AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Reclamation Agreement; W.K. Edwards and Link, LLC;

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: BOCC, W.K. Edwards and Link, LLC

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

Summary:

Attached for approval and signature please find the Reclamation Agreement for the proposed Vista Business Park.

Fiscal Impact:

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

Finance Review: (●) Required ( ) Not Required

Comments:
no concerns

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 1/25/2016

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

Comments:
ok - gs

Reveiwed by: GUNCOUNTY1\gstuhr Discharge Date: 1/26/2016 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 1/28/2016

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

Agenda Date: 2/2/2016

Revised April 2015

RECLAMATION AGREEMENT

THIS RECLAMATION AGREEMENT (herein "Agreement") is entered into this ___ day of January, 2016 among the Board of County Commissioners of the County of Gunnison, Colorado, whose address is 200 E. Virginia, Gunnison, Colorado 81230 (herein "Gunnison County"), W.K. Edwards, whose address is PO Box 1003, Gunnison, Colorado 81230 (herein "Property Owner") and Link, LLC, a Colorado limited liability company, whose address is 1641 County Road 771, Ohio City, Colorado 81237 (herein "Project Manager").

1. Purpose. The purpose of this Agreement is to identify the reclamation activities and responsibilities of the Property Owner and Project Manager for the restoration of the road improvements initiated on the real property located within the NW1/4SW1/4 and the SW1/4NW1/4, Section 3, Township 49 North, Range 1 East, N.M.P.M and as more specifically described in the Special Warranty Deed recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado at Reception No: 494574 (herein the "Property").

Gunnison County, Property Owner and Project Manager agree that in order to resolve the code enforcement issues on the Property and, further, to proceed with the application and final approval of Land Use Change Permit No: 2011-35, an agreement guaranteeing the Property Owner's and Project Manager's performance secured by suitable security to protect the interests of Gunnison County, and the public in the amount set forth herein is an appropriate condition.

The parties herein have entered into this Agreement to memorialize such understandings and agreements. The relationship of the parties to this Agreement is contractual; Property Owner and Project Manager are independent and not an agent of Gunnison County.

2. Property Owner and Project Manager Bound. The Property Owner and Project Manager agree to accept and be bound by the terms and conditions of this Agreement. Property Owner and Project Manager accept Gunnison County's review and permitting authority, process and performance as legal and valid and waives any defect therein.

3. Construction.

A. The Property Owner and Project Manager agree to complete the reclamation improvements within the Property in accordance with the specifications as identified in paragraph 7 herein ("Improvements") no later than November 1, 2016. However, this obligation for completion of the Improvements and Property Owner and Project Manager's obligations under Paragraph 6 shall become null and void upon the following:

1. Final approval by Gunnison County of Land Use Change No: 2011-35; and

2. Recordation in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado of both Gunnison County's Resolution of Approval and the fully executed Development Improvements Agreement for Land Use Change No: 2011-35.

Acts of God and any cause beyond the reasonable control of the Property Owner and Project Manager excepted, including without limitation labor disputes, laws, regulations, or orders of any governmental entity, orders of court, inability to obtain any required authorization, act of war or conditions arising out of or attributable to war, riot, civil strike, insurrection or rebellion, fire, explosion, earthquake, storm, flood or other adverse weather condition, delay or failure by suppliers or materialmen, contractors, or subcontractors, shortage of or inability to obtain labor, supplies or materials.

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

4. Estimated Cost. The total cost of the Improvements to be constructed by the Property Owner and Project Manager is estimated currently to be Five Thousand Seven Hundred Seventy Two and No/100 U.S. Dollars ($5,772.00) plus a contingency amount.

5. Security. In order to secure all obligations of the Property Owner and Project Manager herein, the Property Owner, Project Manager and Gunnison County agree that the Property Owner and Project Manager shall, at Property Owner's and Project Manager's sole cost, and before starting work on any phase of the Improvements, obtain and provide to Gunnison County either cash, a bond, an irrevocable letter of credit or other performance guarantee in a form and content satisfactory to Gunnison County to the benefit of Gunnison County in the amount of Seven Thousand Two Hundred Fifteen and No/100 U.S. Dollars ($7,215.00) which is 125 percent of the currently estimated cost of the Improvements to include a reasonable contingency amount. If said security is in the form of

cash, it will be placed by Gunnison County in an interest bearing account; the interest shall accrue to Property Owner and Project Manager at 1% less than received by Gunnison County.

