AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Acknowledgment of CM Signature; Host Compliance

Action Requested: County Manager Signature

Parties to the Agreement:

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

Summary:

Annual Host Compliance, LLC Services Agreement; Requesting acknowledgment of CM Birnie's signature

Fiscal Impact:

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

Finance Review: (●) Required ( ) Not Required

Comments:
We have $40,000 loaded in the 2020 adopted budget for this service. Document states Total Annual Subscription Servcie Price TBC based on products selected. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 3/17/2020

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

Comments:
ok db 3/18/20

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 3/18/2020 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\emense Discharge Date: 3/18/2020

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

Agenda Date: 4/7/2020

Revised April 2015

Host Compliance Services Agreement

THIS SERVICES AGREEMENT (the "**Agreement**") is entered into as of March 17, 2020 (the "**Effective Date**"), between Host Compliance LLC, ("**Host Compliance**") and Gunnison County, with an address at 200 E. Virginia Ave, Gunnison, CO 81230 (the "**Customer**"). This Agreement supersedes and replaces that certain Bear Cloud Software SaaS Agreement dated as of March 17, 2017 by and between Bear Cloud Software ("**BCS**") and the Customer (the **"BCS Agreement**") and sets forth the terms and conditions under which Host Compliance agrees to license to Customer certain hosted software and provide all other services necessary for Customer's productive use of such software (the "**Services**") as further described in the attached Schedule A.

1.0 Services.

1.1 Subscriptions. Subject to and conditioned on Customer's payments pursuant to Section 4.0 of this Agreement, Host Compliance hereby grants Customer a non-exclusive, non-transferable right to access and use the Services during the term of this Agreement, in accordance with the terms and conditions of this Agreement. Unless otherwise provided in the attached Schedule A, (a) Services are purchased as subscriptions, (b) additional service subscriptions may be added during a subscription term, with the pricing for such additional services, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscription.

1.2 Provision of Services. Customer and Customer's end-users ("End Users") may access and use the Services and any other Services that may be ordered by the Customer from time to time pursuant to a valid subscription in accordance with the terms of this Agreement.

1.3 Facilities and Data Processing. Host Compliance will use, at a minimum, industry standard technical and organizational security measures to store data provided by Customer, or obtained by Customer through the use of the Services ("Customer Data"). These measures are designed to protect the integrity of Customer Data and guard against unauthorized or unlawful access.

1.4 Modifications to the Services. Host Compliance may update the Services from time to time. If Host Compliance updates the Services in a manner that materially improves functionality, Host Compliance will inform the Customer.

2.0 Customer Obligations.

2.1 Customer Administration of the Services. Host Compliance' responsibilities do not extend to internal management or administration of the Services. Customer is responsible for: (i) maintaining the confidentiality of Customer passwords and accounts; (ii) managing Customer access to Host Compliance system administrator accounts; and (iii) ensuring that such administrators' use of the Services complies with this Agreement.

2.2 Compliance. Customer is responsible for use of the Services, including use of the Services by End Users and will comply with laws, regulations, and such provisions of this Agreement that are applicable to Customer's use of the Services.

2.3 Unauthorized Use & Access. Customer will prevent unauthorized use of the Services and terminate any unauthorized use of or access to the Services. Customer will promptly notify Host Compliance of any unauthorized use of or access to the Services.

2.4 Restricted Uses. Customer will not and will ensure that its End Users do not: (i) sell, resell, or lease the Services; (ii) reverse engineer or attempt to reverse engineer the Services, nor assist anyone else to do so; or (iii) use the Services in any way that infringes, misappropriates or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

2.5 Third Party Requests.

2.5.1 "Third Party Request" means a request from a third party for records relating to Customer's or an End User's use of the Services including information regarding an End User. Third Party Requests may include valid search warrants, court orders, or subpoenas, or any other request for which there is written consent from End Users permitting a disclosure.

