AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Resolution; Personal Data Privacy

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

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

Summary:

A Resolution Adopting the 2018 Gunnison County, Colorado Personal Data Privacy Policy

Fiscal Impact:

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

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ○ Required ◉ Not Required

Comments:

Reveiwed by: Discharge Date: Certificate of Insurance Required

Yes ○ No ○

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 11/30/2018

◉ Consent Agenda ○ Regular Agenda ○ Worksession Time Allotted: 0

Agenda Date: 12/4/2018

Revised April 2015

BOARD OF COUNTY COMMISSIONERS OF
THE COUNTY OF GUNNISON, COLORADO

RESOLUTION NO: 2018-44

A RESOLUTION ADOPTING THE 2018 GUNNISON COUNTY, COLORADO
PERSONAL DATA PRIVACY POLICY

WHEREAS, Colo. Rev. Stat. § 24-73-101(1) (2018) states:

> "Each governmental entity in the state that maintains paper or electronic documents during the course of business that contain personal identifying information shall develop a written policy for the destruction or proper disposal of those paper and electronic documents containing personal identifying information. Unless otherwise required by state or federal law or regulation, the written policy must require that, when such paper or electronic documents are no longer needed, the governmental entity destroy or arrange for the destruction of such paper and electronic documents within its custody or control that contain personal identifying information by shredding, erasing, or otherwise modifying the personal identifying information in the paper or electronic documents to make the personal identifying information unreadable or indecipherable through any means";

WHEREAS, by virtue of House Bill 18-1128, Colo. Rev. Stat. § 6-1-713 (2018), Colo. Rev. Stat. § 6-1-713.5 (2018), Colo. Rev. Stat. § 6-1-716 (2018), and Colo. Rev. Stat. §§ 24-73-101 to 103 (2018) have been amended to provide stronger protections for consumer data and consumer data privacy;

WHEREAS, Gunnison County's current policies, procedures and practices follow and honor the requirements of the foregoing statutes, but it is prudent to set forth the requirements of those laws in a single policy to help ensure compliance; and

WHEREAS, because to date no court of competent and controlling jurisdiction has interpreted House Bill 18-1128, it is prudent that any policy of the County in relation to House BILL 18-1128 adopt the same language of the changes made by House Bill 18-1128;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of the County of Gunnison, Colorado, that, effective immediately from the date this Resolution is passed by such Board, the attached *Gunnison County, Colorado Personal Data Privacy Policy* shall be and hereby is approved and adopted as the primary guidance tool for personal data protection and personal data privacy for all Departments under the supervision and control of the Gunnison County Board of County Commissioners and to all County elected officials' offices and departments of Gunnison County, Colorado.

FURTHER, any and all future amendments of the *Gunnison County, Colorado Personal Data Privacy Policy,* dated December 4, 2018 (Exhibit A), may be approved and adopted by motion of the Board.

INTRODUCED by Commissioner _____, seconded by Commissioner _____, and adopted this 4th day of December, 2018.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By _____
Phil Chamberland, Chairperson

By _____
Jonathan Houck, Vice Chairperson

By _____
John Messner, Commissioner

ATTEST:

_____
Deputy County Clerk

EXHIBIT A

Policy Name:	Personal Data Privacy Policy		**Policy Number:**	1.2.11.3	
Approval Authority:	Gunnison County Board of County Commissioners	**Date of Adoption:**	12/4/2018	**Effective Date:**	12/4/2018
Adoption Document:	Resolution #2018-44	**Policy Custodian:**	Gunnison County Administration Department		
Review Date:	December 2023	**Review Frequency:**	Every Five (5) Years after the Date of Adoption.		

PURPOSE

To help ensure ongoing and continuing compliance with the Act.

SCOPE

This Policy shall apply to all Departments under the supervision and control of the Gunnison County Board of County Commissioners and to all County elected officials' offices and departments.

DEFINITIONS

"Act" means that legislation passed by the Colorado Legislature as House Bill 18-1128, "Concerning Strengthening Protections for Consumer Data Privacy," and signed into law on May 29, 2018 by the Governor of the State of Colorado.

"Biometric Data" means unique biometric data generated from measurements or analysis of human body characteristics for the purpose of authenticating the individual when he or she accesses an online account.

"Departments" means, collectively, the following departments and offices of Gunnison County: Board of County Commissioners, Administration, Airport, Assessor's Office, County Attorney's Office, Clerk & Recorder's Office, Community and Economic Development, Coroner's Office, Colorado State University Extension, Emergency Management, Facilities and Grounds, Geographic Information Services, Health and Human Services, Information Technology, Juvenile Services, Public Trustee, Public Works, Sheriff's Office, Treasurer's Office, and Veterans' Services.

"Determination that a Security Breach Occurred" means the point in time at which there is sufficient evidence to conclude that a security breach has taken place.

"**Gunnison County"** means Gunnison County, Colorado, acting by and through the Gunnison County Board of County Commissioners, including all Departments under the supervision and control of the Gunnison County Board of County Commissioners and all County elected officials' offices and departments.

