

- 1 - REVISED Agenda, BOCC reg meeting Nov 15, 2022
- 2 - Calendar Scheduling - Nov 15 to Dec 31, 2022
- 3 - consent 1, Professional Svcs Agreement, Jackalope Services LLC
- 3 - consent 2, Professional Svcs Agreement, Axis Health Services
- 3 - consent 3, CDPHE Task Order 2023 2302, Womens Wellnes, Family Planning
- 3 - consent 4, Professional Svcs Agreement, CB State of Mind
- 3 - consent 5, Amendmt No 1, CDEC Contract QAA 178558, re UPK advance payment
- 3 - consent 6, Contractor Agreement, Walter Sorrentino, CBOE Hearing Officer 2022
- 3 - consent 7, Contractor Agreement, GV Drivers Education
- 3 - consent 8, CDEC contract 23 QAAA 178787, expand child care access
- 3 - consent 9, Trade Contract, Fairgrounds Horse Stall Expansion
- 3 - consent 10, MOA with BOCC, GVH BoT, RTA, senior transportation
- 3 - consent 11, Employer App for Group Ins, Electronic Consent, Principal Life Insurnce Co
- 3 - consent 12, Amended County Aid Agreement, GV Animal Welfare League
- 4 - Jaynes Subdivision Application

**GUNNISON COUNTY BOARD OF COMMISSIONERS**  
**REGULAR MEETING AGENDA - REVISION #1**

**DATE:** Tuesday, November 15, 2022

**Page 1 of 2**

**PLACE:** Board of County Commissioners' Meeting Room at the Gunnison County Courthouse  
(REMOTE OPTION BELOW)

**GUNNISON COUNTY BOARD OF COUNTY COMMISSIONERS REGULAR MEETING:**

- 8:30 am
- Call to Order; Agenda Review
  - Scheduling
  - Consent Agenda: These items will not be discussed unless requested by a Commissioner or citizen. Items removed from consent agenda for discussion may be rescheduled later in this meeting, or at a future meeting.
    1. Acknowledgement of County Manager's signature; Professional Services Agreement; Jackalope Services LLC dba Bethany J Montlary; for Airport janitorial services; 11/1/2022 – 12/31/2023; up to \$6,300 every 4 weeks
    2. Approval for Professional Services Agreement; Axis Health Services; for Grasp Consortium collaboration services; 1/01/2022 – 11/07/22; up to \$5,000
    3. Approval for Colorado Department of Public Health and Environment Task Order 2023\*2302; for Women's Wellness and HHS Family Planning Programs; 1/01/2023 – 6/29/2023; \$8,807
    4. Approval for Professional Services Agreement; Crested Butte State of Mind; for mental health scholarship services; 1/01/2022 – 11/07/2022; up to \$36,000
    5. Approval for Amendment #1 to Colorado Department of Early Childhood Contract, QAAA 178558; for revised language regarding advance payments in the Universal Pre-School program; 10/27/2022 – 6/30/2023
    6. Approval for Contractor Agreement; Walter A. Sorrentino; for CBOE Hearing Officer services; 10/01/2022 – 10/01/2023; \$65/hour and travel mileage
    7. Approval for Contractor Agreement; Gunnison Valley Driver's Education; for Driver Training program; 11/15/2022 – 9/30/2023; up to \$50,000
    8. Approval for Colorado Department of Early Childhood Contract; Early Childhood Council; for Emerging and Expanding child care access grants; 11/01/2022 – 12/30/2024; \$18,793
    9. Approval for Trade Contractor Agreement; Christopher Klein Construction; for expansion of the horse stall building, replacing the quonset stall building as planned in the Fairgrounds Master Plan; 10/28/2022 – 6/30/2023; up to \$294,317
    10. Acknowledgement of County Manager's signature; Memorandum of Agreement between the Board of County Commissioners, the Board of Trustees of Gunnison Valley Hospital on behalf of the Senior Care Center, and the Regional Transportation Authority; for senior transportation services; 1/1/2023 to 12/31/2023; \$300,000
    11. Approval for Employer Application for Group Insurance and Policyholder Electronic Consent; Principal Life Insurance Company; New provider for 2023 Life/AD&D Insurance and Short-Term Disability; Effective date 1/01/2023
    12. Approval for amended County Aid Agreement; Gunnison Valley Animal Welfare League; 1/01/2022 – 12/31/2022; \$11,000
- 8:35 am
- County Manager's Reports
  - Sawtooth Phase I Boundary Line Adjustment Plat
  - **ADDITION:** Subdivision Application; LUC-20-00037; Resolution Approving the Application for Subdivision for LUC-20-00037, Pamela and Jay Jaynes
- 9:10 am
- Unscheduled Citizens: Limit to 5 minutes per item. No formal action can be taken at this meeting.
  - Commissioner Items: Commissioners will discuss among themselves activities that they have recently participated in that they believe other Commissioners and/or members of the public may be interested in hearing about.
  - Adjourn (Zoom meeting details continued on the next page)

*NOTE: This agenda is subject to change, including the addition of items up to 24 hours in advance or the deletion of items at any time. All times are approximate. The County Manager and Deputy County Manager's reports may include administrative items not listed. Regular Meetings, Public Hearings, and Special Meetings are recorded and **ACTION MAY BE TAKEN ON ANY ITEM.** Work Sessions are not recorded and formal action cannot be taken. For further information, contact the County Administration office at 641-0248. If special accommodations are necessary per ADA, contact 641-0248 or TTY 641-3061 prior to the meeting.*

**GUNNISON COUNTY BOARD OF COMMISSIONERS**  
**REGULAR MEETING AGENDA - REVISION #1**

**DATE:** Tuesday, November 15, 2022

**Page 2 of 2**

**PLACE:** Board of County Commissioners' Meeting Room at the Gunnison County Courthouse  
(REMOTE OPTION BELOW)

Please Note: Packet materials for the above discussions will be available on the Gunnison County website at <http://www.gunnisoncounty.org/meetings> prior to the meeting.

**ZOOM MEETING DETAILS:**

Join Zoom Meeting: <https://us02web.zoom.us/j/82753657556?pwd=MjNDbTZHTFNRVdDemZjdC91aVBIZz09>

Meeting ID: 827 5365 7556

Passcode: 471302

One tap mobile

+12532158782,,82753657556#,,,,\*471302# US (Tacoma)

+13462487799,,82753657556#,,,,\*471302# US (Houston)

# Gunnison County Board of County Commissioners Calendar

(Two or more commissioners may be in attendance.)

November 15 – December 31, 2022  
(as of 11/10/2022)

## Board of County Commissioners

### 1. BOCC Regular Meeting

November 15, 2022, All Day @ BOCC Boardroom

[More Details](#)

### 2. Elected Officials & Managers Meeting - Hosted by the Town of Mt. Crested Butte

November 17, 2022, 6:00 PM

[More Details](#)

### 3. BOCC Work Session

November 22, 2022, All Day @ BOCC Boardroom

[More Details](#)

### 4. Mayors & Managers Meeting - Hosted by Community Foundation of the Gunnison Valley

December 1, 2022, 12:00 PM - 1:30 PM

[More Details](#)

### 5. BOCC Regular Meeting

December 6, 2022, All Day @ BOCC Boardroom

[More Details](#)

### 6. BOCC Work Session

December 13, 2022, All Day @ BOCC Boardroom

[More Details](#)

### 7. BOCC Regular Meeting

December 20, 2022, All Day @ BOCC Boardroom

[More Details](#)

### 8. BOCC Work Session

December 27, 2022, All Day @ BOCC Boardroom

[More Details](#)

## Gunnison County Organization

### 1. Holiday - Thanksgiving - Offices Closed

November 24, 2022 - November 25, 2022

[More Details](#)

### 2. Holiday - Business Day Before Christmas & Christmas Day (observed) - Offices Closed

December 23, 2022 - December 26, 2022

[More Details](#)

## Gunnison-Hinsdale Board of Human Services

### 1. Gunnison-Hinsdale Board of Human Services Meeting

December 20, 2022, All Day @ BOCC Board Room

[More Details](#)

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

**Agenda Item:** Acknowledgement of County Manager's signature; Pro

**Action Requested:**

**Parties to the Agreement:**

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

For your approval, a Professional Services Agreement with Jackalope Services LLC, for janitorial services at the Airport terminal.

**Fiscal Impact:** up to \$6,300 every 4 weeks (28 days)

**Submitted by:** Melanie Bollig

**Submitter's Email Address:** mbollig@gunnisoncounty.org

**Finance Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\PSolheim

Discharge Date: 11/9/2022

**County Attorney Review:**

Required

Not Required

Comments:

Legally sufficient. MRH

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 11/8/2022

Certificate of Insurance Required

Yes  No

**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 11/10/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted:

Agenda Date: 11/15/2022

## PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) made effective the 1st day of November, 2022, by and between the Board of County Commissioners of the County of Gunnison, Colorado, whose address is 200 East Virginia, Gunnison, CO 81230 (herein “Gunnison County”) and Jackalope Services LLC dba Bethany J Montlary, whose address is P. O. Box 1412 Gunnison, CO 81230 (herein “Contractor”).

### RECITALS

The Contractor desires to provide professional services regarding (“Services”).

as identified in the Scope of Work attached hereto and incorporated herein by reference as Appendix “A (“Services”).

Gunnison County desires to engage Contractor to provide Services according to this Agreement.

### AGREEMENT

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

1. SERVICES.

Contractor shall furnish all materials, labor, supervision, supplies and equipment to commence, diligently pursue, and complete the Services. All Services shall be performed in a timely manner and in accordance with generally accepted standards for Contractor’s profession and all applicable federal, state and local laws and regulations affecting the Services or their subject matter. Contractor acknowledges that this is a non-exclusive Agreement, and Gunnison County may contract with additional or other providers able to furnish the same or similar services as it deems appropriate to do so.

2. TERM.

The term of this Agreement shall commence on the date first set forth above and shall terminate on December 31, 2023, unless sooner terminated or replaced as provided herein.

3. STRATEGIC RESULT.

Execution of this Agreement will assist the County with its

Clean and safe facilities and grounds strategy, as outlined in the Gunnison County Strategic Plan.

#### 4. COMPENSATION, BONUS AND EXPENSES.

In consideration and exchange for Contractor's performance of the Services, during the Term, Gunnison County shall pay Contractor fees as more specifically not to exceed Six Thousand Three Hundred and No/100 U. S. Dollars (\$6,300) every 4 weeks (28 days). Payment shall be made by Gunnison County to Contractor within 45 days of receipt of an invoice.

The Compensation shall compensate Contractor for all charges, expenses, overhead, payroll costs, employee benefits, insurance subsistence, and profits, except as specifically set forth in this Agreement.

This Agreement is subject to Gunnison County making an annual budget appropriation in an amount sufficient to fund this Agreement. If Gunnison County fails or refuses to make such an appropriation, Gunnison County reserves the right to terminate this Agreement pursuant to the Termination paragraph of this Agreement.

#### 5. INSURANCE.

Contractor agrees that at all times during the Term of this Agreement, and for three (3) years after the date the Term of this Agreement expires or the date this Agreement is terminated, or any applicable warranty period, Contractor shall maintain, in full force and effect and at its sole cost and expense, the following insurance policies. Within thirty (30) days of the execution of this Agreement, Contractor will provide insurance certificates to Gunnison County, listing Gunnison County as an additional insured, for the coverages required by this paragraph, which shall state that such policies shall not be materially changed or cancelled without thirty (30) days prior notice to Gunnison County. Written notice shall be sent to the parties identified in the Notices section of this Agreement and sent thirty (30) days prior to any cancellation or non-renewal unless due to non-payment of premiums, in which case, notice shall be sent ten (10) days prior. If written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, nonrenewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s).