Pending full performance of all of the terms and conditions hereof by the Property Owner and Project Manager, Gunnison County shall retain said security and shall remain the beneficiary of such security. In the event of any uncured default hereunder Gunnison County in its sole discretion, and without any other authority required, may draw upon said security up to the full amount of Seven Thousand Two Hundred Fifteen and No/100 U.S. Dollars ($7,215.00) and if by bond or letter of credit upon presentation by Gunnison County to the issuer of a written statement by Gunnison County that such uncured default exists. Upon timely performance of all terms and conditions hereof, said security shall be tendered by Gunnison County to the Property Owner, except as provided in paragraph 7C. The security shall be fully released upon the occurrence of the events described in paragraphs 3.A.1 and 2.

6. Certification.

A. Not later than November 30, 2016, the Property Owner and Project Manager shall provide proof of completion of the Improvements to Gunnison County demonstrating that the Property Owner and Project Manager's construction obligations regarding Improvements under this agreement have been fully and faithfully performed according to design and time specifications. Upon receipt by the Office of the Gunnison County Attorney of such certification, Gunnison County shall review the same and shall make an independent judgment whether to accept the same in the sole discretion of Gunnison County. Property Owner and Project Manager agree not to cover or otherwise prevent inspection of the Improvements constructed hereunder until Gunnison County's representative have had reasonable opportunity to inspect such Improvements.

B. Not later than November 30, 2016, Property Owner and Project Manager shall provide to the Office of the Gunnison County Attorney a sworn affidavit, signed by the Property Owner and/or Project Manager, that the Improvements completed have been paid for, in full, by the Property Owner and/or Project Manager. The Property Owner and Project Manager shall be responsible for the information so provided. Said written certification will be reviewed by Gunnison County, but Gunnison County shall have no responsibility or liability to any party regarding the veracity of the information so provided.

7. Scope of Work.

A. The reclamation work to be completed by the Property Owner and Project

Manager shall include and be according to the engineer's cost estimate titled: "Proposed Vista Business Center Property Access Rehabilitation Engineer's Cost Estimate" prepared by Norma C. Whitehead of NCW & Associates, Inc., dated November 12, 2015 attached hereto and incorporated herein as Appendix "A".

B. The conditions of this Agreement are such that if the obligations hereunder of the Property Owner and Project Manager are well, truly, faithfully and timely performed by Property Owner and Project Manager, inspected and certified to by the Property Owner and Project Manager, and such performance is accepted by Gunnison County in Gunnison County's sole discretion, the Property Owner's and Project Manager's obligations to Gunnison County under this Agreement except as set forth in 7C below shall be at an end; otherwise such conditions and obligations shall remain in full force and effect.

C. For a period of two years from and after the acceptance of the Improvements described in paragraph 7A above, Property Owner and Project Manager shall, at their own expense, maintain, reseed and replant and further reclaim such work as, in Gunnison County's reasonable opinion, becomes necessary. Gunnison County shall have the right to retain up to Two Thousand Sixty Two and 50/100 U.S. Dollars ($2,062.50) of the security for up to two years following the acceptance of all of the work described in paragraph 7A above, to ensure that the disturbed areas have been reclaimed to Gunnison County's satisfaction.

8. Partial Release of Security. Gunnison County recognizes that as work proceeds upon the Improvements, Gunnison County's need for security shall be reduced. Accordingly, Gunnison County may make a reasonable partial release of the security to be delivered to Gunnison County pursuant to paragraph 5 herein upon receipt of a written certification by the Property Owner and/or the Project Manager stating the estimated cost of remaining completion. Upon receipt of such certification, Gunnison County shall review the same and shall make an independent judgment whether to accept the same in the sole discretion of Gunnison County. If Gunnison County does make a partial release, Gunnison County shall retain security equal to: (a) 125 percent of such estimated cost of remaining completion of Improvements plus 25 percent of the original estimated cost of the Improvements.

9. Property Owner's and Project Manager's Default. In the event of any default hereunder by the Property Owner and Project Manager, Gunnison County shall give notice to the Property Owner and Project Manager specifying the nature of such default, which notice shall be given by facsimile transmission or by certified mail with return receipt requested addressed to:

A. Property Owner: PO Box 1003, Gunnison, Colorado 81230; and

B. Project Manager at: is 1641 County Road 771, Ohio City, Colorado 81237.

In the event the Property Owner and/or the Project Manager do not remedy such default to the satisfaction of Gunnison County within 14 days following such notice, Gunnison County may elect, in its discretion to exercise all remedies available to it, including but not limited to:

A. To specifically enforce the terms and conditions of this Agreement;

B. To draw upon or otherwise obtain the benefit of the security;

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

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

E. To engage a manager to supervise the completion of improvements as identified herein. The costs incurred for hiring a manager shall be the responsibility of the Property Owner and Project Manager and may be withdrawn by Gunnison County from the security. Furthermore, all Gunnison County staff time spent thereafter on this Project shall be calculated at an hourly rate and shall be charged to the Property Owner and Project Manager and may be withdrawn from security.

