AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: DIA for Discount Self-Storage

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: BOCC, Centennial Storage Partners, LLC and Jerry Pike

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

Summary:

Attached please find the DIA for Discount Self-Storage Parking Area Expansion. We have a copy of the Letter of Credit and anticipate receiving the original Letter of Credit along with the original signed copy of the DIA by no later than Monday.

Fiscal Impact:

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

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, deposit will be held as described in document. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 12/14/2018

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

Comments:

Reveiwed by: Discharge Date: Certificate of Insurance Required

Yes ( ) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\emense Discharge Date: 12/14/2018

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

Agenda Date: 12/18/2018

Revised April 2015

DEVELOPMENT IMPROVEMENTS AGREEMENT
FOR
DISCOUNT SELF-STORAGE PARKING AREA EXPANSION

THIS DEVELOPMENT IMPROVEMENTS AGREEMENT FOR DISCOUNT SELF-STORAGE PARKING AREA EXPANSION ("Agreement") is entered into this ___ day of December, 2018 among the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO, whose address is 200 E. Virginia, Gunnison, Colorado 81230 ("Gunnison County") and CENTENNIAL STORAGE PARTNERS, L.L.C., a Colorado limited liability company, whose principal address is 3440 Admire Road, Dover, Pennsylvania 17315 ("Developer") and JERRY PIKE, whose address is 1725 State Highway 135, Gunnison, Colorado 81230 ("Property Owner").

1. Purpose. The Developer, with permission from the Property Owner, has submitted to Gunnison County the Developer's application for Land Use Change Permit No: 2018-00036 for the expansion of the current Discount Self-Storage parking area by constructing an additional 134 parking spaces for commercial storage along with the installation of chain link fencing ("Project").

The Project is located on 3 acres adjacent to and directly west of the existing Discount Self-Storage facility, on the northern half of Lot 2, Flying E Ranch Subdivision, according to the plat filed in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on December 13, 1993, bearing Reception No. 447702, also known as street address: 1725 Highway 135, Gunnison, Colorado 81230.

As valuable and sufficient consideration for this Agreement, Gunnison County and the Developer agree that approval of such application by Gunnison County is expressly conditioned on completion of the improvements described in paragraph 7 below ("Improvements") to the specifications described herein and by the times specified herein. Gunnison County and the Developer further agree that such Improvements are appropriate and necessary requirements to be required by Gunnison County, and to be performed by Developer and which Developer shall perform. Gunnison County and Developer further agree that an agreement guaranteeing the Developer'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 to Gunnison County's approval of such Land Use Change Permit. The parties have entered into this Agreement to memorialize such understandings and agreements. The relationship of the parties to this Agreement is contractual; Developer is an independent contractor and is not an agent of Gunnison County.

2. Developer Bound. The Developer agrees to accept and be bound by the terms and conditions for Gunnison County's issuance of its approval of the Land Use Change Permit No: 2018-00036 and the terms and conditions of this Agreement. Developer accepts Gunnison County's review and permitting authority, process and performance of same in

connection with Land Use Change No: 2018-00036, as legal and valid and waives any defect therein.

3. Construction.

A. The Developer agrees to complete construction of Improvements as identified in paragraph 7 below within the Project in the locations and in accordance with the specifications as identified in paragraph 7 herein, by no later than July 30, 2019. Acts of God and any cause beyond the reasonable control of the Developer 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 Developer if Gunnison County determines that: (1) such extension of time will not operate to the detriment of Gunnison County, the public or the owners of property within the Project; and (2) Gunnison County's security is adequate to ensure full performance by Developer by the extended completion date; and (3) that such an extension would not be in conflict with the conditions of the approved Land Use Change Permit. Gunnison County may require Developer to provide, at Developer's cost, supplemental estimates by Developer's engineer 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.

C. Each contract entered into by Developer for construction of the Improvements shall provide that Gunnison County is a third party beneficiary with all rights to enforce such contracts in place of Developer in the event of a default by Developer. Developer shall provide to Gunnison County a copy of each such contract upon its execution.

4. Estimated Cost. The total cost of the Improvements to be constructed by the Developer is estimated currently to be One Hundred Fourteen Thousand Three Hundred Sixty and No/100 U.S. Dollars ($114,360.00) plus a contingency amount.

5. Security. In order to secure all obligations of the Developer herein, the Developer and Gunnison County agree that the Developer shall, at Developer's sole cost, and before starting work on any phase of the Project or Improvements, and before conveying any portion of the Project, 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 One

Hundred Forty Two Thousand Nine Hundred Fifty and No/100 U.S. Dollars ($142,950.00) 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 Developer at 1% less than received by Gunnison County.