- a. Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Contractor during the term of this Agreement.
- b. Comprehensive General Liability Insurance or the equivalent in an amount no less than Four Hundred Twenty-Four Thousand and No/100 U.S. Dollars (\$424,000.00) for injury to one person in any single occurrence; and no less than One Million One Hundred Ninety-Five Thousand and No/100 U.S. Dollars (\$1,195,000.00) for injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate).
- c. Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than Four Hundred Twenty-Four Thousand and No/100 U.S. Dollars

(\$424,000.00) for injury to one person in any single occurrence; and no less than One Million One Hundred Ninety-Five Thousand and No/100 U.S. Dollars (\$1,195,000.00) for injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate).

- d. Professional Liability Insurance or the equivalent, such as Errors and Omissions coverage, in an amount no less than Four Hundred Twenty-Four Thousand and No/100 U.S. Dollars (\$424,000.00) for injury to one person in any single occurrence; and no less than One Million One Hundred Ninety-Five Thousand and No/100 U.S. Dollars (\$1,195,000.00) for any injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate).

The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado. Combinations of primary and excess coverage may be used to achieve minimum coverage limits. Excess/umbrella policy(ies) must follow form of the primary policy(ies) with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance. The County's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the County's rights or remedies under this Agreement.

If excluded from any policy coverage, this Agreement shall be specifically named an insured contract. If any policy is in excess of a deductible or self-insured retention, the County must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) must be included. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the County, excluding Professional Liability and Workers Compensation policies, if required.

For all coverages required under this Agreement, Contractor's insurer(s) shall waive subrogation rights against the County by policy endorsement. All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the County.

The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor to the County under this Agreement. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

The insurance provisions of this Agreement shall survive expiration or termination of this Agreement.

6. INDEPENDENT CONTRACTOR.

In carrying out its obligations and activities under this Agreement, Contractor is acting as an independent contractor and not as an agent, partner, joint venture or employee of Gunnison County. Contractor does not have any authority to bind Gunnison County in any manner whatsoever.

**Contractor acknowledges and agrees that Contractor is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County.** Further, Contractor is obligated to pay all applicable federal, state and local taxes owed in relation to the services.

7. INDEMNIFICATION.

Contractor irrevocably and unconditionally agrees to indemnify, defend and hold harmless Gunnison County, its Commissioners, agents and employees of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) arising out of or related to any loss, cost, damage or injury, including death, of any person or damage to property of any kind caused by the misconduct or negligent acts, errors or omissions of Contractor or its employees, subcontractors or agents in connection with this Agreement. Further, the County shall not be liable to Contractor or its affiliates for any loss of anticipated business opportunities, contracts, revenues, profits or savings; damage to goodwill or reputation; or indirect, special or consequential loss or damage, arising out of or in connection with this Agreement, whether for breach of contract, in tort (including negligence), under statute or any other law, and Contractor expressly disclaims any such claims or damages as against the County.

In case of any claim that is subject to indemnification under this Agreement, Contractor will provide the County reasonably prompt notice of the relevant claim. Contractor will defend or settle, at its own expense, any demand, action, or suit on any claim subject to indemnification under this Agreement, through legal counsel selected by Contractor but approved by the County. Each party will cooperate in good faith with the other to facilitate the defense of any such claim and the County will tender the defense and settlement of any action or proceeding covered by this Section to Contractor or upon request. Claims may be settled without the consent of the County, unless the settlement includes an admission of wrongdoing, fault or liability by the County, whether express or implied.

This defense and indemnification obligation shall survive any termination or expiration of this Agreement.

a.

8. DISCRIMINATION.

The Contractor agrees to not discriminate against any person or class of persons by reason of age, race, color, sex, creed, religion, disability, national origin, sexual orientation or political affiliation in providing any services or in the use of any facilities provided for the public in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. Contractor shall further comply with the letter and spirit of the Colorado Anti-Discrimination Act of 1957, as amended, and any other laws and regulations respecting discrimination in unfair employment practices. Additionally, Contractor shall comply with such enforcement procedures as any governmental authority might demand that Gunnison County take for the purpose of complying with any such laws and regulations.

9. AMERICANS WITH DISABILITIES ACT COMPLIANCE.

The Contractor represents and warrants to Gunnison County that at all times during the performance of this Agreement no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor upon which assurance Gunnison County relies.

10. MISCELLANEOUS.

- a. SEVERABILITY. If any clause or provision of this 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 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. The parties hereto understand and agree that the County is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 2410-101, et seq., C.R.S. Nothing in this 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.
- d. LEGAL AUTHORITY. Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The County shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.

- e. NO CONSTRUCTION AGAINST DRAFTING PARTY. The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.
- f. ORDER OF PRECEDENCE. In the event of any conflicts between the language of the Agreement and any exhibits to it, the language of the Agreement controls.
- g. SURVIVAL OF CERTAIN PROVISIONS. The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the County will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.
- h. INUREMENT. The rights and obligations of the parties herein set forth shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns permitted under this Agreement.
- i. TIME IS OF THE ESSENCE. The parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.
- j. PARAGRAPH HEADINGS. The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

#### 11. DELEGATION AND ASSIGNMENT.

Contractor shall not delegate or assign its duties under this Agreement without the prior written consent of Gunnison County which consent Gunnison County may withhold in its discretion. Subject to the foregoing, the terms, covenants and conditions of this Agreement shall be binding on the successors and assigns of either party.

#### 12. TERMINATION.

Either party shall have the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other. Upon termination, Contractor shall be entitled to compensation for Services performed prior to the date of termination, per the compensation terms provided in this Agreement. Termination shall not affect or prejudice any rights or other remedy that a party may have with respect to the event giving rise to termination or any other rights or other remedy a party may have with respect to breach of this Agreement which existed at or before the date of termination.

#### 13. OWNERSHIP OF PROPERTY.

Any work product, information, materials, goods, or intellectual property generated as a result of the Services shall become the sole and exclusive property of the County, and Contract agrees to relinquish any rights, implied or otherwise, to such property, including but not limited to any resulting intellectual property rights.

#### 14. WARRANTIES.

Contractor represents and warrants to the County as follows:

- a. The Services shall conform to applicable specifications and will be free from deficiencies and defects in materials, workmanship, design or performance, as applicable.
- b. All Services shall be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards.
- c. Contractor has the requisite ownership, rights and licenses to perform its obligations under this Agreement and to perform the Services free and clear from all liens, adverse claims, encumbrances and interests of any third party.
- d. There are no pending or threatened lawsuits, claims, disputes or actions adversely affecting the Services or Contractor's ability to perform its obligations under this Agreement.
- e. Performance of the Services shall not violate, infringe, or misappropriate any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right of any third party.
- f. Contractor has the right to and shall assign to County all third-party warranties and indemnities that Contractor receives in connection with any of the Services provided to County. To the extent that Contractor is not permitted to assign any warranties or indemnities to the County, Contractor agrees to specifically identify and enforce those warranties and indemnities on behalf of County to the extent Contractor is permitted to do so under the terms of the applicable third-party agreements.

#### 17. WHEN RIGHTS AND REMEDIES NOT WAIVED.

In no event shall any action by either party constitute or be construed to be a waiver by the other party of any breach of covenant or default which may then exist on the part of the party alleged to be in breach, and the non-breaching party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

#### 18. NO THIRD-PARTY BENEFICIARY.

Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the County or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

#### 19. CONFLICT OF INTEREST.

The signatories to this Agreement aver to their knowledge, no employee of the County has any personal or beneficial interest whatsoever in the Services. Contractor has no beneficial interest, direct or indirect, that would conflict in any manner or degree with the performance of the Services, and Contractor shall not employ any person having such known interests. The Contractor shall also not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the County. The County, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

#### 20. FORCE MAJEURE.

Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of an unforeseeable event outside the control of such party, and not caused by such party's negligence, including war or armed conflict, fire, flood, strike, riot or insurrection, terrorist attack, nuclear, chemical or biological attack, natural disaster, martial law, unreasonable delay of carriers, governmental order or regulation; PROVIDED, HOWEVER, the any delay caused by the Covid-19 Pandemic (or Endemic), or any other communicable disease pandemic or endemic, shall NOT be considered a force majeure event. If a force major event occurs, the time for performance shall be extended by mutual agreement of the parties for a period of time as may be reasonably necessary to compensate for such delay, provided that if such performance still cannot be completed within such extended period of time, either party may terminate this Agreement and both parties will be released from any further obligation to the other.

#### 21. NOTICES.

Any notice, demand or communication which either party may desire or be required to give to the other party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally or sent by certified first class US mail, postage prepaid, addressed as follows:

Gunnison County: County Manager  
Gunnison County  
200 E. Virginia  
Gunnison, Colorado 81230

Phone: 970-641-0248

With a copy to: Board of County Commissioners  
of the County of Gunnison, Colorado  
200 E. Virginia  
Gunnison, Colorado 81230

Contractor: Jackalope Services LLC dba Bethany J Montlary

Either party has the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

22. GOVERNING LAW.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Jurisdiction and venue for any legal proceedings related to this Agreement shall exclusively lie in the State of Colorado District Court located in Gunnison County, Colorado.

23. COUNTERPARTS: FACSIMILE AND ELECTRONIC TRANSMISSION.

This Agreement may be executed by facsimile and/or in any number of counterparts, any or all of which may contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the parties as though originally executed on one originally executed document. All facsimile counterparts shall be promptly followed with delivery of original executed counterparts.

This Agreement may also be executed by electronic means or signatures. Accordingly, the Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the County in the manner specified by the County. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

The parties agree that: (i) any notice or communication transmitted by electronic transmission, as defined below, shall be treated in all manner and respects as an original written document; (ii) any such notice or communication shall be considered to have the same binding and legal effect as an original document; and (iii) at the request of either party, any such notice or communication shall be re-delivered or re-executed, as appropriate, by the party in its original form. For purposes of this Agreement, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form

by such a recipient through an automated process, but specifically excluding text or instant messages.

24. ENTIRE AGREEMENT.

This Agreement comprises the entire agreement between County and Contractor and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. No amendment to or modification of this Agreement will be binding unless in writing and signed by an authorized representative of each party.

Notwithstanding anything to the contrary herein, the County shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor's or a subcontractor's website or any provision incorporated into any click-through or online agreements related to the work unless that provision is specifically referenced in this Agreement.

25. RECORDS.

Contractor shall maintain for a minimum of three (3) years, adequate financial and other records for reporting to County. Contractor shall be subject to financial audit by federal, state or county auditors or their designees. Contractor authorizes such audits and inspections of records during normal business hours, upon forty-eight (48) hours' notice to Contractor. Contractor shall fully cooperate during such audit or inspections.

26. PUBLIC RECORD.

To the extent not prohibited by state or federal law, this Agreement is potentially subject to public release through the Colorado Open Records Act. The parties further acknowledge and understand that all work product or materials provided or produced under this Agreement, including items marked Proprietary or Confidential, may be subject to the Colorado Open Records Act., § 24-72-201, et seq., C.R.S.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date above written.

BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF GUNNISON, COLORADO

By:   
Matthew Birnie, County Manager

ATTEST:

Melanie Bolig

Deputy Clerk



CONTRACTOR

By: BJM

Bethany J Montlary

## APPENDIX "A"

### Scope of Work

#### Airport Terminal Janitorial

**Rate:**

\$225 a day billed every 4 weeks.

