AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: License Agreement; Gunnison-Hinsdale Emergency Tel

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: BOCC and GHETSA

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

Summary:

Attached please find the License Agreement with the Gunnison-Hinsdale Emergency Telephone Service Authority for use of the infrastructure and equipment at the three communication sites, the Comstock Mountain Site, W Mountain Site and the Rose Ridge Site.

Fiscal Impact:

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

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 8/31/2017

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

Comments:
ok db 8/31/17

Reveiwed by: Discharge Date: 8/31/2017 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 8/31/2017

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

Agenda Date: 9/5/2017

Revised April 2015

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made and entered into this ___ day of _____, 2017, by and between the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO, whose address is 200 E. Virginia, Gunnison, Colorado 81230 ("Gunnison County") and the GUNNISON-HINSDALE EMERGENCY TELEPHONE SERVICE AUTHORITY, whose address is 201 W. Virginia Avenue, Gunnison, Colorado 81230 ("GHETSA").

A. RECITALS

WHEREAS, Gunnison County has established three emergency communication sites, the Comstock Mountain Site, the W Mountain Site and the Rose Ridge Site; and

WHEREAS, the location of the three emergency communication sites are identified in Appendices "A.1" through "A.3" attached hereto and incorporated herein by reference; and

WHEREAS, Gunnison County owns certain infrastructure and equipment located at the three communication sites as identified in Appendix "B" attached hereto and incorporated herein by reference ("Infrastructure and Equipment"); and

WHEREAS, GHETSA would like to utilize the Infrastructure and Equipment to provide for emergency communication services; and

WHEREAS, Gunnison County would like GHETSA to utilize the Infrastructure and Equipment to provide for emergency communication services; and

WHEREAS, Gunnison County and GHETSA desire to identify the terms and conditions for utilization of the Infrastructure and Equipment according to this License Agreement.

B. AGREEMENT

NOW THEREFORE, in consideration of the Recitals above and the mutual covenants and obligations hereinafter set forth, the parties agree as follows:

1. GRANT OF USE.

Gunnison County hereby grants to GHETSA use of its Infrastructure and Equipment identified in Appendix "B" attached hereto located at the three communication sites identified in Appendices "A.1" through "A.3" attached hereto.

2. TERM.

The term of this License Agreement shall commence on the date first set forth above and shall terminate on December 31, 2037, unless sooner terminated or replaced as provided herein ("Term").

3. COMPENSATION.

For and in consideration of the Recitals above and the rights granted herein, GHETSA shall pay to Gunnison County the sum of TEN DOLLARS AND NO/100 U.S. DOLLARS ($10.00) per year due and payable on January 1st of each calendar year during the Term of this License Agreement.

4. USE OF INFRASTRUCTURE AND EQUIPMENT.

GHETSA shall utilize the Infrastructure and Equipment at each of the three emergency communication to provide for emergency communication services for the purpose of public health and safety and welfare in a manner consistent with current established local emergency protocols, to include Sections 5.A.4 and 5.B of the 2017 Gunnison County, Colorado Emergency Operations Plan, as amended, and in accordance with applicable laws, rules and regulations of the United States, State of Colorado and Gunnison County and in accordance with the Lease Agreements for each of the three emergency communication sites.

5. MAINTENANCE, REPAIRS AND IMPROVEMENTS.

GHETSA shall be responsible for all maintenance, repairs and improvements of the Infrastructure and Equipment and shall be in a good workmanship manner and in accordance with applicable law, rules and regulations of the United States, State of Colorado and Gunnison County.

GHETSA shall not modify, alter or reconstruct the Infrastructure and Equipment without the prior written consent of Gunnison County.

6. UTILTIES.

GHETSA shall be financially responsible for any and all utility costs incurred, to include but not limited to, electricity, diesel and propane, for its use of the Infrastructure and Equipment.

7. DAMAGE TO OR DESTRUCTION OF INFRASTRUCTURE AND EQUIPMENT

During the Term of this License Agreement, notwithstanding anything herein to the contrary, in the event that any of the Infrastructure and/or Equipment is damaged or destroyed, partially or wholly, by fire or otherwise, Gunnison County shall be under no obligation whatsoever to repair, replace or rebuild the same or to provide substitute Infrastructure and/or Equipment.