2.5.2 Customer is responsible for responding to Third Party Requests via its own access to information policies. Customer will seek to obtain information required to respond to Third Party Requests and will contact Host Compliance only if it cannot obtain such information despite diligent efforts.

2.5.3 If Host Compliance receives a Third Party Request, Host Compliance will make reasonable efforts, to the extent allowed by law and by the terms of the Third Party Request, to: (A) promptly notify Customer of Host Compliance's receipt of a Third Party Request; (B) comply with Customer's reasonable requests regarding efforts to oppose a Third Party Request; and (C) provide Customer with information or tools required for Customer to respond to the Third Party Request (if Customer is otherwise unable to obtain the information). If Customer fails to promptly respond to any Third Party Request, then Host Compliance may, but will not be obligated to do so.

2.5.4 If Customer receives a Third Party Request for access to the Services, or descriptions, drawings, images or videos of the Services' user interface, Customer will make reasonable efforts, to the extent allowed by law and by the terms of the Third Party Request, to: (A) promptly notify Host Compliance of Customer's receipt of such Third Party Request; (B) comply with Host Compliance's reasonable requests regarding efforts to oppose a Third Party Request; and (C) provide Host Compliance with information required for Host Compliance to respond to the Third Party Request. If Host Compliance fails to promptly respond to any Third Party Request, then Customer may, but will not be obligated to do so.

3.0 Intellectual Property Rights; Confidentiality

3.1 Reservation of Rights. Except as expressly set forth herein, this Agreement does not grant (i) Host Compliance any intellectual Property Rights (as defined below) in the Customer Data or (ii) Customer any Intellectual Property Rights in the Services, any other products or offerings of Host Compliance, Host Compliance trademarks and brand features, or any improvements, modifications or derivative works of any of the foregoing. Notwithstanding the foregoing, while Customer Data and Services may include some Publicly Available Data (as defined as below), neither Customer nor Host Compliance make any proprietary claim to Publicly Available Data. "**Intellectual Property Rights**" means current and future worldwide rights under patents, copyright, trade secret, trademark, moral rights and other similar rights. "**Publicly Available Data**" means data, material, and information collected from publicly available sources in the performance of this Agreement, but specifically excluding Services.

3.2 Suggestions. Host Compliance may, at its discretion and for any purpose, use, modify, and incorporate into its products and services, and license and sub-license, any feedback, comments, or suggestions Customer or End Users send Host Compliance or post in Host Compliance' online forums without any obligation to Customer.

3.3 Confidential Information. Customer understands and agrees that it will not reveal, publish or otherwise disclose to any person, firm or corporation, without written authorization of Host Compliance, or except as required by law, any Confidential Information of Host Compliance, including without limitation any trade secrets, confidential knowledge, data or other proprietary information relating to the Services. "Confidential Information" means all information, written or oral, relating to the business, operations, services, facilities, processes, methodology, technologies, intellectual property, research and development, customers, strategy or other confidential or proprietary materials of Host Compliance.

3.4 Consent to use Customer Data and Marks. Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data to Host Compliance: (i) to perform the Services; (ii) to enforce this Agreement and exercise Host Compliance rights hereunder; and (iii) to use for any lawful purpose. Customer hereby grants to Host Compliance a license to use, reproduce and display Customer's name and logos in connection with: (i) Host Compliance performance of its obligations hereunder; (ii) include Customer's name and logos in its lists of Host Compliance current or former customers, and (ii) with Customer's prior consent, for promotional and marketing purposes such as developing promotional press releases, case studies, and reports.

3.5 Validated Data. In the course of providing the Services, Host Compliance performs significant work validating and confirming various data sets including, without limitation, postal addresses, property owner information, and listing de-duplication ("**Validated Data**"). Validated Data may include data otherwise classified as Customer Data, Services, or Publicly Available Data. Notwithstanding any provision to the contrary in this Agreement, Customer is prohibited from disclosing Validated Data to a competitor of Host Compliance during the term of this Agreement and for a period of one (1) year thereafter.