For example, a 4-week invoice will be  $\$225 \times 28 \text{ days} = \$6,300$

A week begins on Sunday and ends on Saturday.

Area Scope: (see attached floor plan for reference)

**Included areas:**

- Public areas
- Ticketing and Rental car counters
- Hold rooms
- Baggage Claim
- Ticketing Hall
- Checkpoint queuing hallway
- Restrooms
- "Living room area"
- West staff stairway and hall in front of airline offices

**Excluded areas:**

- TSA office
- Airline offices
- TSA checkpoint
- Airline staff side of ticket counters and gate counters
- Rental car offices and backside of Rental car counters
- Mechanical and electrical rooms
- Bar and food preparation area
- Baggage screening
- Baggage make-up
- Airline break-room

Daily (tasks to be completed as time allows up to not to the 28-day billing period not-to exceed limit of \$6,300)

- Empty all garbage cans
- Sweep and dust mop wood floors
- Spot vacuum as needed
- Disinfect and polish all water fountains
- Clean and disinfect entrance doors and sterile area exit doors and glass
- Wipe and disinfect all countertops
- Clean Restrooms:
  - o Remove all garbage and empty feminine waste bins
  - o Clean toilets including removing hard water stains, disinfecting bowl, seat, stool, and flush handles

- Clean and disinfect and partitions, tile walls, latch handles and all other touch points
- Clean and disinfect sinks, counter tops, soap dispensers and remove all hard water build up
- Clean and polish mirrors and light fixtures
- Clean and mop all bathroom floors

Weekly

- Spot clean furniture as needed
- Spot clean all glass as needed
- Folding and returning all cleaning towels.
- Cleaning carts cleaned and organized
- Emptying vacuum bags and cleaning vacuum filters the 1<sup>st</sup> of each month.

Supplies purchased by the County.

Hourly Rate for additional services if requested IN WRITING: \$75/hr

The items that a custodian will be handling are as follows:

- remove all trash and recycling at mid-day
- riding vacuum all carpeted areas
- dust building
- sweeping, moping, and vacuuming all floors including 3 flights of stairs mid-day
- maintain wood floors in bar area with maintenance oil coat
- clean windows and glass inside and out bi-annually
- restocking paper towels, toilet paper and toilet seat liners in bathrooms
- cleaning and dusting all chairs and tables
- clean escalator glass
- disinfect and clean elevator
- high area vacuum ductwork, art wall, etc.
- stair and escalator cleaning
- clean and polish stainless steel at baggage belts

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

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**Agenda Item:** Approval for Professional Services Agreement; Axis

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**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:**

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

opioid community work

**Fiscal Impact:**

**Submitted by:** Kari Commerford

**Submitter's Email Address:** kcommerford@gunnisoncounty.org

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**Finance Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\PSolheim

Discharge Date: 11/9/2022

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**County Attorney Review:**

Required

Not Required

Comments:

Legally sufficient. MRH

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 11/8/2022

Certificate of Insurance Required

Yes  No

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**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 11/10/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted:

Agenda Date: 11/15/2022

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**PROFESSIONAL SERVICES AGREEMENT**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) made effective the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Board of County Commissioners of the County of Gunnison, Colorado, whose address is 200 East Virginia, Gunnison, CO 81230 (herein “Gunnison County”) and \_\_\_\_\_, whose address is \_\_\_\_\_ (herein “Contractor”).

**RECITALS**

The Contractor desires to provide professional services regarding \_\_\_\_\_ (“Services”).

[OR]

[as identified in the Scope of Work attached hereto and incorporated herein by reference as Appendix “A (“Services”).]

Gunnison County desires to engage Contractor to provide Services according to this Agreement.

**AGREEMENT**

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

1. **SERVICES.**

Contractor shall furnish all materials, labor, supervision, supplies and equipment to commence, diligently pursue, and complete the Services. All Services shall be performed in a timely manner and in accordance with generally accepted standards for Contractor’s profession and all applicable federal, state and local laws and regulations affecting the Services or their subject matter. Contractor acknowledges that this is a non-exclusive Agreement, and Gunnison County may contract with additional or other providers able to furnish the same or similar services as it deems appropriate to do so.

2. **TERM.**

The term of this Agreement shall commence on the date first set forth above and shall terminate on \_\_\_\_\_, unless sooner terminated or replaced as provided herein.

3. **STRATEGIC RESULT.**

Execution of this Agreement will assist the County with its \_\_\_\_\_ strategy, as outlined in the Gunnison County Strategic Plan.

4. COMPENSATION, BONUS AND EXPENSES.

In consideration and exchange for Contractor's performance of the Services, during the Term, Gunnison County shall pay Contractor fees as more specifically not to exceed \_\_\_\_\_ and No/100 U. S. Dollars (\$\_\_\_\_\_). Payment shall be made by Gunnison County to Contractor within 45 days of receipt of an invoice.

The Compensation shall compensate Contractor for all charges, expenses, overhead, payroll costs, employee benefits, insurance subsistence, and profits, except as specifically set forth in this Agreement.

[IF THE TERM IS FOR MORE THAN 1 YEAR: This Agreement is subject to Gunnison County making an annual budget appropriation in an amount sufficient to fund this Agreement. If Gunnison County fails or refuses to make such an appropriation, Gunnison County reserves the right to terminate this Agreement pursuant to the Termination paragraph of this Agreement. ]

5. INSURANCE.

Contractor agrees that at all times during the Term of this Agreement, and for three (3) years after the date the Term of this Agreement expires or the date this Agreement is terminated, or any applicable warranty period, Contractor shall maintain, in full force and effect and at its sole cost and expense, the following insurance policies. Within thirty (30) days of the execution of this Agreement, Contractor will provide insurance certificates to Gunnison County, listing Gunnison County as an additional insured, for the coverages required by this paragraph, which shall state that such policies shall not be materially changed or cancelled without thirty (30) days prior notice to Gunnison County. Written notice shall be sent to the parties identified in the Notices section of this Agreement and sent thirty (30) days prior to any cancellation or non-renewal unless due to non-payment of premiums, in which case, notice shall be sent ten (10) days prior. If written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s).

- a. Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Contractor during the term of this Agreement.
- b. Comprehensive General Liability Insurance or the equivalent in an amount no less than Four Hundred Twenty-Four Thousand and No/100 U.S. Dollars (\$424,000.00) for injury to one person in any single occurrence; and no less than One Million One Hundred Ninety-Five Thousand and No/100 U.S. Dollars (\$1,195,000.00) for injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate).

- c. Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than Four Hundred Twenty-Four Thousand and No/100 U.S. Dollars (\$424,000.00) for injury to one person in any single occurrence; and no less than One Million One Hundred Ninety-Five Thousand and No/100 U.S. Dollars (\$1,195,000.00) for injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate).
- d. Professional Liability Insurance or the equivalent, such as Errors and Omissions coverage, in an amount no less than Four Hundred Twenty-Four Thousand and No/100 U.S. Dollars (\$424,000.00) for injury to one person in any single occurrence; and no less than One Million One Hundred Ninety-Five Thousand and No/100 U.S. Dollars (\$1,195,000.00) for any injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate).

The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado. Combinations of primary and excess coverage may be used to achieve minimum coverage limits. Excess/umbrella policy(ies) must follow form of the primary policy(ies) with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance. The County's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the County's rights or remedies under this Agreement.

If excluded from any policy coverage, this Agreement shall be specifically named an insured contract. If any policy is in excess of a deductible or self-insured retention, the County must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) must be included. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the County, excluding Professional Liability and Workers Compensation policies, if required.

For all coverages required under this Agreement, Contractor's insurer(s) shall waive subrogation rights against the County by policy endorsement. All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the County.

The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor to the County under this

Agreement. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

The insurance provisions of this Agreement shall survive expiration or termination of this Agreement.

6. INDEPENDENT CONTRACTOR.

In carrying out its obligations and activities under this Agreement, Contractor is acting as an independent contractor and not as an agent, partner, joint venture or employee of Gunnison County. Contractor does not have any authority to bind Gunnison County in any manner whatsoever.

**Contractor acknowledges and agrees that Contractor is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County.** Further, Contractor is obligated to pay all applicable federal, state and local taxes owed in relation to the services.

7. INDEMNIFICATION.

Contractor irrevocably and unconditionally agrees to indemnify, defend and hold harmless Gunnison County, its Commissioners, agents and employees of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) arising out of or related to any loss, cost, damage or injury, including death, of any person or damage to property of any kind caused by the misconduct or negligent acts, errors or omissions of Contractor or its employees, subcontractors or agents in connection with this Agreement. Further, the County shall not be liable to Contractor or its affiliates for any loss of anticipated business opportunities, contracts, revenues, profits or savings; damage to goodwill or reputation; or indirect, special or consequential loss or damage, arising out of or in connection with this Agreement, whether for breach of contract, in tort (including negligence), under statute or any other law, and Contractor expressly disclaims any such claims or damages as against the County.

In case of any claim that is subject to indemnification under this Agreement, Contractor will provide the County reasonably prompt notice of the relevant claim. Contractor will defend or settle, at its own expense, any demand, action, or suit on any claim subject to indemnification under this Agreement, through legal counsel selected by Contractor but approved by the County. Each party will cooperate in good faith with the other to facilitate the defense of any such claim and the County will tender the defense and settlement of any action or proceeding covered by this Section to Contractor or upon request. Claims may be settled without the consent of the County, unless the settlement includes an admission of wrongdoing, fault or liability by the County, whether express or implied.

This defense and indemnification obligation shall survive any termination or expiration of this Agreement.

8. SOLE SOURCE CONTRACTS. [ONLY USE ON CONTRACTS \$100,000 or more.]]

If the Contractor has entered into a sole source contract or contracts with the State of Colorado or any of its political subdivisions as defined in Article XXVIII of the Colorado Constitution which including this contract in the aggregate on an annual basis are equal to or exceed the amount of \$100,000, then the following provisions apply:

- a. Because of a presumption of impropriety between contributions to any campaign and sole source government contracts, Contractor, on behalf of itself, any person who controls ten percent or more of the shares of or interest in the Contractor, and the Contractor's officers, directors and trustees (collectively, the "Contract Holder") shall contractually agree, for the duration of the contract and for two years thereafter, to cease making, causing to be made, or inducing by any means, a contribution, directly or indirectly, on behalf of the Contractor Holder or on behalf of his or her immediate family member and for the benefit of any political party or for the benefit of any candidate for any elected office of the state or any of its political subdivisions.
- b. The parties further agree that if a Contract Holder makes or causes to be made any contribution intended to promote or influence the result of an election on a ballot issue, the Contract Holder shall not be qualified to enter into a sole source government contract relating to that particular ballot issue.
- c. The parties agree that if a Contract Holder intentionally violates sections 15 or 17(2) of Article XXVIII of the Colorado Constitution, as contractual damages that Contract Holder shall be ineligible to hold any sole source government contract, or public employment with the state or any of its political subdivisions, for three years.
- d. These provisions shall not apply to the extent they have been enjoined or invalidated by a court of competent jurisdiction.

9. DISCRIMINATION.

The Contractor agrees to not discriminate against any person or class of persons by reason of age, race, color, sex, creed, religion, disability, national origin, sexual orientation or political affiliation in providing any services or in the use of any facilities provided for the public in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. Contractor shall further comply with the letter and spirit of the Colorado Anti-Discrimination Act of 1957, as amended, and any other laws and regulations respecting discrimination in unfair employment practices. Additionally, Contractor shall comply with such enforcement procedures as any governmental authority might demand that Gunnison County take for the purpose of complying with any such laws and regulations.