8. AGENCY AGREEMENTS.

During the Term of this License Agreement, GHETSA shall maintain current and active agreements with each user agency for use of the radio equipment situated at the three

emergency communication sites, to include cost incurred for maintenance, repair and replacement thereof. Said agreements shall also include share of the cost incurred for the maintenance, repair and replacement of the Infrastructure and Equipment.

9. RIGHT TO INSPECT AND USE.

Gunnison County expressly reserves the right to inspect and utilize the Infrastructure and Equipment at any reasonable time

10. LICENSE AGREEMENT IS NONEXCLUSIVE.

Gunnison County reserves the right to enter into further agreements, as it deems necessary, for use of the Infrastructure and Equipment identified herein. Utility, maintenance, and repair costs shall be shared by the parties in proportion to their use.

11. LIABILITY.

GHETSA agrees to obtain and keep in force, throughout the Term of this License Agreement, commercial general liability insurance, as follows:

A. For any injury to one person in any single occurrence, Three Hundred Fifty Thousand and No/100 U.S. Dollars ($350,000.00); and

B. For an injury to two or more persons in any single occurrence, the sum of Nine Hundred Ninety Thousand and No/100 U.S. Dollars ($990,000.00).

GHETSA shall include Gunnison County in said policy as an additional insured. GHETSA shall provide to Gunnison County with copies of appropriate insurance policies, as described above, within ten (10) days after the execution of this License Agreement. The insurance coverage required pursuant to this paragraph 10 shall remain inforce during the term of this License Agreement; no cancellation or reduction may be made without thirty (30) days written notice to Gunnison County. GHETSA shall not allow the placement of any lien or other claim against the Infrastructure and Equipment by reason of any improvements placed upon the Infrastructure and/or Equipment, and shall indemnify, hold harmless and defend Gunnison County against any claim upon the premises or whatsoever.

Nothing in this License Agreement, including but not limited to the required or the existence of the insurance required hereunder, is or shall be deemed a waiver by the Gunnison County of any defense or claim of sovereign immunity, nor a waiver of any other provision of law relating to the liability of governmental units or the limits thereof.

12. IMMUNITY..

The parties agree and understand that the County is relying on and does not waive, by

any provisions of this Agreement, the monetary limitations or terms or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq., as from time to time amended or otherwise available to the County or any of its officers, agents, or employees.

The parties agree and understand that GHETSA is relying on and does not waive, by any provisions of this Agreement, the rights, immunities and protection provided by Section 29-11-105, C.R.S., as from time to time amended or otherwise available to GHETSA or any of its officers, agents, or employees.

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

13. WARRANTIES.

Gunnison County makes no warranties, either express or implied, as to any matter whatsoever, including but not limited to, the condition of the Infrastructure and Equipment.

14. OWNERSHIP.

The Infrastructure and Equipment is, and shall at all times be and remain, the sole and exclusive property of Gunnison County, and GHETSA shall have no right, title, or interest therein or thereto.

15. NOTICES.

All notices and other communications required or permitted under this License Agreement shall be in writing and shall be by registered or certified mail, return receipt requested to the required party at the following addresses:

GUNNISON COUNTY: Gunnison County Manager
200 East Virginia Avenue
Gunnison, CO 81230-2297

GHETSA: Gunnison – Hinsdale Emergency Telephone Service Authority
PO Box 239
Gunnison, CO 81230

16. DEFAULT.

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

17. TERMINATION.

Either party shall have the right to terminate this License Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other.

18. MISCELLANEOUS.

A. SEVERABILITY. If any clause or provision of this 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 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 License Agreement is, or shall be construed to be, a waiver, in whole or part, by Gunnison County of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

19. PROHIBITION UPON ASSIGNMENT.

Without the prior written consent of Gunnison County, GHETSA shall not (a) assign, transfer, pledge, or hypothecate this License Agreement, or any part thereof, or any interest therein, or (b) convey, sublet or lend the Infrastructure and/or Equipment or any part thereof.