4.0 Fees & Payment.

4.1 Fees.

4.1.1 Customer will pay Host Compliance for all applicable fees upfront annually, as set forth in Schedule A.

4.1.2 Customer will pay any amounts related to the Services as per payment terms detailed on the applicable invoice. Customer will not withhold payment on any invoices for any reason, including a Customer's decision to delay implementation of the Services. Unless otherwise indicated, all dollar amounts referred to in the Agreement are in U.S. funds.

4.2 Taxes. Customer is responsible for all taxes. Host Compliance will charge tax when required to do so. If Customer is required by law to withhold any taxes, Customer must provide Host Compliance with an official tax receipt or other appropriate documentation.

4.3 Purchase Orders. If Customer requires the use of a purchase order or purchase order number, Customer (i) must provide the purchase number at the time of purchase and (ii) agrees that any terms and conditions on a Customer purchase order will not apply to this Agreement or the Services provided hereunder and are null and void.

5.0 Term & Termination.

5.1 Term. The initial term of this Agreement shall be one year commencing on the Effective Date, which shall automatically renew for a further period of one year upon each expiry of the then current term, unless either party provides written notice to the other party of its intention not to renew at least 45 days prior to the end of the then current term. That said, the time period until the earlier of (a) the 6-month anniversary of the Effective Date, or (b) the start date of Customer's systematic or mass outreach activities utilizing the data obtained through the Services (traditional mail, electronic mail, and/or telephone campaigns), or (c) termination by Host Compliance in our sole discretion, shall be considered a trial period ("Trial Period").

5.2 Termination for Convenience. If, for any reason during the Trial Period, Customer is dissatisfied with the Services, Customer may terminate the Subscription and all funds paid under this Agreement will be refunded and future commitments waived.

5.3 Effects of Termination for Convenience. If this Agreement is terminated by Customer in accordance with Section 5.2 (Termination for Convenience): (i) the rights granted by Host Compliance to Customer will cease immediately and Customer will no longer have the right to utilize the data obtained through the use of the Services for outreach (including traditional mail, electronic mail, and/or telephone); and (ii) after a reasonable period of time, Host Compliance may delete any Customer Data relating to Customer's account. The following sections will survive expiration or termination of this Agreement: 2.5 (Third Party Requests), 3.0 (Intellectual Property Rights; Confidentiality), 4.0 (Fees & Payments), 5.2 (Termination for Convenience), 5.3 (Effects of Termination for Convenience), 6.0 (Indemnification), 7.0 (Exclusion of Warranties; Limitation of Liability), and 8.0 (Miscellaneous).

5.4 Termination for Breach: Following the Trial Period, a party may terminate this Agreement for cause upon 45 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period. In addition, Host Compliance may terminate this Agreement, effective on written notice to Customer, if Customer fails to pay any amount when due hereunder, and such failure continues more than 10 days after Host Compliance's delivery of written notice hereof.

5.5 Refund or Payment upon Termination for Breach. If this Agreement is terminated by Customer in accordance with Section 5.4 (Termination for Breach), Host Compliance will refund Customer any prepaid fees covering the remainder of the term of all Subscriptions after the effective date of termination. If this Agreement is terminated by Host Compliance in accordance with Section 5.4 (Termination for Breach), Customer will pay any unpaid fees covering the remainder of the term of the Agreement. In no event will Customer's termination after the first 6 months relieve Customer of its obligation to pay any fees payable to Host Compliance for the period prior to the effective date of termination.