If the contract(s) provided to Gunnison County pursuant to paragraph 3C indicate a substantially different total cost than estimated in paragraph 4, the amount of security may be increased or decreased. For the purposes of this paragraph 5, substantial is defined as 10 percent or more.

Pending full performance of all of the terms and conditions hereof by the Developer, 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 One Hundred Forty Two Thousand Nine Hundred Fifty and No/100 U.S. Dollars ($142,950.00) 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 Developer, except as provided in paragraph 7C.

6. Certification.

A. Not later than August 15, 2019, a registered Colorado engineer retained by the Developer at its expense shall certify to Gunnison County whether the Developer's construction obligations regarding the Improvements, under this agreement have been fully and faithfully performed according to design and time specifications. Upon receipt by the Office of the County Attorney of such certification and receipt of a complete paper and two (2) electronic copies of road and utility as-built specifications and drawings, Gunnison County shall review the same and shall make an independent judgment whether to accept the same in the sole discretion of Gunnison County.

B. Not later than August 15, 2019, Developer shall provide to Gunnison County Attorney a sworn affidavit, signed by the Developer's authorized representative, that the Improvements completed have been paid for, in full, by the Developer. The Developer 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 scope of work to be done by the Developer shall include, but not be limited to:

1. Those improvements identified in the design plans titled: *Discount Storage Outdoor Parking Proposed Plan*, *Site and Drainage*, prepared by Robert L. Williams, P.E., Williams Engineering, dated October 2, 2018; and

2. Installation of fencing as identified in the site plan titled: *Discount Self Storage Outdoor Parking Plan*, prepared by Ken Snyder, dated August 20, 2018; and

3. The cost proposal prepared by Gunnison Valley Construction, dated October 8, 2018 attached hereto and incorporated herein by reference as Appendix "A"; and

4. The cost proposal prepared by England Fence Co., L.L.C., dated October 1, 2018 attached hereto and incorporated herein by reference as Appendix "B"; and

5. Those conditions cited by the Planning Commission and approved by the Board of County Commissioners of the County of Gunnison, Colorado for Land Use Change Permit No: 2018-00036.

B. The conditions of this Agreement and Land Use Change Permit No: 2018-00036 are such that if the obligations hereunder of the Developer are well, truly, faithfully and timely performed by Developer, inspected and certified by the Developer's engineer, and such performance is accepted by Gunnison County in Gunnison County's sole discretion, the Developer'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 one year from and after the completion and acceptance by Gunnison County of Improvements, described in paragraph 7A above, Developer shall, at its own expense, make all needed repairs and replacements to such work as shall, in Gunnison County's reasonable opinion, become necessary. Gunnison County shall have the right to retain up to Twenty Eight Thousand Five Hundred Ninety and No/U.S. Dollars ($28,590.00) of the security for up to one year following the acceptance of Improvements, as security to ensure such repair and replacement.

8. <u>Partial Release of Security</u>.

A. 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 Developer's engineer 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; and (b) all the estimated costs of all of the Reclamation; and shall release the balance of all security held by Gunnison County.

Without limiting the generality of the foregoing provision, Gunnison County shall make a partial release of the security upon acceptance of the Improvements, in accordance with paragraph 6 above. The amount released shall be the full security, less the amounts that Gunnison County has reserved the right to retain in paragraph 7.C, above, such amounts to be released in accordance with paragraph 7.C, above.

B. Upon Developer's entering into a contract or contracts for construction of Improvements hereunder, Developer and Gunnison County may negotiate an addendum to this Agreement setting forth such reasonable schedule for partial releases of the security in accordance with the anticipated construction schedule. In such circumstance, Gunnison County shall designate and authorize Gunnison County Manager to make the partial release(s) hereunder after consultation with appropriate Gunnison County staff.

9. Developer's Default. In the event of any default hereunder by the Developer, Gunnison County shall give notice to the Developer specifying the nature of such default, which notice shall be given to the Developer. In the event the Developer does 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 Developer 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 Developer 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 Developer and may be withdrawn from security.

10. 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, mailed by registered or certified mail, return receipt requested or by facsimile communication to the required party at the following addresses:

Gunnison County:	Board of Gunnison County Commissioners of the County of Gunnison, Colorado c/o Gunnison County Attorney 200 East Virginia Gunnison, CO 81230
Developer:	Centennial Storage Partners, L.L.C. 3440 Admire Road Dover PA 17315
Property Owner:	Jerry Pike 1725 State Highway 135 Gunnison, CO 81230

11. Recording of Agreement. Upon its execution, this Agreement shall be recorded by the Developer 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.