20. NON-WAIVER.

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

21. FURTHER ORDERS, RULES AND REGULATIONS.

Gunnison County and GHETSA agree that, during the term of this License Agreement, in addition to or notwithstanding any terms of this License Agreement, Gunnison County may adopt and enforce such orders, rules or regulations as in the discretion of the Gunnison County which are reasonably necessary for the administration, protection or maintenance of the Infrastructure and/or Equipment.

22. GOVERNING LAW, JURISDICTION AND VENUE

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

23. ENTIRE AGREEMENT

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

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

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By _____
Phil Chamberland, Chairperson

ATTEST:

_____
Deputy County Clerk

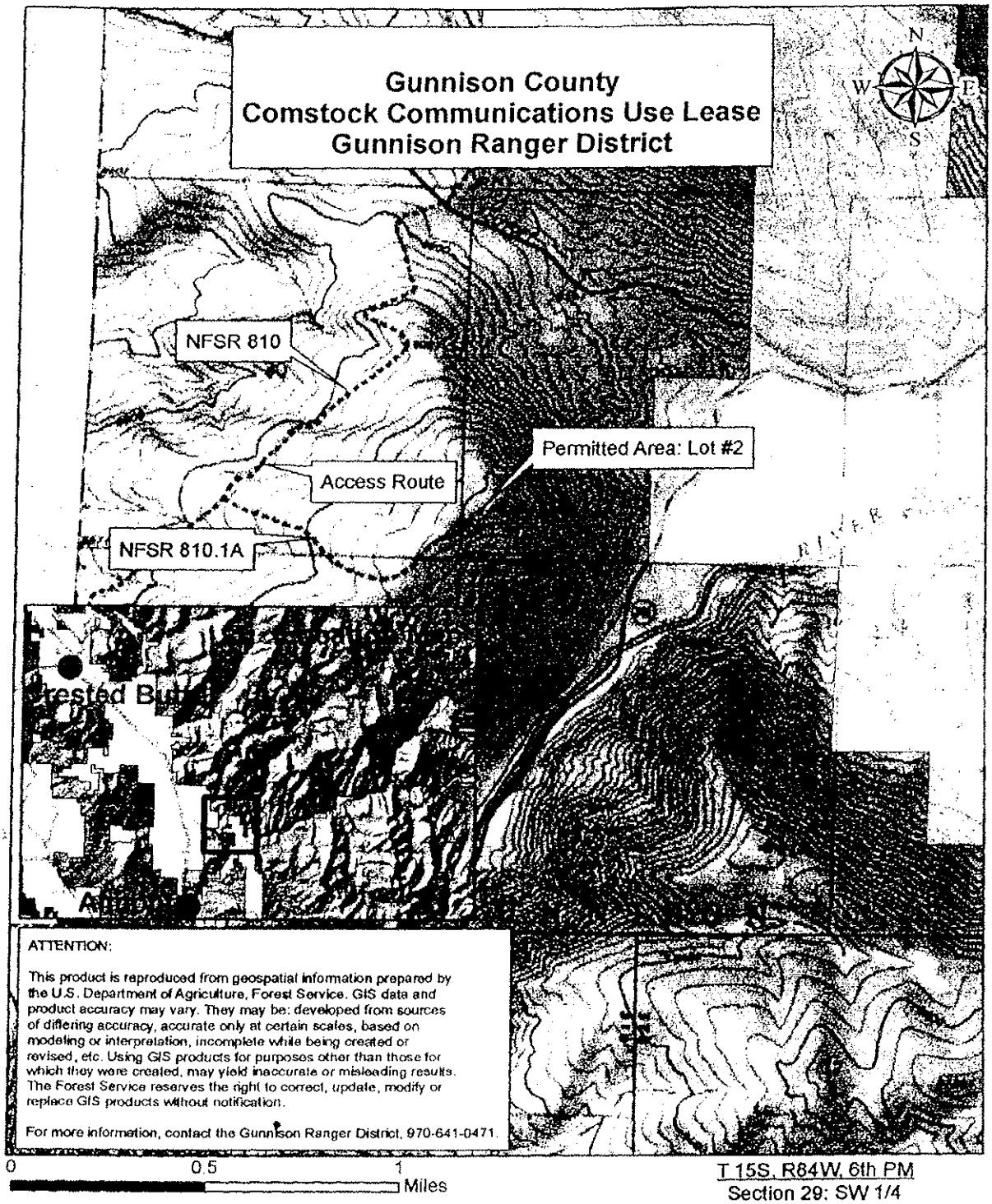
GUNNISON – HINSDALE EMERGENCY
TELEPHONE SERVICE AUTHORITY