10. IMMIGRATION COMPLIANCE CERTIFICATION.

- a. Contractor certifies that Contractor does not and will not knowingly contract with or employ illegal aliens to work under this Agreement.
- b. Contractor certifies that Contractor has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work under this Agreement.
- c. Contractor certifies that it has attempted to verify the eligibility of its employees and subcontractors to work through the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security.
- d. Contractor agrees to comply with all reasonable requests made in the course of an investigation under C.R.S. § 8-17.5-102 by the Colorado Department of Labor and Employment.
- e. Contractor agrees to comply with the provisions of C.R.S. § 8-17.5-101 et seq.

11. AMERICANS WITH DISABILITIES ACT COMPLIANCE.

The Contractor represents and warrants to Gunnison County that at all times during the performance of this Agreement no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor upon which assurance Gunnison County relies.

12. MISCELLANEOUS.

- a. SEVERABILITY. If any clause or provision of this 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 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. The parties hereto understand and agree that the County is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, et seq., C.R.S. Nothing in this 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.

- d. **LEGAL AUTHORITY.** Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The County shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.
- e. **NO CONSTRUCTION AGAINST DRAFTING PARTY.** The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.
- f. **ORDER OF PRECEDENCE.** In the event of any conflicts between the language of the Agreement and any exhibits to it, the language of the Agreement controls.
- g. **SURVIVAL OF CERTAIN PROVISIONS.** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the County will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.
- h. **INUREMENT.** The rights and obligations of the parties herein set forth shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns permitted under this Agreement.
- i. **TIME IS OF THE ESSENCE.** The parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.
- j. **PARAGRAPH HEADINGS.** The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

### 13. DELEGATION AND ASSIGNMENT.

Contractor shall not delegate or assign its duties under this Agreement without the prior written consent of Gunnison County which consent Gunnison County may withhold in its discretion. Subject to the foregoing, the terms, covenants and conditions of this Agreement shall be binding on the successors and assigns of either party.

#### 14. TERMINATION.

Either party shall have the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other. Upon termination, Contractor shall be entitled to compensation for Services performed prior to the date of termination, per the compensation terms provided in this Agreement. Termination shall not affect or prejudice any rights or other remedy that a party may have with respect to the event giving rise to termination or any other rights or other remedy a party may have with respect to breach of this Agreement which existed at or before the date of termination.

#### 15. OWNERSHIP OF PROPERTY.

Any work product, information, materials, goods, or intellectual property generated as a result of the Services shall become the sole and exclusive property of the County, and Contractor agrees to relinquish any rights, implied or otherwise, to such property, including but not limited to any resulting intellectual property rights.

#### 16. WARRANTIES.

Contractor represents and warrants to the County as follows:

- a. The Services shall conform to applicable specifications and will be free from deficiencies and defects in materials, workmanship, design or performance, as applicable.
- b. All Services shall be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards.
- c. Contractor has the requisite ownership, rights and licenses to perform its obligations under this Agreement and to perform the Services free and clear from all liens, adverse claims, encumbrances and interests of any third party.
- d. There are no pending or threatened lawsuits, claims, disputes or actions adversely affecting the Services or Contractor's ability to perform its obligations under this Agreement.
- e. Performance of the Services shall not violate, infringe, or misappropriate any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right of any third party.
- f. Contractor has the right to and shall assign to County all third-party warranties and indemnities that Contractor receives in connection with any of the Services provided to County. To the extent that Contractor is not permitted to assign any warranties or indemnities to the County, Contractor agrees to specifically identify and enforce those warranties and indemnities on behalf of County to the extent Contractor is permitted to do so under the terms of the applicable third-party agreements.

17. WHEN RIGHTS AND REMEDIES NOT WAIVED.

In no event shall any action by either party constitute or be construed to be a waiver by the other party of any breach of covenant or default which may then exist on the part of the party alleged to be in breach, and the non-breaching party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

18. NO THIRD-PARTY BENEFICIARY.

Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the County or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

19. CONFLICT OF INTEREST.

The signatories to this Agreement aver to their knowledge, no employee of the County has any personal or beneficial interest whatsoever in the Services. Contractor has no beneficial interest, direct or indirect, that would conflict in any manner or degree with the performance of the Services, and Contractor shall not employ any person having such known interests. The Contractor shall also not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the County. The County, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

20. FORCE MAJEURE.

Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of an unforeseeable event outside the control of such party, and not caused by such party's negligence, including war or armed conflict, fire, flood, strike, riot or insurrection, terrorist attack, nuclear, chemical or biological attack, natural disaster, martial law, unreasonable delay of carriers, governmental order or regulation; PROVIDED, HOWEVER, the any delay caused by the Covid-19 Pandemic (or Endemic), or any other communicable disease pandemic or endemic, shall NOT be considered a force majeure event. If a force major event occurs, the time for performance shall be extended by mutual agreement of

the parties for a period of time as may be reasonably necessary to compensate for such delay, provided that if such performance still cannot be completed within such extended period of time, either party may terminate this Agreement and both parties will be released from any further obligation to the other.

21. NOTICES.

Any notice, demand or communication which either party may desire or be required to give to the other party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally or sent by certified first class US mail, postage prepaid, addressed as follows:

Gunnison County: County Manager  
Gunnison County  
200 E. Virginia  
Gunnison, Colorado 81230  
Phone: 970-641-0248

With a copy to: Board of County Commissioners  
of the County of Gunnison, Colorado  
200 E. Virginia  
Gunnison, Colorado 81230

Contractor: \_\_\_\_\_  
\_\_\_\_\_

Either party has the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

22. GOVERNING LAW.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Jurisdiction and venue for any legal proceedings related to this Agreement shall exclusively lie in the State of Colorado District Court located in Gunnison County, Colorado.

23. COUNTERPARTS: FACSIMILE AND ELECTRONIC TRANSMISSION.

This Agreement may be executed by facsimile and/or in any number of counterparts, any or all of which may contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the parties as though originally executed on one originally executed document. All facsimile counterparts shall be promptly followed with delivery of original executed counterparts.

This Agreement may also be executed by electronic means or signatures. Accordingly, the Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the County in the manner specified by the County. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

The parties agree that: (i) any notice or communication transmitted by electronic transmission, as defined below, shall be treated in all manner and respects as an original written document; (ii) any such notice or communication shall be considered to have the same binding and legal effect as an original document; and (iii) at the request of either party, any such notice or communication shall be re-delivered or re-executed, as appropriate, by the party in its original form. For purposes of this Agreement, the term “electronic transmission” means any form of communication not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, but specifically excluding text or instant messages.

#### 24. ENTIRE AGREEMENT.

This Agreement comprises the entire agreement between County and Contractor and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. No amendment to or modification of this Agreement will be binding unless in writing and signed by an authorized representative of each party.

Notwithstanding anything to the contrary herein, the County shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor’s or a subcontractor’s website or any provision incorporated into any click-through or online agreements related to the work unless that provision is specifically referenced in this Agreement.

#### 25. RECORDS.

Contractor shall maintain for a minimum of three (3) years, adequate financial and other records for reporting to County. Contractor shall be subject to financial audit by federal, state or county auditors or their designees. Contractor authorizes such audits and inspections of records during normal business hours, upon forty-eight (48) hours’ notice to Contractor. Contractor shall fully cooperate during such audit or inspections.

26. PUBLIC RECORD.

To the extent not prohibited by state or federal law, this Agreement is potentially subject to public release through the Colorado Open Records Act. The parties further acknowledge and understand that all work product or materials provided or produced under this Agreement, including items marked Proprietary or Confidential, may be subject to the Colorado Open Records Act., § 24-72-201, et seq., C.R.S.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date above written.

BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF GUNNISON, COLORADO

By: \_\_\_\_\_  
Jonathan Houck, Chairperson

By: \_\_\_\_\_  
Roland Mason, Vice Chairperson

By: \_\_\_\_\_  
Elizabeth Smith, Commissioner

ATTEST:

\_\_\_\_\_  
Deputy Clerk

[OR COUNTY MANAGER SIGNATURE]

CONTRACTOR

By: \_\_\_\_\_

APPENDIX "A"

SCOPE OF SERVICES

Contractor shall perform and provide the following services:

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

**Agenda Item:** Approval for Colorado Department of Public Health

**Action Requested:** County Manager Signature

**Parties to the Agreement:** CDPHE Women's Wellness Program and HHS/Family Planning Program

**Term Begins:** 1/1/23

**Term Ends:**

**Grant Contract #:** 23 FA 00023

**Summary:**

biannual contract with the state to fund our Women's Wellness Program that gives Pap smears and breast exams to low income, underinsured, and uninsured women

**Fiscal Impact:** 8807.00

**Submitted by:** Ariel Tidwell

**Submitter's Email Address:** atidwell@gunnisoncounty.org

**Finance Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\PSolheim

Discharge Date: 11/4/2022

**County Attorney Review:**

Required

Not Required

Comments:

Appears legally sufficient. MRH

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 11/8/2022

Certificate of Insurance Required

Yes  No

**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 11/10/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted:

Agenda Date: 11/15/2022

## TASK ORDER

<p><b>State Agency</b> State of Colorado for the use &amp; benefit of the Department of Public Health and Environment 4300 Cherry Creek Drive South Denver CO 80246</p>	<p><b>Contractor</b> Board of County Commissioners of Gunnison County (a political subdivision of the state of Colorado) 200 East Virginia Avenue Gunnison CO 81230-2297 for the use and benefit of the Gunnison County Department of Health and Human Services 225 North Pine Street, Suite E Gunnison CO 81230-2333</p>								
<p><b>Master Task Order Contract Number</b> 23 FA 00023</p> <p><b>Task Order Number</b> 2023*2302</p>	<p><b>Task Order Performance Beginning Date</b> <b>The later of the Task Order Effective Date or</b> January 1, 2023</p>								
<p><b>Task Order Maximum Amount</b></p> <table border="0" style="width: 100%;"> <tr> <td style="width: 60%;"><b>Initial Term</b></td> <td></td> </tr> <tr> <td style="padding-left: 20px;">Fiscal Year 2023</td> <td style="text-align: right;">\$8,807.00</td> </tr> <tr> <td colspan="2"> </td> </tr> <tr> <td>Total for All Fiscal Years</td> <td style="text-align: right;">\$8,807.00</td> </tr> </table>	<b>Initial Term</b>		Fiscal Year 2023	\$8,807.00			Total for All Fiscal Years	\$8,807.00	<p><b>Task Order Expiration Date</b> June 29, 2023</p> <p>Except as stated in §2.D., the total duration of this Contract, including the exercise of any options to extend, shall not exceed 5 years from its Performance Beginning Date.</p>
<b>Initial Term</b>									
Fiscal Year 2023	\$8,807.00								
Total for All Fiscal Years	\$8,807.00								
<p><b>Pricing/Funding</b> Price Structure: Cost Reimbursement <b>Contractor Shall Invoice:</b> Monthly <b>Funding Source:</b></p> <table border="0" style="width: 100%;"> <tr> <td style="width: 15%;"><b>State</b></td> <td style="width: 45%;">\$5,187.00</td> <td style="width: 40%;"></td> </tr> <tr> <td><b>Federal</b></td> <td>\$3,620.00</td> <td></td> </tr> </table>	<b>State</b>	\$5,187.00		<b>Federal</b>	\$3,620.00		<p><b>Miscellaneous:</b> Authority to enter into this Contract exists in: C.R.S. 25-1.5-101 – C.R.S. 25-1.5-113 Law Specified Vendor Statute (if any):</p> <p><b>Procurement Method:</b> Request For Application (RFA) <b>Solicitation Number (if any):</b> 40359</p>		
<b>State</b>	\$5,187.00								
<b>Federal</b>	\$3,620.00								
<p><b>State Representative</b> Emily Kinsella Women's Wellness Connection Section Manager Prevention Services Division Colorado Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246 emily.kinsella@state.co.us</p>	<p><b>Contractor Representative</b> Joni Reynolds Public Health Director Board of County Commissioners of Gunnison County (a political subdivision of the state of Colorado) 200 East Virginia Avenue Gunnison CO 81230-2297 for the use and benefit of the Gunnison County Department of Health and Human Services 225 North Pine Street, Suite E Gunnison CO 81230-2333 jreynolds@gunnisoncounty.org</p>								
<p><b>Exhibits and Order of Precedence</b> The following Exhibits and attachments are included with this Contract:</p> <ul style="list-style-type: none"> <li>Exhibit A, Additional Provisions</li> <li>Exhibit B, Statement of Work</li> <li>Exhibit C, Budget</li> <li>Exhibit D, Federal Provisions – Colorado Cancer Prevention and Control</li> </ul>									

**Contract Purpose**

This project serves to reduce cancer health disparities, and morbidity and mortality rates in Colorado. Cancer screening will increase in Colorado Department of Public Health and Environment (CDPHE)-identified priority populations, especially women who are eligible for CDPHE-paid Clinical Services, by implementing one or more approved strategies (community outreach, health navigation, CDPHE-paid clinical services) to address cancer prevention and early detection.