5.6 Effects of Termination for Breach. If this Agreement is terminated in accordance with Section 5.4 (Termination for Breach): (i) the rights granted by Host Compliance to Customer will cease immediately (except as set forth in this section); (ii) Host Compliance may provide Customer access to its account at then-current fees so the Customer may export its Customer Data; and (iii) after a reasonable period of time, Host Compliance may delete any Customer Data relating to Customer's account. The following sections will survive expiration or termination of this Agreement: 2.5 (Third Party Requests), 3.0 (Intellectual Property Rights; Confidentiality), 4.0 (Fees & Payments), 5.5 (Refund or Payment upon Termination for Breach), 5.6 (Effects of Termination for Breach), 6.0 (Indemnification), 7.0 (Exclusion of Warranties; Limitation of Liability), and 8.0 (Miscellaneous).

6.0 Indemnification.

6.1 By Host Compliance. Host Compliance will indemnify, defend and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorney's fees) arising out of any claim by a third party against Customer to the extent based on an allegations that Host Compliance' technology used to provide the Services to the Customer infringes or misappropriates any copyright, trade secret, patent or trademark right of the third party. In no event will Host Compliance have any obligations or liability under this section arising from: (i) use of any Services in a modified form or in combination with materials not furnished by Host Compliance and (ii) any content, information, or data provided by Customers, End Users, or other third parties.

6.2 By Customer. Customer will indemnify, defend, and hold harmless Host Compliance from and against all liabilities, damages, and costs (including settlement costs and reasonable attorney's fees) arising out of any claim by a third party against Host Compliance regarding: (i) Customer Data; (ii) Customer's use of the Services in violation of this Agreement; or (iii) End Users' use of the Services in violation of this Agreement.

6.3 Possible Infringement. If Host Compliance believes the Services infringe or may be alleged to infringe a third party's Intellectual Property Rights, then Host Compliance may (i) obtain the right for Customer, at Host Compliance' expense, to continue using the Services; (ii) provide a non-infringing functionally equivalent replacement for the Services; or (iii) modify the Services so that they no longer infringe. If Host Compliance does not believe the options described in this section are reasonable then Host Compliance may suspend or terminate this Agreement and/or Customer's use of the affected Services with no further liability or obligation to the Customer other than the obligation to provide the Customer with a pro-rata refund of pre-paid fees for the affected portion of the Services.

6.4 General. The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party will have full control and authority over the defense, except that: (i) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed and (ii) the other party may join in the defense with its own counsel at its own expense. The indemnities above are Host Compliance' and Customer's only remedy under this Agreement for violation by the other party of a third party's Intellectual Property Rights.

7.0 EXCLUSION OF WARRANTIES; LIMITATION OF LIABILITY.

7.1 EXCLUSION OF WARRANTIES. EXCEPT AS EXPLICITLY SET FORTH IN THIS AGREEMENT, HOST COMPLIANCE MAKES NO OTHER REPRESENTATION, WARRANTY OR CONDITION, EXPRESS OR IMPLIED, AND EXPRESSLY EXCLUDES ALL IMPLIED OR STATUTORY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, DURABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE WITH RESPECT TO THE SERVICES. HOST COMPLIANCE DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND TO CLIENT WITH RESPECT TO ANY THIRD PARTY SOFTWARE FORMING PART OF THE SERVICES

7.2 LIMITATION ON INDIRECT LIABILITY. TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT FOR HOST COMPLIANCE AND CUSTOMER'S INDEMNIFICATION OBLIGATIONS HEREUNDER, NEITHER CUSTOMER NOR HOST COMPLIANCE AND ITS AFFILIATES, SUPPLIERS, AND DISTRIBUTORS WILL BE LIABLE UNDER THIS AGREEMENT FOR (I) INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR (II) LOSS OF USE, DATA, BUSINESS, REVENUE, OR PROFITS (IN EACH CASE WHETHER DIRECT OR INDIRECT), EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

7.3 LIMITATION ON AMOUNT OF LIABILITY. TO THE FULLEST EXTENT PERMITTED BY LAW, HOST COMPLIANCE' AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT PAID BY CUSTOMER TO HOST COMPLIANCE HEREUNDER DURING THE SIX MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

8.0 Miscellaneous.

8.1 Terms Modification. Host Compliance may wish to revise this Agreement from time to time. If a revision, in Host Compliance' sole discretion, is material, Host Compliance will notify Customer and possibly request that an Amendment to this Agreement be agreed upon and signed. If Customer does not agree to the revised Agreement terms, Customer may terminate the Services within 30 days of receiving notice of the change.