By: _____
Keith Robinson, Chairperson

ATTEST:

Secretary

APPENDIX "A.1"



0 0.5 1 Miles

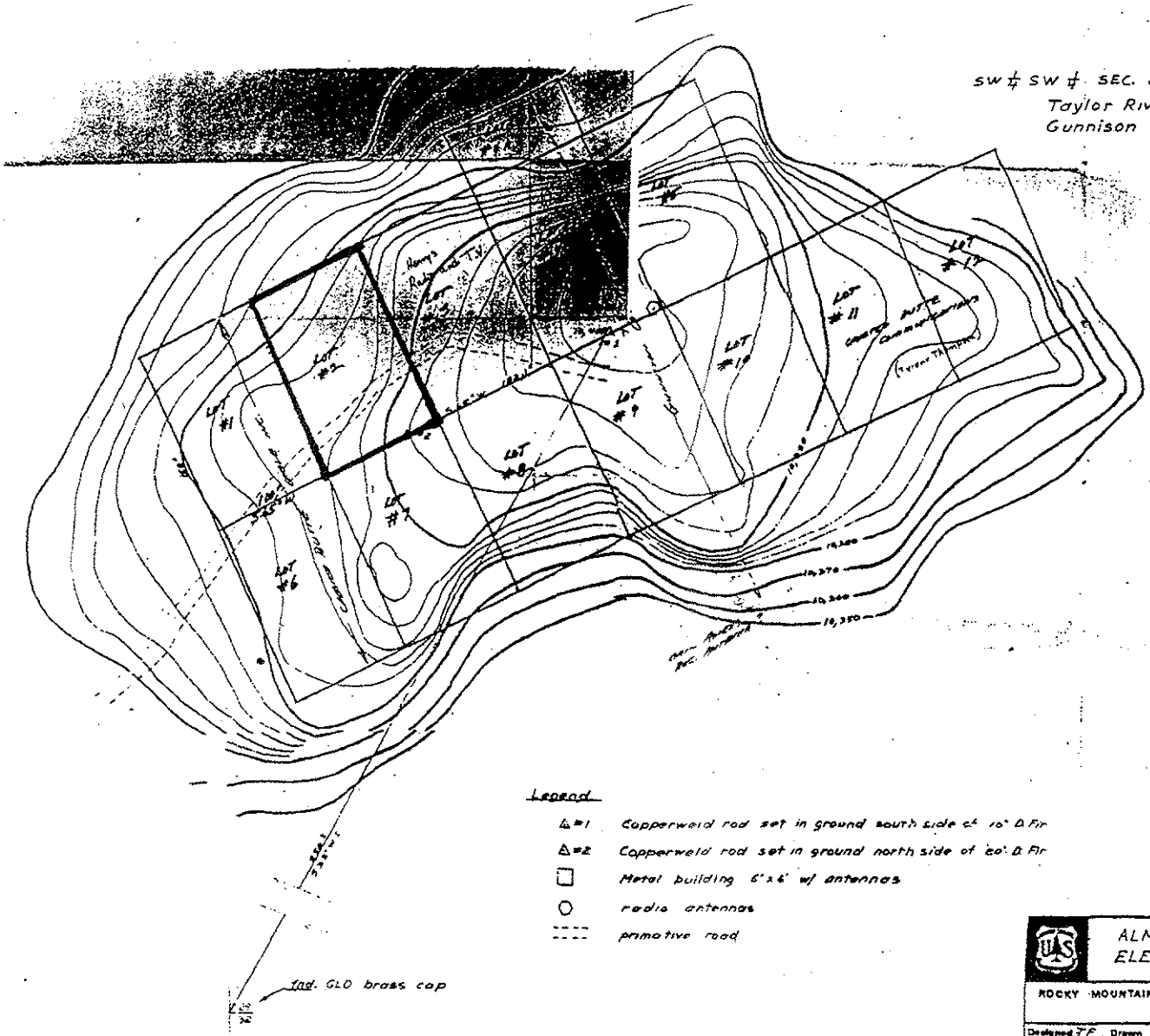
8/10 GDG

T 15S, R84W, 6th PM