In accordance with §4.B of the Master Task Order Contract referenced above, Contractor shall complete the following Project:

**1. PROJECT DESCRIPTION**

Contractor shall complete the Project described in Exhibit B Statement of Work (SOW) that is attached hereto and incorporated herein (“the SOW”). All terminology used in this Task Order and the Statement of Work shall be interpreted in accordance with the Master Task Order Contract unless specifically defined differently in this Task Order. The Statement of Work and Budget are incorporated herein, made a part hereof and attached hereto as Exhibit B - Statement of Work and Exhibit C - Budget.

**2. PAYMENT**

The State shall pay Contractor the amounts shown in Exhibit C - Budget that is attached hereto and incorporated herein, in accordance with the requirements of the Statement of Work and the Master Task Order Contract. The State shall not make any payment for a State Fiscal Year that exceeds the Task Order Maximum Amount shown above for that State Fiscal Year.

**3. PERFORMANCE PERIOD**

Contractor shall complete all Work on the Project described in this Task Order by the Task Order Expiration Date stated above. Contractor shall not perform any Work described in the Statement of Work prior to the Task Order Performance Beginning Date or after the Task Order Expiration Date stated above.

**4. TASK ORDER EFFECTIVE DATE:**

The Effective Date of this Task Order is upon approval of the State Controller or **January 1, 2023**, whichever is later.

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

Each person signing this Contract represents and warrants that he or she is duly authorized to execute this Contract and to bind the Party authorizing his or her signature.

<p><b>CONTRACTOR</b> <b>Board of County Commissioners of Gunnison County</b> <b>(a political subdivision of the state of Colorado)</b> <b>for the use and benefit of the</b> <b>Gunnison County Department of Health and Human</b> <b>Services</b></p>	<p><b>STATE OF COLORADO</b> <b>Jared S. Polis, Governor</b> <b>Colorado Department of Public Health and Environment</b> <b>Jill Hunsaker Ryan, MPH, Executive Director</b></p>
<p>_____ By: Signature</p>	<p>_____ By: Signature</p>
<p>_____ Name of Person Signing for Contractor</p>	<p>_____ Name of Executive Director Delegate</p>
<p>_____ Title of Person Signing for Contractor</p>	<p>_____ Title of Executive Director Delegate</p>
<p>Date: _____</p>	<p>Date: _____</p>
<p>In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.</p>	
<p><b>STATE CONTROLLER</b> <b>Robert Jaros, CPA, MBA, JD</b></p>	
<p>_____ By: Signature</p>	
<p>_____ Name of State Controller Delegate</p>	
<p>_____ Title of State Controller Delegate</p>	
<p>Effective Date: _____</p>	

--Signature Page End--

**ADDITIONAL PROVISIONS  
To Original Contract Routing Number 2023\*2302**

**These provisions are to be read and interpreted in conjunction with the provisions of the Contract specified above.**

1. To receive compensation under the Contract, the Contractor shall submit a signed **Monthly** CDPHE Reimbursement Invoice Form. This form is a customized CDPHE Reimbursement Invoice Form that CDPHE will distribute to the Contractor each budget period and is incorporated and made part of this Contract by reference. The Contractor may contact the CDPHE Contract Monitor to obtain additional electronic copies of the invoice form. CDPHE will provide technical assistance in accessing and completing the form. The CDPHE Reimbursement Invoice Form and Expenditure Details page must be submitted no later than **forty-five (45)** calendar days after the end of the billing period for which services were rendered. Expenditures shall be in accordance with the Statement of Work and Budget. The Contractor shall submit the invoice using the method listed below.

Scan the completed and signed CDPHE Reimbursement Invoice Form into an electronic document. Email the scanned invoice and Expenditure Details page to: Cancer Prevention and Early Detection Contracts Monitor at [cdphe\\_cancer@state.co.us](mailto:cdphe_cancer@state.co.us).

Final billings under the Contract must be received by the State within a reasonable time after the expiration or termination of the Contract; but in any event no later than **forty-five (45)** calendar days from the effective expiration or termination date of the Contract.

Unless otherwise provided for in the Contract, "Local Match," if any, shall be included on all invoices as required by funding source.

The Contractor shall not use federal funds to satisfy federal cost sharing and matching requirements unless approved in writing by the appropriate federal agency.

If applicable, the Contractor shall be reimbursed for the purchase of allowable Health Navigation and Clinical Services supplies/operating costs identified in the Women's Wellness Connection (WWC) Health Navigation and Clinical Services Allowable Purchases document. This document is located at the following website <https://cancerplan.colorado.gov/help-for-grantees> and is incorporated and made part of this Contract by reference.

2. To receive compensation for Health Navigation and Clinical Services provided to eligible individual clients as identified in the Statement of Work under this Contract, the Contractor shall:
  - a. Navigate eligible low-income women to timely and complete breast and cervical cancer screening procedures (Health Navigation); and/or,
  - b. Provide CDPHE-funded breast and cervical cancer screening and/or diagnostic procedures (Clinical Services), to eligible clients.
  - a. eCaST Data System

Data entered into the electronic cancer surveillance and tracking (eCaST) data system are the basis for calculating reimbursement for each client receiving Health Navigation or Clinical Services. To be considered for payment, all Cancer Prevention and Early Detection Health Navigation and Clinical Services related cancer screening and diagnostic procedures shall be entered into eCaST within thirty (30) days of service being performed. Health Navigation or Clinical Services cases that exceed sixty (60) calendar days in screening length and negatively affect WWC's Performance Indicators may not be reimbursed at the discretion of the State. Reimbursement is determined by the clinical outcome of each case; therefore, cases must be clinically complete or administratively closed before reimbursement occurs. Contractors shall only be paid for cases that meet eligibility, performance, and data requirements. Based on performance, the Cancer Prevention and Early Detection Program may unilaterally change the groups of eligible clients who may be served with eCaST funding.

b. Bundled Payment System (BPS)

The Contractor shall be paid for Health Navigation or Clinical Services to individual clients in accordance with rates as outlined in the Cancer Prevention and Early Detection Bundled Payment System (BPS) for Health Navigation and Clinical Services. This document is incorporated and made a part of this Contract by reference and is available on the following website at <https://cancerplan.colorado.gov/help-for-grantees>.

Rates may be revised or updated during the contract term. Reimbursement policies are defined in the Cancer Prevention and Early Detection Program Manual. This manual is located at the following website <https://cancerplan.colorado.gov/help-for-grantees> and is incorporated and made part of this Contract by reference.

The Contractor shall not charge the Cancer Prevention and Early Detection program for Clinical Services not listed on the CPT Code List. This document is incorporated and made part of this Contract by reference and is available on the following website: <https://cancerplan.colorado.gov/help-for-grantees>.

c. Payment Procedures

Payment to the Contractor for Health Navigation and Clinical Services provided to eligible individual clients is made from available funds encumbered and shared across multiple contractors. The State may increase or decrease the total funds encumbered at its sole discretion and without formal notice to the Contractor. No minimum payment is guaranteed to the Contractor. The liability of the State for such payments is limited to the encumbered amount remaining of such funds.

Payment to the Contractor for expenses not included in the BPS for Cancer Prevention and Early Detection Health Navigation and Clinical Services is made from available funds encumbered and in accordance with the Statement of Work and Budget set forth under this Contract.

Payment to the Contractor for eCaST is made from available funds encumbered through a General Accounting Encumbrance (GAE) and shared across multiple contractors. CDPHE may increase or decrease the total funds encumbered in the GAE at its sole discretion and without formal notice to the Contractor. No minimum payment is guaranteed to the Contractor. The liability of the State for such payments is limited to the encumbered amount remaining of such funds.

d. Expenditure Cap for Health Navigation and Clinical Services to Individual Clients (eCaST Amount)

CDPHE will set the expenditure cap for Health Navigation and Clinical Services to individual clients for the Contractor for each budget-period. CDPHE may increase or decrease the Contractor expenditure cap at its sole discretion based on the Contractor's spending rate. The Contractor may request to increase or decrease this expenditure cap. Once the expenditure cap is reached or the share of program funds are fully expended, the State will not reimburse for additional expenses incurred by the Contractor unless CDPHE opts to increase the cap.

3. Time Limit For Acceptance Of Deliverables.

- a. Evaluation Period. The State shall have thirty (30) calendar days from the date a deliverable is delivered to the State by the Contractor to evaluate that deliverable, except for those deliverables that have a different time negotiated by the State and the Contractor.
- b. Notice of Defect. If the State believes in good faith that a deliverable fails to meet the design specifications for that particular deliverable, or is otherwise deficient, then the State shall notify the Contractor of the failure or deficiencies, in writing, within thirty (30) calendar days of: 1) the date the deliverable is delivered to the State by the Contractor if the State is aware of the failure or deficiency at the time of delivery; or 2) the date the State becomes aware of the failure or deficiency. The above time frame shall apply to all deliverables except for those deliverables that have a different time negotiated by the State and the Contractor in writing pursuant to the State's fiscal rules.