8.2 Entire Agreement. The Agreement including the invoice and order form provided by Host Compliance, constitutes the entire agreement between Customer and Host Compliance with respect to the subject matter of this Agreement and supersedes and replaces any prior or contemporaneous understandings and agreements, whether written or oral, with respect to the subject matter of this Agreement. If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: this Agreement, then the invoice, then the order form.

8.3 Governing Law. This Agreement will in all respects be governed exclusively by and construed in accordance with the laws of the State of Washington.

8.4 Severability. Unenforceable provisions will be modified to reflect the parties' intention and only to the extent necessary to make them enforceable, and the remaining provisions of the Agreement will remain in full effect.

8.5 Waiver or Delay. Any express waiver or failure to exercise promptly any right under the Agreement will not create a continuing waiver or any expectation of non-enforcement.

8.6 Force Majeure. Except for payment obligations, neither Host Compliance nor Customer will be liable for inadequate performance to the extent caused by a condition that was beyond the party's reasonable control (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action and Internet disturbance).

8.7 Procurement Piggybacking. Host Compliance agrees to reasonably participate in any "piggybacking" programs pertinent to local government, and Customer agrees to reasonably allow any local government to "piggyback" off of Customer's efforts leading to this Agreement.

8.8 Independent Contractor. It is specifically understood and agreed that in the making and performance of this Agreement, Host Compliance is an independent contractor and is not and shall not be construed to be an employee of Customer.

IN WITNESS WHEREOF Host Compliance and the Customer have executed this Agreement as of the Effective Date.

Gunnison County by its authorized signatory:	**Host Compliance LLC** by its authorized signatory:
Name: MATTHEW BIRNIE Title: COUNTY MANAGER Date: MARCH 20, 2020	Name: Title: Date:
Billing Contact: LINDA NIENHUESER Billing Email: LNIENHUESER@GUNNISONCOUNTY.ORG Billing Direct Phone: (970) 641-2203	Account Executive: Account Executive Email: Account Executive Phone:

Schedule A

Scope of Services:

BCS platform as configured under the BCS Agreement until migration to the Host Compliance platform as described below

Address Identification - $19,800 / year

Monthly email-delivered report and live web-delivered dashboard with complete address information and screenshots of all identifiable STRs in Gunnison County's jurisdiction:

- Up-to-date list of jurisdiction's active STR listings
- High resolution screenshots of all active listings (captured weekly)
- Full address and contact information for all identifiable STRs in jurisdiction
- All available listing and contact information for non-identifiable STRs in jurisdiction

Rental Activity Monitoring and Tax Audit Support - $19,115 / yr

Ongoing monitoring of jurisdiction's short-term rental properties for signs of rental activity:

- Automatic monitoring of review activity across 40+ STR websites
- Weekly screenshots of reviews and calendars for each active listing
- Quarterly staff report on jurisdiction's STR tax compliance
- Up-to-date list of short-term rental landlords suspected of under-reporting taxes
- Documentation of information that serves as the foundation for the suspicion of tax under-reporting
- Custom reports and analysis to support tax audits and other STR related investigations
- Quarterly pro-active, systematic and data-informed outreach (physical letters) to short-term rental operators regarding their tax remittance obligations (using jurisdiction's form letters)
    - Up to 4 letters each property per year (full color)
    - Letters are 2 pages each (2nd page is dedicated to full length screenshot of listing) to improve results for effective compliance
- Functionality to streamline audits of most egregious violators
- Online submission of platform activity reports

Total Annual Subscription Service Price **$38,915 per year**