12. Retention of Police Powers. Gunnison County retains the power and right to impose additional requirements upon Developer with regard to the Project if the failure to do so would place the public or owners of property within the Project in a perilous condition, 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.

13. Transfer or Assignment. No transfer or assignment of any of the rights or obligations of the Developer under this Agreement shall be permitted without prior written approval of Gunnison County which approval shall not unreasonably be withheld.

14. Title and Authority. The Developer expressly warrants and represents to Gunnison County that the Developer has full power and authority to enter into this Agreement. The Developer understands that Gunnison County is relying on such representations and warranties in entering into this Agreement.

15. 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.

16. 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.

17. 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.

18. 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.

19. Hold Harmless Clause. The Developer 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 owner, Developer, contractors or subcontractors, which relate to the Project.

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. 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.

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: _____
Phil Chamberland, Chairperson

ATTEST:

_____
Deputy County Clerk

CENTENNIAL STORAGE PARTNERS, L.L.C.,
a Colorado limited liability company

By: _____
Ken Snyder, Owner

STATE OF COLORADO)
)ss
COUNTY OF GUNNISON)

The foregoing instrument was acknowledged before me this _____ day of December, 2018 by Ken Snyder, Owner of Centennial Storage Partners, L.L.C., a Colorado limited liability company, Developer herein.

Witness my hand and official seal.
My commission expires: _____.

_____
Notary Public
Address:

PROPERTY OWNER:

By: _____
Jerry Pike

STATE OF COLORADO)
)ss.
COUNTY OF GUNNISON)

The foregoing instrument was acknowledged before me this ___ day of December, 2018, by Jerry Pike, Property Owner herein.

Witness my hand and seal.
My commission expires: _____.

_____
Notary Public
Address:

Gunnison Valley Construction

October 8, 2018

Discount Storage

New Parking Area, 2.8 acres

Item	work	Unit	Cost	Totals
Road Base 3/4 inch	Haul 3/4 rb from McCabe	201	$ 300.00	$ 63,000.00
Fabric	Mirafi 500X 12.5x432'	4	$ 450.00	$ 1,800.00
Spreading Road Base	Level, Grade, and compact	16	$ 150.00	$ 2,400.00
Lot Prep	Prep lot for fabric	14	$ 165.00	$ 2,310.00
			Total	$ 69,510.00

Ken,

Bid is for spring 2019. Bid includes 201 12 yard loads of class 6 ¾ road base material delivered to site at $10/yd cost of gravel. Mirafi 500X is $450/roll. Equipment and labor cost not subject to change.

Thanks

Phil Chamberland

APPENDIX A

23501 Hwy 135 • Crested Butte, Colorado 81224 • 970.349.5398 Phone/Fax

ENGLAND FENCE CO, LLC
1568 N. TOWNSEND AVE.
MONTROSE, CO 81401

PROPOSAL

Date	Estimate #
10/1/2018	31701

Name / Address	Ship To
Snyder, Ken 3440 Admire Rd. Dover, PA 17315	Discount Self Storage Snyder, Ken 1825 Hwy. 135 Gunnison, Co 81230

Description	
Provide and install 1141' of 8'tall chain link fence all slatting 2 7/8" x 10' CQ20 post 2 3/8 X 10' 16GA DURA-TUBE POST 1 5/8 X 24' PE 16GA DURA-TUBE /ft 2 X 11GA 8' BK GAW C/L 9 GA TENSION WIRE CLASS 3/lb (17'=1 lb) 2 7/8 PS CAPS 1 7/8 X 1 5/8 P.S. EYETOP STD. 1 5/8 PS RAIL ENDS 2 7/8 BRACE BAND 3/16 X 3/4 X 94 TENSION BARS 2 7/8 TENSION BAND 3/8 X 2 1/4" CARRIAGE BOLT W/NUT 7 1/2" 12GA STEEL TIE CLASS 3 12 1/2 GA STL HOG RING CLASS 3 (224 = 1 LB) Ultimate slat 8' tall ANY COLOR SAND & GRAVEL & PORTLAND for c/l 6" hole set 4hr 40min-hookupx4 30min/50' roll slats 30mins/bag x 115 Gunnison 2.5hrs/day x 10 Total of items listed above Additional Overhead costs	
FINAL COST	$44,850.00

APPENDIX B