AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Intergovernmental Agreement and License Agreement; Town of Pitkin; Construction and Maintenance of a Trail; 8/19/14

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Town of Pitkin

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

Summary:
Intergovernmental Agreement and License Agreement among Gunnison County and Town of Pitkin for construction and public use of trail adjacent to Quartz Creek Road

Fiscal Impact:

Submitted by: Bwiseman for Marlene Crosby **Submitter's Email Address:** mcrosby@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:

Per Marlene, costs will be covered in maintenance budget already adopted for 2014.

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 8/20/2014

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

Comments:

Reviewed by: GUNCOUNTY1\atrezise Discharge Date: 8/20/2014 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reviewed by: GUNCOUNTY1\mbirnie Discharge Date: 8/20/2014

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: DCM Report

Agenda Date: 9/2/2014 Follow Up Agenda Date:

Revised April 2013

INTERGOVERNMENTAL AGREEMENT
AND LICENSE AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT ("IGA") AND LICENSE AGREEMENT ("License Agreement"), is made and entered into this ___ day of _____, 2014, by and between the Town of Pitkin, a home rule municipality of the State of Colorado, whose address is P.O. Box 9, Pitkin, Colorado 81241, hereinafter referred to as "Pitkin", and the Board of County Commissioners of the County of Gunnison, Colorado, a political subdivision of the State of Colorado, whose address is 200 E. Virginia, Gunnison, Colorado 81230, hereinafter referred to as "Gunnison County".

RECITALS

WHEREAS, pursuant to the Colorado Constitution, Article XIV, Section 18(2.a.) and C.R.S. 29-1-201, et seq., any political subdivision of the State of Colorado may cooperate or contract with one another to provide any function, service or facility lawfully authorized to each of the cooperating or contracting units, provided that such cooperation or contracts are authorized by each party thereto with the approval of its legislative body; and

WHEREAS, Pitkin and Gunnison County desire to enter into an IGA to provide for the construction and maintenance of a public trail (hereinafter the "Trail") on property owned by the Town of Pitkin designated for walking, bicycling, horseback riding, off-highway vehicles and snow machines. Uses and conditions of said Trail are defined below in Section II License Agreement.

WHEREAS, Pitkin owns the real property upon which said Trail will be constructed and maintained. The Trail will be placed on Pitkin property adjacent to Quartz Creek Road located in Gunnison County, Colorado, as generally depicted in the attached Exhibit "A".

WHEREAS, Pitkin wants to assert, preserve and confirm its ownership, dominion and control of the property upon which the Trail crosses.

WHEREAS, Pitkin and Gunnison County deem such IGA and License Agreement to be in the best interests of each of their inhabitants.

NOW, THEREFORE, Pitkin and Gunnison County in consideration of the agreements and covenants set forth herein, do hereby enter into this IGA and License Agreement as follows:

SECTION I
INTERGOVERNMENTAL AGREEMENT

1. <u>Construction and Maintenance of Trail</u>.

Gunnison County shall furnish all labor, equipment and materials to commence, diligently pursue and construct the Trail at no charge to Pitkin as follows: a truck, backhoe and

loader to remove vegetation, manage drainage, cut back-slopes, level and surface trail, and re-vegetate disturbed areas. Gunnison County shall maintain the Trail by keeping Trail surface smooth and controlling vegetation.

Pitkin shall provide a 50 foot of access from the centerline of the Trail (25 feet on each side of the centerline) for the construction of the eight foot wide Trail, and access for maintenance 20 feet (10 feet on each side of the centerline) in width for the duration of this License Agreement. The parties agree that Gunnison County will provide no winter maintenance of the Trail.

Pitkin and Gunnison County specifically understand and agree that nothing in this IGA shall be interpreted to require Gunnison County to perform any snow removal and/or plowing.

Parties acknowledge that once the Trail is fully constructed a formal survey will be conducted to memorialize the precise location of the Trail.

SECTION II
LICENSE AGREEMENT

2. Pitkin gives Gunnison County and the general public a license to use the Trail for walking, bicycling, horseback riding, off-highway vehicles and snow machines across Pitkin property depicted in Exhibit A, subject to the following conditions:

A. Such license shall be non-exclusive;

B. Such license may not be revoked by Pitkin without 60 days prior notice to Gunnison County; and

C. Such license may be temporarily suspended for up for 10 days with notice to Gunnison County.

In the event the license is revoked within one year of completion of construction of Trail, Pitkin shall compensate Gunnison County for the reasonable costs of construction.