Section 29: SW 1/4

Almont, CO Quadrangle

Comstock Communications Site

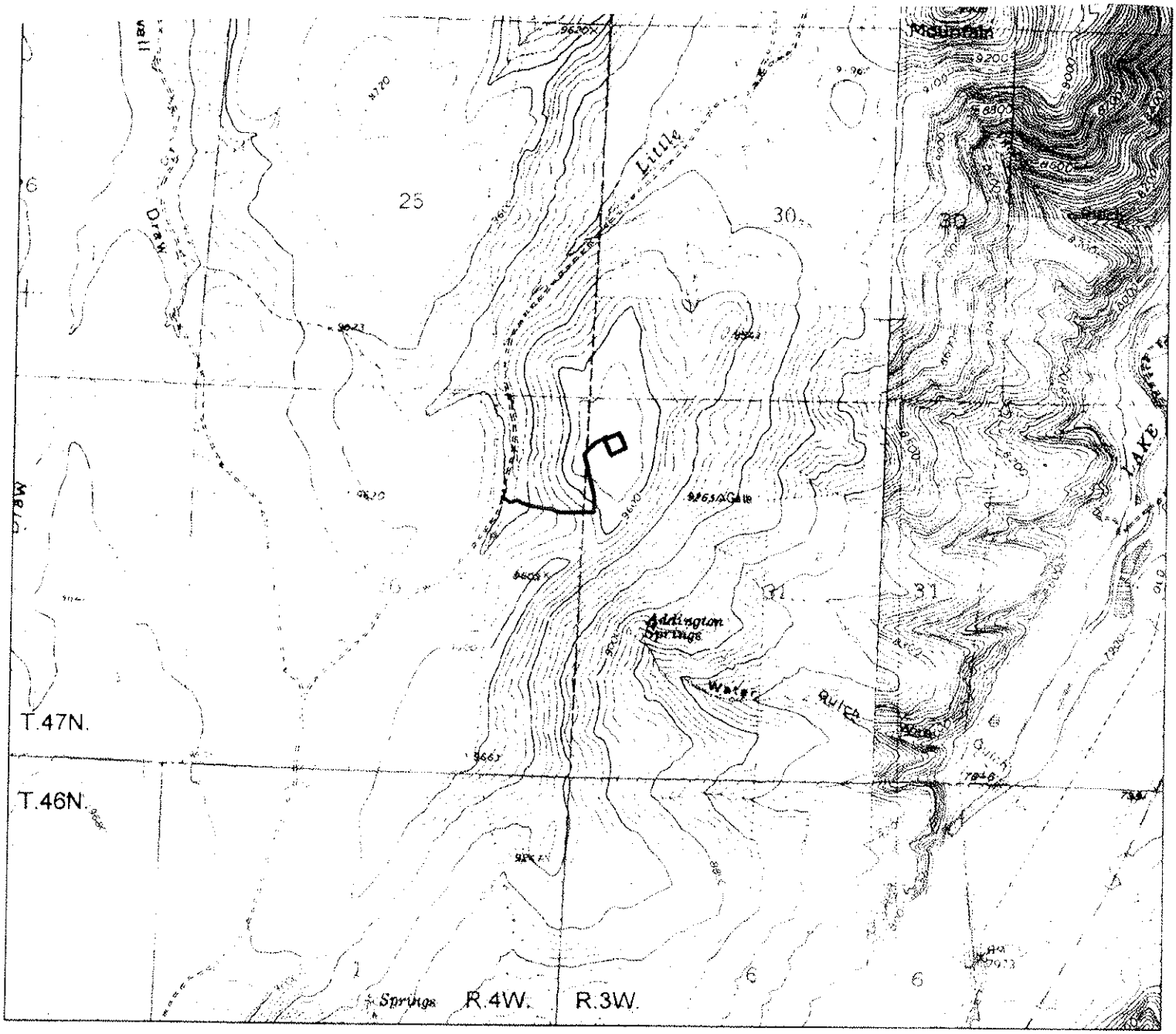
Lot Locations



APPENDIX "A.2"