## EXHIBIT A

- c. Time to Correct Defect. Upon receipt of timely written notice of an objection to a completed deliverable, the Contractor shall have a reasonable period of time, not to exceed thirty (30) calendar days, to correct the noted deficiencies.
4. Health Insurance Portability and Accountability Act (HIPAA) Business Associate Determination.
- The State has determined that this Contract does not constitute a Business Associate relationship under HIPAA.
5. The Contractor shall request prior approval in writing from the State for all modifications to the Statement of Work/Work Plan, or for any modification to the direct costs in excess of twenty-five percent (25%) of the total budget for direct costs, or for any modifications to the indirect cost rate. Any request for modifications to the Budget in excess of twenty-five percent (25%) of the total budget for direct costs, or any modifications to indirect cost rates, shall be submitted to the State at least ninety (90) days prior to the end of the contract period and may require an amendment in accordance with General Provisions, Section 16, Contract Modifications, of this Contract.
6. The Contractor agrees to provide services to all Program participants and employees in a smoke-free environment in accordance with Public Law 103-227, also known as "the Pro-Children Act of 1994", (Act). Public Law 103-227 requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of eighteen (18), if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee.
7. The State of Colorado, specifically the Colorado Department of Public Health and Environment, shall be the owner of all equipment as defined by Federal Accounting Standards Advisory Board (FASAB) Generally Accepted Accounting Principles (GAAP) purchased under this Contract. At the end of the term of this Contract, the State shall approve the disposition of all equipment.
8. The Contractor shall not use State funds provided under this Contract for the purpose of lobbying as defined in Colorado Revised Statutes (C.R. S.) 24-6-301(3.5)(a).
9. Notwithstanding the terms contained in Section 10, Insurance, of this Contract, the parties agree to add the following language to the end of Paragraph vi:
- vii. The Contractor agrees to maintain in full force and effect a Professional Liability Insurance Policy in the minimum amount of \$1,000,000 per occurrence and \$1,000,000 in the aggregate, written on an occurrence form that provides coverage for its work undertaken pursuant to this Contract. If a policy written on an occurrence form is not commercially available, the claims-made policy shall remain in effect for the duration of this Contract and for at least two (2) years beyond the completion and acceptance of the work under this Contract, or, alternatively, a two (2) year extended reporting period must be purchased.
10. If Contractor indicates full expenditure of funds under this Contract by March 29 of each grant year and the full expenditure does not occur, CDPHE has the option to reduce current or upcoming Contract by said amount or a percent deemed reasonable by CDPHE. CDPHE will notify the Contractor of the potential need to decrease the current or upcoming budget. If the Contractor indicates at a later date than March 29 of each grant year an expectation of surplus of funds or inability to fully expend said funds for unforeseen circumstances that Contractor had not anticipated by March 29, CDPHE will reallocate unspent funds without any penalties to the Contractor.
11. All data collected, used or acquired shall be used solely for the purposes of this Contract. The Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell, or otherwise make known any such data to unauthorized persons without the express prior written consent of the State or as otherwise required by law. This includes a prior written request by the Contractor to the State for submission of abstracts or reports to conferences, which utilize data collected under this Contract.
12. Notwithstanding the foregoing, the Contractor shall be entitled to retain a set of any such data collected or work papers necessary to perform its duties under this Contract and in accordance with professional standards.

**EXHIBIT A**

13. Neither the U.S. Department of Health and Human Services (HHS) nor the Centers for Disease Control (CDC) logo may be displayed on any conference materials if such display would cause confusion as to the conference source or give false appearance of Government endorsement. Use of the HHS name or logo is governed by U.S.C. 1320b-10, which prohibits misuse of the HHS name and emblem in written communication. A non-federal entity is unauthorized to use the HHS name or logo governed by U.S.C. 1320b-10. The appropriate use of the HHS logo is subject to review and approval of the Office of the Assistant Secretary for Public Affairs (OASPA).
14. Notwithstanding the terms contained in the Section 8, Confidential Information-State Records, Contractor shall protect the confidentiality of all applicant or recipient records and other materials that are maintained in accordance with this Contract. Except for purposes directly connected with the administration of this Contract, no information about or obtained from any applicant or recipient shall be disclosed in a form identifiable with the applicant or recipient without the prior written consent of the applicant or recipient, or the parent or legal guardian of a minor applicant or recipient with the exception of information protected by Colorado Statute as it applies to confidentiality for adolescent services in which case the adolescent minor and not the parent or legal guardian must provide consent or as otherwise properly ordered by a court of competent jurisdiction. Contractor shall have written policies governing access, duplication, and dissemination of all such information. Contractor shall advise its employees, agents, servants, and any subcontractors that they are subject to these confidentiality requirements.
15. The Contractor affirms that it maintains no affiliations or contractual relationships, direct or indirect, with tobacco companies, owners, affiliate, subsidiaries, holding companies, or companies involved in any way in the production, processing, distribution, promotion, sales, or use of tobacco.

**EXHIBIT B**

STATEMENT OF WORK  
To Original Contract Number 2023\*2302

**These provisions are to be read and interpreted in conjunction with the provisions of the contract specified above.**

**I. Entity Name:** Gunnison County Department of Health and Human Services

**II. Project Description:**

This project serves to reduce cancer health disparities, and morbidity and mortality rates in Colorado. Cancer screening will increase in Colorado Department of Public Health and Environment (CDPHE)-identified priority populations, especially women who are eligible for CDPHE-paid Clinical Services, by implementing one or more approved strategies (community outreach, health navigation, CDPHE-paid clinical services) to address cancer prevention and early detection.

Citizens of Colorado in the Contractor’s service area will benefit from this project by receiving cancer screening prevention and early detection services. CDPHE is funding this project to meet the goal of reducing cancer health disparities, morbidity and mortality in Colorado by increasing cancer screening and early detection.

**III. Definitions:**

1. **Action Plan:** Identifies the strategy(ies) the Contractor is approved to plan or implement and the detailed steps the Contractor will take to address the objectives of this agreement.
2. **CDPHE:** Colorado Department of Public Health and Environment.
3. **CDPHE-Paid Clinical Services:** The Clinical Services component of the Health Navigation and Clinical Services strategy funds breast and cervical cancer screening and diagnostic procedures for eligible, low-income uninsured or underinsured clients.
4. **CDPHE Contract Monitor:** CDPHE staff member assigned to monitor the contract.
5. **Health navigation:** Individualized assistance offered to clients to help overcome health care system barriers and facilitate timely access to quality screening and diagnostics as well as initiation of treatment services for persons diagnosed with cancer.

**IV. Work Plan:**

<b>Goal #1:</b> Facilitate health care services among people who face barriers to good health.	
<b>Objective #1:</b> No later than the expiration date of this contract, reduce cancer health disparities, and morbidity and mortality rates, in Colorado by increasing cancer screening among CDPHE-identified priority populations, especially CDPHE-paid Clinical Services eligible women.	
<b>Primary Activity #1</b>	The Contractor shall, in collaboration with the CDPHE Contract Monitor, draft an action plan outlining: <ol style="list-style-type: none"> <li>1. the strategy(ies) (community outreach; health navigation and clinical services) in which the project will focus;</li> <li>2. the detailed steps which the Contractor shall take to address the objectives of this agreement.</li> </ol>
<b>Sub-Activities #1</b>	<ol style="list-style-type: none"> <li>1. The Contractor shall record their approval by signing the final action plan agreed upon with CDPHE.</li> <li>2. The Contractor shall update the action plan at a minimum annually.</li> </ol>

**EXHIBIT B**

	3. The Contractor shall record their approval by signing the action plan each time it changes.
<b>Primary Activity #2</b>	The Contractor shall implement one or more strategies and sub-strategies to address cancer prevention and early detection in Colorado.
<b>Sub-Activities #2</b>	<ol style="list-style-type: none"> <li>1. The Contractor shall implement at least one (1) of the following strategies and sub-strategies to address cancer prevention and early detection in Colorado, as approved by CDPHE in the action plan.                             <ol style="list-style-type: none"> <li>a. Community outreach</li> <li>b. Health navigation and clinical services                                     <ol style="list-style-type: none"> <li>i. Health navigation only among eligible uninsured/underinsured clients</li> <li>ii. Health navigation and CDPHE-paid clinical services among eligible clients</li> </ol> </li> </ol> </li> <li>2. The Contractor shall report required data related to the strategies listed in the approved action plan.</li> </ol>
<b>Primary Activity #3</b>	The Contractor shall participate in CDPHE-required meetings.
<b>Primary Activity #4</b>	The Contractor shall complete Progress Reports.
<b>Standards and Requirements</b>	<ol style="list-style-type: none"> <li>1. The content of electronic documents located on CDPHE and non-CDPHE websites and information contained on CDPHE and non-CDPHE websites may be updated periodically during the contract term. The contractor shall monitor documents and website content for updates and comply with all updates.</li> <li>2. The Contractor shall comply with any changes, revisions, inclusions, and exclusions to the CDPHE Cancer Prevention and Early Detection Program. The CDPHE Cancer Prevention and Early Detection Program is subject at any time to changes, revisions, inclusions, and exclusions as needed and/or pursuant to directives or changes required by rule, regulation, statute or guidance.</li> <li>3. The Contractor shall comply with all requirements stated in the <i>CDPHE Cancer Prevention and Early Detection Program Manual</i>. This document is incorporated and made part of this contract by reference and is available on the following website: <a href="https://cancerplan.colorado.gov/help-for-grantees">https://cancerplan.colorado.gov/help-for-grantees</a>.</li> <li>4. The Contractor shall use all CDPHE-required forms and templates.</li> <li>5. The Contractor shall submit all final data and reports as non-reimbursable deliverables.</li> <li>6. The Contractor shall comply with all program activities and requirements stated in the action plan and its referenced documents.</li> <li>7. The Contractor shall comply with mandatory program reporting processes such as online written reports, data submission or progress calls at an interval outlined in the action plan.</li> </ol>

**EXHIBIT B**

	<ol style="list-style-type: none"> <li>8. The Contractor shall report required data related to the strategies listed in the approved action plan within 30 days of service delivery and no later than 60 days after the end of the performance period.</li> <li>9. The Contractor shall attend a post-award orientation provided by CDPHE as well as other required meetings, training, webinars and telephone calls for the purpose of information-sharing, training, technical assistance and contract monitoring.</li> <li>10. The Contractor shall adhere to the following requirements for the action plan:             <ol style="list-style-type: none"> <li>a. Develop an annual action plan to adopt and implement prioritized strategies approved by CDPHE. CDPHE will inform the Contractor of necessary modification or provide approval of the action plan within 30 business days.</li> <li>b. Modify the action plan in collaboration with the CDPHE Contract Monitor, as needed.</li> <li>c. Obtain approval from CDPHE prior to beginning activities outlined in the action plan.</li> <li>d. Use the action plan developed with CDPHE.</li> <li>e. CDPHE’s evaluation of the Contractor’s performance will be determined by the Contractor’s adherence to the established action plan.</li> </ol> </li> <li>11. CDPHE will provide the Contractor with the Progress Report template that requires the reporting on strategies and tasks listed in the approved action plan.</li> <li>12. The Contractor shall identify and support key personnel as outlined in the action plan and referenced documents.</li> <li>13. The Contractor shall communicate with CDPHE within 15 days of a change in key staff responsible for the performance of work during the contract period.</li> <li>14. The Contractor shall plan to have new staff members receive required training within two (2) months of hire.</li> <li>15. The Contractor shall comply with CDPHE evaluation and performance measurement efforts.</li> <li>16. The Contractor shall collect required evaluation and program monitoring data.</li> <li>17. The Contractor shall submit all deliverables to CDPHE via the method indicated in the <i>CDPHE Cancer Prevention and Early Detection Program Manual</i>.</li> <li>18. If purchasing gift cards, the Contractor shall provide to CDPHE upon request written procedures related to gift card purchasing and handling. At a minimum, the procedures shall include the following:             <ol style="list-style-type: none"> <li>a. How the gift card inventory is tracked and maintained?</li> <li>b. Gift card storage and safeguards against theft</li> <li>c. The primary person responsible for securing and distribution of gift cards</li> <li>d. A gift card distribution log that records each gift card number, dollar amount, and the printed name and signature of each gift card recipient.</li> </ol> </li> </ol>
<p><b>Expected Results of Activity(s)</b></p>	<ol style="list-style-type: none"> <li>1. Increased number of individuals screened for CDPHE-approved cancers.</li> <li>2. Increased number of quality of CDPHE-approved cancer screenings provided within priority populations</li> </ol>

**EXHIBIT B**

	<ol style="list-style-type: none"> <li>3. Analysis of programmatic data submissions.</li> <li>4. Assessments, data submissions, along with evaluation information.</li> </ol>	
<b>Measurement of Expected Results</b>	<ol style="list-style-type: none"> <li>1. Progress Reports.</li> <li>2. CDPHE received programmatic data submissions.</li> <li>3. CDPHE received assessments, along with evaluation information.</li> </ol>	
		<b>Completion Date</b>
<b>Deliverables</b>	<ol style="list-style-type: none"> <li>1. The Contractor shall submit an action plan that includes each of the strategies selected and referenced in this Statement of Work.</li> </ol>	No later than the first business day in March in the first budget period of the contract, and then the first business day in August, annually.
	<ol style="list-style-type: none"> <li>2. The Contractor shall submit a signed action plan.</li> </ol>	Within 15 calendar days after CDPHE approval of the initial or modified action plan.
	<ol style="list-style-type: none"> <li>3. The Contractor shall submit CDPHE-approved Progress Report.</li> </ol>	No later than 3/15 in the first budget period of the contract, and no later than 1/15 annually.