3. Gunnison County acknowledges that Pitkin owns the Property and has complete dominion and control over the Trail as it crosses the Property. Gunnison County claims no easement, right of way or thoroughfare by prescription, adverse possession or otherwise over the Trail as it crosses the Property. Gunnison County hereby waives any claim to an easement, right of way or thoroughfare which it might have prescriptively acquired in the Trail as it crosses the Property. Gunnison County acknowledges that use of the Trail across the Property by Gunnison County and its citizens, visitors and invitees is exclusively by permission acquired through this IGA and License Agreementof Pitkin.

4. Neither Pitkin nor Gunnison County makes any representations or warranties regarding the safety or suitability of the public's use of the Trail designated for walking, bicycling, horseback riding, off-highway vehicles and snow machines or other related activities.

SECTION III
OTHER PROVISIONS

5. Term.

The term of the Intergovernmental Agreement and License Agreement shall be from August 19, 2014 until otherwise terminated by either party. Either party shall have the right to terminate this IGA at any time, with or without cause, upon sixty (60) days prior written notice to the other party and such termination must be consistent with the License Agreement in Section II above.

6. Reciprocal Indemnification.

The parties agrees to indemnify, defend and hold each other harmless, its Commissioners and Town Council Members, agents and employees of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) arising out of or related to any loss, cost, damage or injury, including death, of any person or damage to property of any kind caused by the misconduct or negligent acts, errors or omissions of their respective representatives, employees, subcontractors or agents in connection with this Intergovernmental Agreement and License Agreement.

This provision shall survive any termination or expiration of this Intergovernmental Agreement and License Agreement with respect to any liability, injury or damage occurring prior to such termination.

7. Miscellaneous.

a) Severability. If any clause or provision of this Intergovernmental Agreement and License Agreement shall be held to be invalid in whole or in part, then the remaining clauses and provisions, or portions thereof, shall nevertheless be and remain in full force and effect.

b) Amendment. No amendment, alteration, modification of or addition to this Intergovernmental Agreement and License Agreement shall be valid or binding unless expressed in writing and signed by the parties to be bound thereby.

c) No Waiver of Governmental Immunity. Nothing in this Intergovernmental Agreement and License Agreement is, or shall be construed to be, a waiver,

in whole or part, by Gunnison County or Pitkin of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

d) Non-Assignability. Neither party shall assign, sublet or transfer this Intergovernmental Agreement and License Agreement or any interest therein to any other party without prior written consent of both parties to this Intergovernmental Agreement and License Agreement, which consent shall not be unreasonably withheld.

8. Notices.

Any notice, demand or communication which either party may desire or be required to give to the other party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally or sent by certified first class US mail, postage prepaid, addressed as follows:

Gunnison County:	Board of County Commissioners of the County of Gunnison, Colorado 200 E. Virginia Gunnison, Colorado 81230
Town of Pitkin:	Town of Pitkin Attn: Town Mayor P.O. Box 9 Pitkin, CO 81241

Either party has the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

9. Governing Law.

This Intergovernmental Agreement and License Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Exclusive jurisdiction and venue for any legal proceedings related to this Intergovernmental Agreement and License Agreement shall be in the Gunnison County District Court, Colorado.

10. Entire Agreement.

This Intergovernmental Agreement and License Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, proposals, negotiations and representations pertaining to the obligations to be performed hereunder.

IN WITNESS WHEREOF, the parties have executed this Intergovernmental Agreement and License Agreement as of the date first set forth above.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO

ATTEST:

_____
By: Paula Swenson, Chairperson

_____
Deputy Clerk

Approved as to form:

_____
Art Trezise, Deputy County Attorney
Attorney for Board of County Commissioners
of the County of Gunnison, Colorado

TOWN OF PITKIN, COLORADO

_____
By: Name

STATE OF COLORADO)
)ss.
County of Gunnison)

The above and foregoing INTERGOVERNMENTAL AGREEMENT AND LICENSE AGREEMENT was acknowledged to before me this 14th day of August, 2014, by Steve Pinkston.

Witness my hand and seal.
My commission expires: 2/14/16.

_____
Notary Public
Address:

LESLIE L. WITTERS
NOTARY
PUBLIC
STATE OF COLORADO

Approved as to form:

_____
James R. McDonald
Attorney for Town of Pitkin

EXHIBIT A