premises and on all improvements which may have been made to the Premises by Tenant in an amount not less than the full replacement cost thereof.

- Commercial General Liability, insuring against liability for bodily injury or property damage to property occurring in or about the Premises or arising out of the ownership, maintenance, use or occupancy thereof. Such insurance shall be obtained in amounts as follows: $5,000,000 per occurrence and in the aggregate. Tennant shall name Oxbow Mining LLC as additional insured.

- Automobile Liability insurance in the amount of $5,000,000 per accident for all owned, non-owned and hired vehicles used in the business of the tenant.

- Workmen's compensation insurance insuring Tenant from all claims for personal injury and death in such amounts as are required by Colorado Law. Tennant shall require the Workermens' Compensation insurer to waive subrogation in favor of Oxbow Mining LLC

- Employers Liability Insurance in the amount of $5,000,000 each accident, $5,000,000 disease each employee and $5,000,000 disease policy limit.

- Tenant shall provide to Landlord a certificate of insurance prior to occupying the Premises showing evidence of the required insurance and coverage provisions.

- Limits of insurance may be provided by umbrella or excess insurance policies.

ARTICLE XV- ASSIGNMENT AND SUBLETTING

Tenant shall not assign this Lease or sublet the Premises, or any part thereof, or in any other manner transfer or assign its leasehold interest, unless such assignment is to an affiliate of Tenant or its Owner, without the prior written consent of Landlord, and any attempt to do any of the foregoing without such consent shall be void. Despite any such assignment or subletting, Tenant shall be liable to Landlord for any act or omission of any assignee or subtenant.

ARTICLE XVI - DEFAULT

The occurrence of any of the following events shall constitute a default by Tenant under this Lease (i) failure of Tenant to pay Rent, or (ii) if Tenant abandons Premises during the term of this Lease.

ARTICLE XVII - NOTICE

Any notice which may or shall be given under the terms of this Lease shall be in writing and shall be sent by United States registered or certified mail, return receipt requested, postage prepaid and addressed to the appropriate party at the address indicated at the beginning of this Lease. A party may change such address from time to time by giving notice as provided above. Notice shall be deemed given when deposited in the United States Mail as provided above, or by fax, email, or in person.

ARTICLE XVIII - MISCELLANEOUS

This document and any attached exhibits signed or initialed by the parties constitute the entire agreement between Landlord and Tenant. This Lease supersedes and cancels any letter of intent which may have been signed by the parties. No prior or contemporaneous oral or written promises or representations shall be binding upon either party hereto. All negotiations and representations have been merged into this Lease. This Lease shall not be amended or extended except by written document signed by both parties hereto. The term "Tenant" as used in this Lease shall mean and include each and every party signing this Lease as Tenant below. Each "Tenant" is jointly and severally liable for the performing of all the terms of this Lease to be performed by Tenant. Acceptance by Landlord of payment from any third party shall not be construed as permission of Landlord to assign or sublet Premises to said third party.

If any provision of this Lease is judged unenforceable, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. Time is of the essence with respect to the performance of each and every provision of this Lease.

This Lease shall be governed by and construed in accordance with the laws of the State of Colorado.

Tenant will, at any time, within ten (10) days after a request by Landlord execute and deliver to Landlord an estoppel certificate regarding the terms, payment status, and covenants of this Lease. Any judgment rendered pursuant to this Lease shall accrue interest at seven percent (7%) per annum from and after the date of filing the Court action.

This Lease shall be binding upon and inure to the benefit of Landlord, Tenant, and their successors and assigns. Landlord may assign all or any portion of its rights and obligations hereunder.

In the event this lease agreement should become the subject of litigation, the parties agree that the venue of any such litigation shall be in the District Court in and for the County of Gunnison, State of Colorado, and that the Court shall award the prevailing party a reasonable attorney's fee as part of the costs to which said party becomes entitled to recover under the court's judgment. This provision shall be effective in the event of appeal to the appellate court or courts having jurisdiction of the cause.

ARTICLE XIX - EXHIBITS

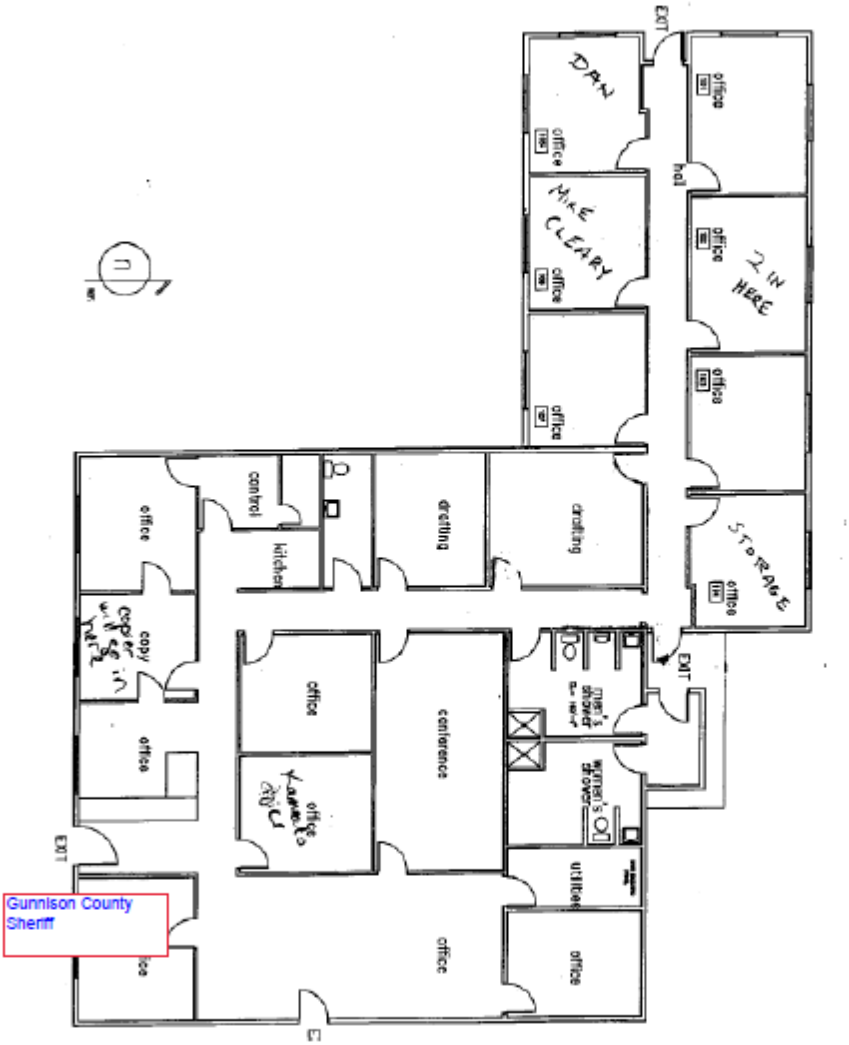
The following Exhibits are attached hereto and made a part hereof:

- EXHIBIT A –PREMISES.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date hereof.

TENANT:	LANDLORD:
GUNNISON COUNTY SHERIFF’s OFFICE	OXBOW MINING, LLC
By: _____	By: _____
Name:	Name:
Its:	Its:

Exhibit "A"

Site Plan

Oxbow Offices