**V. Monitoring:**

CDPHE’s monitoring of this contract for compliance with performance requirements will be conducted throughout the contract period by the CDPHE Contract Monitor. Methods used will include a review of documentation determined by CDPHE to be reflective of performance to include progress reports and other fiscal and programmatic documentation as applicable. The Contractor’s performance will be evaluated at set intervals and communicated to the contractor. A Final Contractor Performance Evaluation will be conducted at the end of the life of the contract.

**VI. Resolution of Non-Compliance:**

The Contractor will be notified in writing within 15 calendar days of discovery of a compliance issue. Within 30 calendar days of discovery, the Contractor and the State will collaborate, when appropriate, to determine the action(s) necessary to rectify the compliance issue and determine when the action(s) must be completed. The action(s) and time line for completion will be documented in writing and agreed to by both parties. If extenuating circumstances arise that requires an extension to the time line, the Contractor must email a request to the CDPHE Contract Monitor and receive approval for a new due date. The State will oversee the completion/implementation of the action(s) to ensure time lines are met and the issue(s) is resolved. If the Contractor demonstrates inaction or disregard for the agreed upon compliance resolution plan, the State may exercise its rights under the provisions of this contract.



**COLORADO**  
Department of Public Health & Environment

**PREVENTION SERVICES DIVISION - LESS THAN 12 MONTH BUDGET WITH JUSTIFICATION FORM**  
**Original Contract Routing 2023\*2302**

<b>Contractor Name</b>	Gunnison County Department of Health and Human Services	<b>Program Contact Name, Title, Phone and Email</b>	Joni Reynolds Director of Health and Human Services 970-641-3244 jreynolds@gunnisoncounty.org
<b>Budget Period</b>	1/1/2023 - 6/29/2023	<b>Fiscal Contact Name, Title, Phone and Email</b>	Jody Wise Finance Dept 970-641-7679 jwise@gunnisoncounty.org
<b>Project Name</b>	Cancer Prevention and Early Detection (CPED); Health Navigation and Clinical Services (HNCS)	<b>Contract (CT or PO) Number</b>	CT FHLA 2023*2302

<b>Expenditure Categories</b>						
<b>Personal Services</b>						
<b>Salaried Employees</b>						
Position Title	Description of Work	Gross or Annual Salary	Fringe	Percent of Time on Project	Number of Months	Total Amount Requested from CDPHE
<b>Personal Services Hourly Employees</b>						
Position Title	Description of Work	Hourly Wage	Hourly Fringe	Total # of Hours on Project	Total Amount Requested from CDPHE	
Nurse	For HNCS: Participate in required training and education, and assist in increasing eligible population.	\$ 38.50	\$ 13.90	30.00	\$1,572.00	
Nurse Practitioner	Participate in required trainings, webinars, patient care, other program related activities. Also performs clinical oversight.	\$ 34.87	\$ 12.50	31.00	\$1,468.47	
<b>Total Personal Services (including fringe benefits)</b>						<b>\$3,040.47</b>
<b>Supplies &amp; Operating Expenses</b>						
Item	Description of Item	Rate	Quantity	Total Amount Requested from CDPHE		
Operating/supplies	For HNCS. Allowable purchase of supplies/operating items listed on the Health Navigation and Clinical Services allowable purchase document on the Cancer Prevention and Early Detection Funding Opportunities website: <a href="https://cdphe.colorado.gov/cancer/cancer-prevention-funding-opportunities/health-system">https://cdphe.colorado.gov/cancer/cancer-prevention-funding-opportunities/health-system</a>	\$ 400.00	1.00	\$400.00		
Postage	For HNCS. Postage for mailing of small media to targeted zip codes, reminder letters. Estimated at \$0.65/each for a total of 50 pieces.	\$ 0.65	50.00	\$32.50		
Registration	For HNCS. Registration costs for staff to attend relevant trainings, including the Colorado Health Navigator Assessment for health navigators. Estimated at \$375.00/training for a total of 2 trainings.	\$ 375.00	2.00	\$750.00		
Translation and Interpretation Services	For HNCS: Translation of outreach materials as needed for culturally and linguistically appropriate relevant small media and education materials to be distributed for educational benefits of the community. Interpretation during educational sessions and events and other meetings. Estimated at \$22.50/item or event for a total of 25 items/events.	\$ 22.50	25.00	\$562.50		



**COLORADO**  
Department of Public  
Health & Environment

**PREVENTION SERVICES DIVISION - LESS THAN 12 MONTH BUDGET WITH JUSTIFICATION FORM**  
**Original Contract Routing 2023\*2302**

<b>Contractor Name</b>	Gunnison County Department of Health and Human Services	<b>Program Contact Name, Title, Phone and Email</b>	Joni Reynolds Director of Health and Human Services 970-641-3244 jreynolds@gunnisoncounty.org
<b>Budget Period</b>	1/1/2023 - 6/29/2023	<b>Fiscal Contact Name, Title, Phone and Email</b>	Jody Wise Finance Dept 970-641-7679 jwise@gunnisoncounty.org
<b>Project Name</b>	Cancer Prevention and Early Detection (CPED): Health Navigation and Clinical Services (HNCS)	<b>Contract (CT or PO) Number</b>	CT FHLA 2023*2302

Office Supplies	For HNCS: Office supplies (not included in indirect). Estimated at \$16.66/month for 6 months.	\$ 16.66	6.00	\$99.96
Participant support costs	HNCS. Gift cards to reduce the barrier of adult or child care costs or food or grocery gift cards to reduce barriers to screening. Estimated \$30.00/card for a total of 5 cards.	\$ 30.00	5.00	\$150.00
<b>Total Supplies &amp; Operating</b>				<b>\$1,994.96</b>

<b>Travel</b>				
Item	Description of Item	Rate	Quantity	Total Amount Requested from CDPHE
Meals	For HNCS. Per diem for meals for staff to attend in-person training and meetings and to travel to other community and clinic locations as needed. Per diem is \$66.00 per person per day for 5 days.	\$ 66.00	5.00	\$330.00
Mileage	For HNCS. Mileage for staff to attend in-person training and meetings and to travel to other community and clinic locations as needed. Current mileage reimbursement rate is \$0.65/mile for an estimated 200 miles.	\$ 0.65	200.00	\$130.00
Lodging	For HNCS. Lodging for staff to attend in-person training and meetings and to travel to other community and clinic locations as needed. Estimated 1 person @ \$200/night for 3 nights.	\$ 200.00	3.00	\$600.00
Participant travel expenses	For HNCS. Taxi, Uber and Lyft vouchers (3 x \$20) or gas cards (3 x \$20) to assist participants in traveling to health system for screening.	\$ 20.00	6.00	\$120.00
<b>Total Travel</b>				<b>\$1,180.00</b>

<b>Contractual</b>				
Subcontractor Name	Description of Item	Rate	Quantity	Total Amount Requested from CDPHE
Karen Adamson, WHNP	For HNCS: Colposcopy provider, to train staff in proper screening procedures for WWC program requirements. \$50.00/hour for an estimated 18 hours of training.	\$ 50.00	18.00	\$900.00
<b>Total Contractual</b>				<b>\$900.00</b>

<b>Indirect</b>				
Item	Description of Item	Total Amount Requested from CDPHE		
CDPHE-Negotiated Indirect Cost Rate	Gunnison County's indirect cost rate for CY2022 is 24.18% of Total Direct Costs excluding capital expenditures, rent and participant incentives.	\$1,691.57		
<b>Total Indirect</b>				<b>\$1,691.57</b>
<b>TOTAL</b>				<b>\$8,807.00</b>

## Federal Provisions – Colorado Cancer Prevention and Control

For the purposes of this Exhibit only, Contractor is also identified as “Subrecipient.” This Contract has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions for Federal Awards, the Special Provisions, the Contract or any attachments or exhibits incorporated into and made a part of the Contract, the Supplemental Provisions for Federal Awards shall control. In the event of a conflict between the Supplemental Provisions for Federal Awards and the FFATA Supplemental Provisions (if any), the FFATA Supplemental Provisions shall control.

1) **Federal Award Identification.**

- a. Subrecipient: **Gunnison County Department of Health and Human Services.**
- b. Subrecipient Unique Entity Identification Number:
  - SAM Unique Entity ID (UEI): **NSN9FAGKEDJ9**
- c. The Federal Award Identification Number (FAIN) is **NU58DP007167.**
- d. The Federal award date is **5/26/2022.**
- e. The subaward period of performance start date is **6/30/2022** and end date is **6/29/2027.**
- f. Federal Funds:

Federal Budget Period	Total Amount of Federal Funds Awarded	Amount of Federal Funds Obligated to CDPHE
6/30/2022 - 6/29/2023	<b>\$5,592,359.00</b>	<b>\$4,333,418.00</b>

- g. Federal award title of project or program: **Colorado Cancer Prevention and Control**  
The name of the Federal awarding agency is: **Department Of Health And Human Services** and the contact information for the awarding official is **Karen Boone, Email: [ikn7@cdc.gov](mailto:ikn7@cdc.gov), Phone: 770-448-3087**; the name of the pass-through entity is the State of Colorado, Department of Public Health and Environment (CDPHE), and the contact information for the CDPHE official is Emily Kinsella, Women’s Wellness Connection (WWC) Program Manager, [emily.kinsella@state.co.us](mailto:emily.kinsella@state.co.us).
  - h. The Catalog of Federal Domestic Assistance (CFDA) number is **93.898** and the grant name is **Cancer Prevention and Control Programs for State, Territorial and Tribal Organizations.**
  - i. This award **is not** for research & development.
  - j. Subrecipient **is not** required to provide matching funds. In the event the Subrecipient is required to provide matching funds, Section 8 of this Attachment applies.
  - k. The indirect cost rate for the Federal award (including if the de minimis rate is charged per 2 CFR §200.414 Indirect (F&A) costs) is pre-determined based upon the State of Colorado and CDPHE cost allocation plan.
- 2) Subrecipient shall at all times during the term of this contract strictly adhere to the requirements under the Federal Award listed above, and all applicable federal laws, Executive Orders, and implementing regulations as they currently exist and may hereafter be amended.