"Encrypted" means rendered unusable, unreadable, or indecipherable to an unauthorized person through a security technology or methodology generally accepted in the field of information security.

"Medical Information" means any information about a consumer's medical or mental health treatment or diagnosis by a health care professional.

"Notice" means:

- Written notice to the postal address listed in the records of Gunnison County;
- Telephonic notice;
- Electronic notice, if a primary means of communication by Gunnison County with a Colorado resident is by electronic means or the notice provided is consistent with the provisions regarding electronic records and signatures set forth in the federal "Electronic Signatures in Global and National Commerce Act", 15 U.S.C. § 7001 et seq.; or
- Substitute notice, if Gunnison County demonstrates that the cost of providing notice will exceed two hundred fifty thousand dollars ($250,000.00), the affected class of persons to be notified exceeds two hundred fifty thousand (250,000) Colorado residents, or the Gunnison County does not have sufficient contact information to provide notice. Substitute notice consists of all of the following:
    - E-mail notice if Gunnison County has e-mail addresses for the members of the affected class of Colorado residents;
    - Conspicuous posting of the notice on the website page of Gunnison County if Gunnison County maintains one; and
    - Notification to major statewide media.

"Personal Identifying Information" means, a social security number; a personal identification number; a password; a pass code; an official state or government-issued driver's license or identification card number; a government passport number; biometric data, as defined in Colo. Rev. Stat. § 6-1-716 (1)(a) (2018); an employer, student, or military identification number; or a financial transaction device, as defined in Colo. Rev. Stat. § 18-5-701(3) (2018).

"Personal Information" means (A) a Colorado resident's first name or first initial and last name in combination with any one or more of the following data elements that relate to the resident, when the data elements are not encrypted, redacted, or secured by any other method rendering the name or the element unreadable or unusable: social security number; driver's license number or identification card number; student, military, or passport identification number; medical information; health insurance identification number; or biometric data; (B) a Colorado resident's username or e-mail address, in combination with a password or security questions and answers, that would permit access to an online account; or (C) a Colorado resident's account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to that account.

- **"Personal Information"** does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records or widely distributed media.

"Security Breach" means the unauthorized acquisition of unencrypted computerized data that compromises the security, confidentiality, or integrity of personal information maintained by Gunnison County. Good faith acquisition of personal information by an employee or agent of Gunnison County for the purpose of the County is not a security breach if the personal information is not used for a purpose unrelated to the lawful government purpose or is not subject to further unauthorized disclosure.

The definitions of Article 73 of Title 24, Colorado Revised Statutes are further hereby incorporated into this Policy except where any such definition conflicts with the definitions contained in this policy; in that case, the definitions contained in this policy shall control.

POLICY STATEMENTS

Applicability. This Policy shall apply to all Departments under the supervision and control of the Gunnison County Board of County Commissioners and to all County elected officials' offices and departments.

Disposal of Personal Identifying Information. It shall be the policy for all Departments that, unless otherwise required by state or federal law or regulation, when such paper or electronic documents containing personal identifying information are no longer needed by the Departments, the Departments shall destroy or arrange for the destruction of such paper and electronic documents within the Departments' custody or control by shredding, erasing, or otherwise modifying the personal identifying information in the paper or electronic documents to make the personal identifying information unreadable or indecipherable through any means.

The Departments shall implement inter-departmental procedures and policies which address the specific nature of their offices to ensure compliance with this Policy and the Act.

Protection of Personal Identifying Information. All Departments shall protect personal identifying information from unauthorized access, use, modification, disclosure, or destruction. The Departments, with assistance from the Information Technology Department, shall implement and maintain reasonable security procedures and practices that are appropriate to the nature of the personal identifying information the nature and size of Gunnison County.

The Departments shall require that all contracts with third parties which could result in the exchange of personal identifying information include contractual terms to ensure third parties are subject to and abiding by the terms of the Act and this Policy.

Notification of Security Breach. A Department shall immediately notify the County Manager when it becomes aware that a Security Breach may have occurred. The County Manager, in conjunction with the notifying Department, shall immediately notify the County's Information Technology Department. The Information Technology Department shall conduct in good faith a prompt investigation to determine the likelihood that personal information has been or will be misused. Gunnison County shall give Notice, as provided below, to the affected Colorado residents unless the investigation determines that the misuse of information about a Colorado resident has not occurred and is not reasonably likely to occur.

Notice must be made in the most expedient time possible and without unreasonable delay, but not later than thirty (30) days after the date of determination that a Security Breach occurred, consistent with the legitimate needs of law enforcement and any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the computerized data system.

If Gunnison County is required to provide notice the following information shall be provided to all affected Colorado residents:

- The date, estimated date, or estimated date range of the security breach;
- A description of the personal information that was acquired or reasonably believed to have been acquired as part of the security breach;
- Information that the resident can use to contact Gunnison County to inquire about the security breach;
- The toll-free numbers, addresses, and websites for consumer reporting agencies;
- The toll-free number, address, and website for the federal trade commission; and
- A statement that the resident can obtain information from the federal trade commission and the credit reporting agencies about fraud alerts and security freezes.