10. Recording of Agreement. Upon its execution, this Agreement shall be recorded by the Property Owner's and Project Manager's expense and shall be a covenant running with the property herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

11. Retention of Police Powers. Gunnison County retains the power and right to impose additional requirements upon the Property Owner and the Project Manager with regard to

the Improvements if the failure to do so would be cause harm to the public or the environment, or in the event of substantially changed conditions; that is, nothing in this Agreement is or shall be construed to be a bargaining away of Gunnison County's police power.

12. Transfer or Assignment. No transfer or assignment of any of the rights or obligations of the Property Owner and Project Manager under this Agreement shall be permitted without prior written approval of Gunnison County which approval shall not unreasonably be withheld.

13. Title and Authority. The Property Owner expressly warrants and represents to Gunnison County that he is the record owner of the Property, and further that the Project Manager represents and warrants that he has full power and authority to enter into this Agreement. The Property Owner and Project Manager understand that Gunnison County is relying on such representations and warranties in entering into this Agreement.

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

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

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

17. Severability. If any term or provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement and the terms and provisions thereof shall not be affected thereby and all other terms and provisions of this Agreement shall be valid and enforceable to the full extent permitted by law.

18. Hold Harmless Clause. The Property Owner and Project Manager shall indemnify, defend and hold harmless Gunnison County, its officials, employees and agents from and against liability for damages, injury or death which may arise from the direct or indirect operations of the Property Owner, Project Manager, contractors or subcontractors, which

relate to the Project.

19. Entire Agreement. This Agreement contains the entire and only Agreement between the parties regarding development improvements, and no oral statements or representations not contained in this Agreement shall be of any force and effect between the parties. This Agreement shall not be modified or amended in any manner except by written instrument executed by the parties.

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

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

Gunnison County:	Board of Gunnison County Commissioners of the County of Gunnison, Colorado c/o Office of the Gunnison County Attorney 200 East Virginia Gunnison, CO 81230
Property Owner:	W.K. Edwards PO Box 1003 Gunnison, Colorado 81230
Project Manager:	Link, L.L.C. 1641 County Road 771 Ohio City, Colorado 81237

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

BOARD OF GUNNISON COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Paula Swenson, Chairperson

ATTEST:

_____
Deputy Gunnison County Clerk

W. K. EDWARDS

By: _____
W. K. Edwards, Property Owner

STATE OF COLORADO)
)ss.
COUNTY OF GUNNISON)

The foregoing instrument was acknowledged before me this 19th day of January, 2016, by W. K. Edwards, Property Owner herein.

Witness my hand and seal.
My commission expires: 6/25/2017

AGNES KRONERAFF JOHNSON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20134039223
My Commission Expires June 25, 2017

_____
Notary Public
Address:

LINK, LLC,
a Colorado limited liability company

By: _____
Hal Hearne, President

STATE OF COLORADO)
)ss.
COUNTY OF GUNNISON)

The foregoing instrument was acknowledged before me this 18th day of January, 2016, by Hal Hearne, President of Link, LLC, a Colorado limited liability company, and Project Manager herein.

Witness my hand and seal.
My commission expires 9/4/18.

_____
Notary Public
Address:

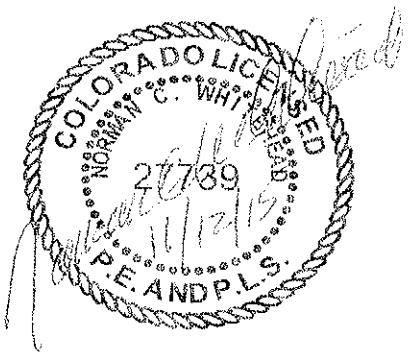
GLORIA R. BESECKER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #19874015397
My Commission Expires September 4, 2018

APPENDIX A

Proposed Vista Business Center Property
Access Rehabilitation
Engineer's Cost Estimate

11/12/15

Earthwork	Unit	Units	Unit Cost	Total Cost
Remove fill material (load and hail)	389	cy	6.00	2,333.00
Replace and grade topsoil	506	cy	2.50	1,264.00
Seed and mulch	16,500	sf	0.10	1,650.00
				5,247.00
Contingency			10%	525.00
	Project Total			$ 5,772.00



Prepared By:

Norman C. Whitehead, P.E. -P.L.S.
NCW & Associates, Inc.
Crested Butte, CO 81224