ROSE RIDGE COMMUNICATION SITE

T47N, R3W, SEC. 31, LOT 1, NMPM, GUNNISON COUNTY, COLORADO



Right-of-Way

Land Ownership

BLM	NPS
Private	State
Forest Service	CDOW

0.25 0.125 0 0.25 0.5 0.75 1 Miles

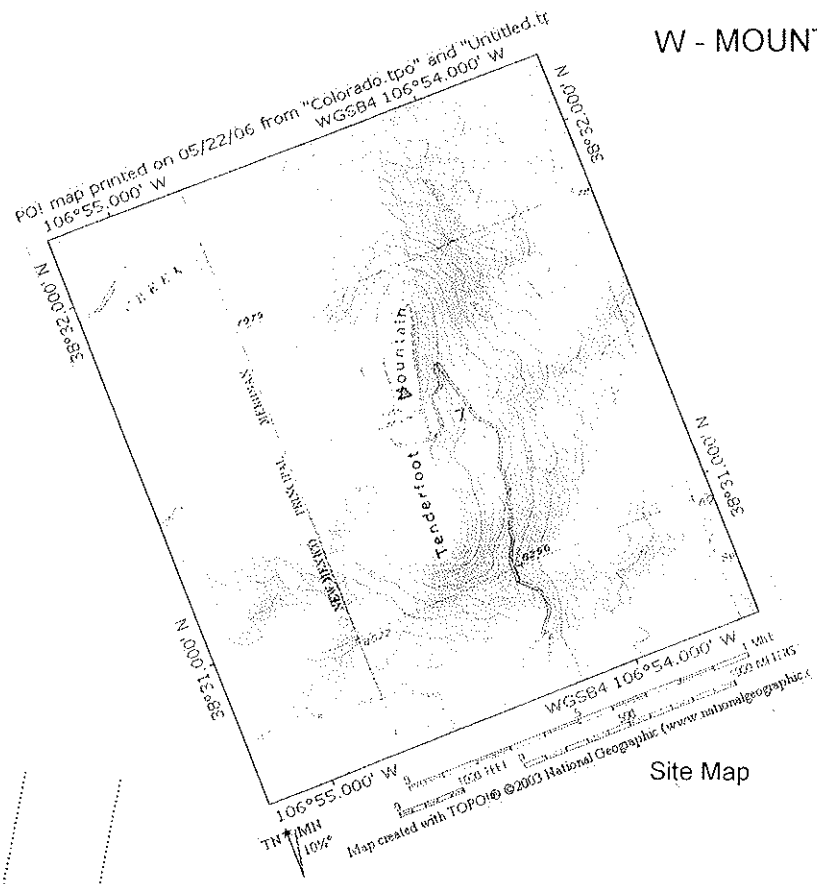
1:24000

N

Poison Draw and Gateview Quadrangles
USGS 7.5 Min Topo

APPENDIX "A.3"

W - MOUNTAIN COMMUNICATION SITE



APPENDIX "B"

GUNNISON COUNTY

INFRASTRUCTURE AND EQUIPMENT

1. Comstock Mountain Communication Site:

20' x 10' prefabricated building; 80' free-standing tri-leg tower; Kohler 30Kw propane generator (Model 30RZG, serial number 2158663); Kohler transfer switch (serial number K2131584); and a 1,000 gallon propane tank.

2. W Mountain Communication Site:

20' x 12' prefabricated building; 80' free-standing tri-leg tower; Kohler 25Kw diesel generator (Model 20REO2JB, serial number 2133071); Kohler transfer switch (model number KCT-APNA-01045, serial number).

3. Rose Ridge Communication Site**:**

20' x 10' prefabricated building; 100' free-standing tri-leg tower; Kohler 30Kw propane generator (Model 30RZG, serial number 2112798); Kohler transfer switch (serial number K2069802); and a 1,000 gallon propane tank.