If an investigation by Gunnison County determines that the type of personal information described within this Policy has been misused or is reasonably likely to be misused, then Gunnison County shall, in addition to the notice and in the most expedient time possible and without unreasonable delay, but not later than thirty (30) days after the date of determination that a security breach occurred, consistent with the legitimate needs of law enforcement and consistent with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the computerized data system:

- Direct the person whose personal information has been breached to promptly change his or her password and security question or answer, as applicable, or to take other steps appropriate to protect the online account with the person or business and all other online accounts for which the person whose personal information has been breached uses the same username or e-mail address and password or security question or answer.
- For log-in credentials of an e-mail account furnished by Gunnison County, Gunnison County shall not comply with this policy by providing the security breach notification to that e-mail address, but may instead comply with this policy by providing notice through other methods, as defined in this policy, or by clear and conspicuous notice delivered to the resident online when the resident is connected to the online account from an internet protocol address or online location from which Gunnison County knows the resident customarily accesses the account.

The breach of encrypted or otherwise secured personal information must be disclosed in accordance with this policy if the confidential process, encryption key, or other means to decipher the secured information was also acquired in the security breach or was reasonably believed to have been acquired.

Departments are prohibited from charging the cost of providing such notice to individuals.

Nothing in this policy prohibits the notice described in this policy from containing additional information, including any information that may be required by state or federal law.

If the Departments use a third-party service provider to maintain computerized data that includes personal information, then the third-party service provider shall give notice to and cooperate with Gunnison County in the event of a security breach that compromises such computerized data, including notifying Gunnison County of any security breach in the most expedient time and without unreasonable delay following discovery of a security breach, if misuse of personal information about a Colorado resident occurred or is likely to occur. Cooperation includes sharing with Gunnison County information relevant to the security breach; except that such cooperation does not require the disclosure of confidential business information or trade secrets.

Notice required by this policy may be delayed if a law enforcement agency determines that the notice will impede a criminal investigation and the law enforcement agency has notified Gunnison County not to send notice required by this policy. Notice required by this policy must be made in good faith, in the most expedient time possible and without unreasonable delay, but not later than thirty (30) days after the law enforcement agency determines that notification will no longer impede the investigation, and has notified Gunnison County that it is appropriate to send the notice required by this policy.

If Gunnison County is required to notify more than one thousand (1,000) Colorado residents of a security breach pursuant to this policy, Gunnison County shall also notify, in the most expedient time possible and without unreasonable delay, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined by the federal "Fair Credit Reporting Act", 15 U.S.C. § 1681a (p), of the anticipated date of the notification to the residents and the approximate number of residents who are to be notified. Nothing in this policy requires Gunnison County to provide to the consumer reporting agency the names or other personal information of security breach notice recipients.

This policy does not apply to a person who is subject to Title V of the federal "Gramm-Leach-Bliley Act", 15 U.S.C. § 6801 et seq.

A waiver of these notification rights or responsibilities is void as against public policy.

Reporting of Security Breach. In the event Gunnison County must notify Colorado residents of a data breach pursuant to this policy, Gunnison County shall provide notice of any security breach to the Colorado attorney general in the most expedient time possible and without unreasonable delay, but not later than thirty (30) days after the date of determination that a security breach occurred, if the security breach is reasonably believed to have affected five hundred (500) Colorado residents or more, unless the investigation determines that the misuse of information about a Colorado resident has not occurred and is not likely to occur.

The breach of encrypted or otherwise secured personal information must be disclosed in accordance with this policy if the confidential process, encryption key, or other means to decipher the secured information was also acquired or was reasonably believed to have been acquired in the security breach.

If Gunnison County is required to notify more than one thousand (1,000) Colorado residents of a security breach pursuant to this Policy, Gunnison County shall also notify, in the most expedient time possible and without unreasonable delay, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined by the federal "Fair Credit Reporting Act", 15 U.S.C. § 1681a (p), of the anticipated date of the notification to the residents and the approximate number of residents who are to be notified. Nothing in this Policy requires Gunnison County to provide to the consumer reporting agency the names or other personal information of security breach notice recipients. This policy does not apply to a person who is subject to Title V of the federal "Gramm-Leach-Bliley Act", 15 U.S.C. § 6801 et seq.

COMPLIANCE

This policy shall be complied with in all respects. Revisions to this policy may occur and every attempt will be made to provide prior notice of any such change. However, when deemed necessary in order to fully protect the County's interests, the interest of the public, and to more fully protect the safety of the public, including employees governed by this policy, this policy may be changed without notice.

APPLICABLE LEGISLATION AND/OR RELATED REGULATIONS, POLICIES AND FORMS

The Act mandates that all governmental entities have in place a policy for the protection, destruction, and proper disposal of paper and electronic documents containing personal identifying information (PII). Because as of the date of this Policy no Court of competent and controlling jurisdiction has interpreted the Act, and to help ensure ongoing and continuing compliance, this Policy contains, to the extent possible, the same or substantially similar language as is contained in the Act. To the extent any such Court interprets or invalidates any portion of the Act, this Policy may need to be amended.