- 3) Any additional requirements that CDPHE imposes on Subrecipient in order for CDPHE to meet its own responsibility to the Federal awarding agency, including identification of any required financial and performance reports, are stated in the Exhibits.
- 4) Subrecipient's approved indirect cost rate is as stated in the Exhibits.
- 5) Subrecipient must permit CDPHE and auditors to have access to Subrecipient's records and financial statements as necessary for CDPHE to meet the requirements of 2 CFR §200.331 Requirements for pass-through entities, §§ 200.300 Statutory and National Policy Requirements through §200.309 Period of performance, and Subpart F—Audit Requirements of this Part.
- 6) The appropriate terms and conditions concerning closeout of the subaward are listed in Section 16 of this Attachment.
- 7) **Performance and Final Status.** Subrecipient shall submit all financial, performance, and other reports to CDPHE no later than 45 calendar days after the period of performance end date or sooner termination of this Contract containing an evaluation and review of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.
- 8) **Matching Funds.** Subrecipient shall provide matching funds as stated in the Exhibits. Subrecipient shall have raised the full amount of matching funds prior to the Effective Date and shall report to CDPHE regarding the status of such funds upon request. Subrecipient's obligation to pay all or any part of any matching funds, whether direct or contingent, only extends to funds duly and lawfully appropriated for the purposes of this Contract by the authorized representatives of the Subrecipient and paid into the Subrecipient's treasury or bank account. Subrecipient represents to CDPHE that the amount designated as matching funds has been legally appropriated for the purposes of this Contract by its authorized representatives and paid into its treasury or bank account. Subrecipient does not by this Contract irrevocably pledge present cash reserves for payments in future fiscal years, and this Contract is not intended to create a multiple-fiscal year debt of the Subrecipient. Subrecipient shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Subrecipient's laws or policies.
- 9) **Record Retention Period.** The record retention period previously stated in this Contract is replaced with the record retention period prescribed in 2 CFR §200.333.
- 10) **Single Audit Requirements.** If Subrecipient expends \$750,000 or more in Federal Awards during Subrecipient's fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
- 11) **Contract Provisions.** Subrecipient shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Contract:
  - a. Office of Management and Budget Circulars and The Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as applicable;
  - b. when required by Federal program legislation, the "Davis-Bacon Act", as amended (40 U.S.C. 3141-3148) as supplemented by Department of Labor Regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction");
  - c. when required by Federal program legislation, the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building of Public Work Financed in Whole or in Part by Loans or Grants from the United States").

**Exhibit D**

- d. 42 U.S.C. 6101 *et seq.*, 42 U.S.C. 2000d, 29 U.S.C. 794 (regarding discrimination);
- e. the “Americans with Disabilities Act” (Public Law 101-336; 42 U.S.C. 12101, 12102, 12111 - 12117, 12131 - 12134, 12141 - 12150, 12161 - 12165, 12181 - 12189, 12201 - 12213 and 47 U.S.C. 225 and 47 U.S.C. 611);
- f. when applicable, the Contractor shall comply with the provisions of the “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments” (Common Rule);
- g. The Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6062 of Public Law 110-252, including without limitation all data reporting requirements required there under. This Act is also referred to as FFATA.
- h. Contractor shall comply with the provisions of Section 601 of Title VI of the Civil Rights Act of 1964, as amended.
- i. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 comply with the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity: (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.
- j. Where applicable, Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).
- k. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into an agreement with a small business firm or nonprofit organization, comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- l. The Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.
- m. If applicable, comply with the mandatory standards and policies on energy efficiency contained within the State of Colorado’s energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201.
- n. The Contractor and all principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; the Contractor and all principals shall comply with all applicable regulations pursuant to Executive Order 12549 (3 CFR Part 1986 Comp., p. 189) and Executive Order 12689 (3 CFR Part 1989 Comp., p. 235), Debarment and Suspension; and,
- o. the Contractor shall comply where applicable, the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

12) **Compliance.** Subrecipient shall comply with all applicable provisions of The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), including but not limited to these Supplemental Provisions for Federal Awards. Any revisions to such provisions automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument.

**Exhibit D**

CDPHE may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

- 13) **Procurement Procedures.** Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.
- 14) **Certifications.** Unless prohibited by Federal statutes or regulations, CDPHE may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis (2 CFR §200.208). Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to CDPHE at the end of the Contract that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(b)(3). If the required level of activity or effort was not carried out, the amount of the Contract must be adjusted.
- 15) **Event of Default.** Failure to comply with the Uniform Guidance or these Supplemental Provisions for Federal Awards shall constitute an event of default under the Contract pursuant to 2 CFR §200.339 and CDPHE may terminate the Contract in accordance with the provisions in the Contract.
- 16) **Close- Out.** Subrecipient shall close out this Contract within 45 days after the End Date. Contract close out entails submission to CDPHE by Subrecipient of all documentation defined as a deliverable in this Contract, and Subrecipient's final reimbursement request. If the project has not been closed by the Federal awarding agency within 1 year and 45 days after the End Date due to Subrecipient's failure to submit required documentation that CDPHE has requested from Subrecipient, then Subrecipient may be prohibited from applying for new Federal awards through the State until such documentation has been submitted and accepted.
- 17) **Erroneous Payments.** The closeout of a Federal award does not affect the right of the Federal awarding agency or CDPHE to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the record retention period.

EXHIBIT END



# STATE OF COLORADO MASTER TASK ORDER CONTRACT AMENDMENT #1

## COVER PAGE

<b>State Agency:</b> Department of Public Health and Environment 4300 Cherry Creek Drive South Denver CO 80246	<b>Contractor:</b> Board of County Commissioners of Gunnison County (a political subdivision of the state of Colorado) 200 East Virginia Avenue Gunnison CO 81230-2297 for the use and benefit of the Gunnison County Department of Health and Human Services 225 North Pine Street, Suite E Gunnison CO 81230-2333
<b>Master Task Order Contract Number:</b> 23 FAA 00023 AMD1	<b>Master Task Order Contract Performance Beginning Date:</b> The later of the Effective Date or October 1, 2022
<b>Contract Authority:</b> §§25-1.5-101 - 25-1.5-113, C.R.S.	<b>Initial Contract Expiration Date:</b> June 30, 2027
<b>Principal Representatives:</b>	
<b>For the State:</b> Lisa McGovern Department of Public Health and Environment 4300 Cherry Creek Drive South Denver CO 80246 lisa.mcGovern@state.co.us	<b>For Contractor:</b> Jonathan Houck Gunnison County Department of Health and Human Services 225 North Pine Street, Suite E Gunnison CO 81230-2333 jhouck@gunnisoncounty.org

### SIGNATURE PAGE

#### THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that he or she is duly authorized to execute this Contract and to bind the Party authorizing his or her signature.

<p style="text-align: center;"><b>CONTRACTOR</b></p> <p style="text-align: center;">Board of County Commissioners of Gunnison County (a political subdivision of the state of Colorado) for the use and benefit of the Gunnison County Department of Health and Human Services</p> <p>DocuSigned by: <i>Matthew Birnie</i> DF57D9FBAE8C463...</p> <p style="text-align: right;">By: Signature</p> <p>Matthew Birnie</p> <p style="text-align: center;">Name of Person Signing for Contractor</p> <p>County Manager</p> <p style="text-align: center;">Title of Person Signing for Contractor</p> <p>Date: 2022-10-05</p>	<p style="text-align: center;"><b>STATE OF COLORADO</b></p> <p style="text-align: center;">Jared S. Polis, Governor Colorado Department of Public Health and Environment Jill Hunsaker Ryan, MPH, Executive Director</p> <p>DocuSigned by: <i>Lisa McGovern</i> 2EDE870A1A7D4FC...</p> <p style="text-align: right;">By: Signature</p> <p>Lisa McGovern</p> <p style="text-align: center;">Name of Executive Director Delegate</p> <p>Procurement &amp; Contracts Section Director ft</p> <p style="text-align: center;">Title of Executive Director Delegate</p> <p>Date: 2022-10-05</p>
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In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.

**STATE CONTROLLER**  
**Robert Jaros, CPA, MBA, JD**

DocuSigned by:  
*Andi Hardy*  
AG2AC54280C6401...

By: Signature

Andi Hardy

Name of State Controller Delegate

Controller

Title of State Controller Delegate

Effective Date: 2022-10-19

**1. PARTIES**

This Amendment (the “Amendment”) to the Original Master Task Order Contract shown on the Signature and Cover Page for this Amendment is entered into by and between the Contractor, and the State.

**2. TERMINOLOGY**

Except as specifically modified by this Amendment, all terms used in this Amendment that are defined in the Master Task Order Contract shall be construed and interpreted in accordance with the Master Task Order Contract.

**3. AMENDMENT EFFECTIVE DATE AND TERM**

**A. Amendment Effective Date**

This Amendment shall not be valid or enforceable until the Amendment Effective Date shown under the State Controller Signature. The State shall not be bound by any provision of this Amendment before that Amendment Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred under this Amendment either before or after of the Amendment term shown in **§3.B** of this Amendment.

**B. Amendment Term**

The Parties’ respective performances under this Amendment and the changes to the Master Task Order Contract contained herein shall commence on the Amendment Effective Date shown under the State Controller Signature or **October 1, 2022**, whichever is later, and shall terminate on the termination of the Master Task Order Contract or **June 30, 2027**, whichever is earlier.

**4. PURPOSE**

The Parties entered into the agreement to set forth the general terms and conditions between the Parties and to define how the Parties will contract with each other in the future using the Task Order process.

The Parties now desire to make an administrative change to the original Master Task Order Contract to delete three subsections as defined in **§5** of this Amendment.

**5. MODIFICATIONS**

The Master Task Order Contract is modified as follows: The Parties now agree to **delete** Sub-Sections **iv. Protected Information**, **v. Professional Liability Insurance**, and **vi. Crime Insurance** from **§10B-Insurance-Subcontractor Requirements** of the original Master Task Order Contract.

**6. LIMITS OF EFFECT AND ORDER OF PRECEDENCE**

This Amendment is incorporated by reference into the Master Task Order Contract, and the Master Task Order Contract remains in full force and effect except as specifically modified in this Amendment. Except for the Special Provisions contained in the Master Task Order Contract, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Master Task Order Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The provisions of this Amendment shall only supersede, govern, and control over the Special Provisions contained in the Master Task Order Contract to the extent that this Amendment specifically modifies those Special Provisions.

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

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**Agenda Item:** Approval for Professional Services Agreement; Cres

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**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:**

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

opioid community work

**Fiscal Impact:**

**Submitted by:** Kari Commerford

**Submitter's Email Address:** kcommerford@gunnisoncounty.org

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**Finance Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\PSolheim

Discharge Date: 11/9/2022

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**County Attorney Review:**

Required

Not Required

Comments:

Legally sufficient. MRH

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 11/8/2022

Certificate of Insurance Required

Yes  No

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**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 11/10/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted:

Agenda Date: 11/15/2022

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**PROFESSIONAL SERVICES AGREEMENT**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) made effective the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Board of County Commissioners of the County of Gunnison, Colorado, whose address is 200 East Virginia, Gunnison, CO 81230 (herein “Gunnison County”) and \_\_\_\_\_, whose address is \_\_\_\_\_ (herein “Contractor”).

**RECITALS**

The Contractor desires to provide professional services regarding \_\_\_\_\_ (“Services”).

[OR]

[as identified in the Scope of Work attached hereto and incorporated herein by reference as Appendix “A (“Services”).]

Gunnison County desires to engage Contractor to provide Services according to this Agreement.

**AGREEMENT**

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

1. **SERVICES.**

Contractor shall furnish all materials, labor, supervision, supplies and equipment to commence, diligently pursue, and complete the Services. All Services shall be performed in a timely manner and in accordance with generally accepted standards for Contractor’s profession and all applicable federal, state and local laws and regulations affecting the Services or their subject matter. Contractor acknowledges that this is a non-exclusive Agreement, and Gunnison County may contract with additional or other providers able to furnish the same or similar services as it deems appropriate to do so.

2. **TERM.**

The term of this Agreement shall commence on the date first set forth above and shall terminate on \_\_\_\_\_, unless sooner terminated or replaced as provided herein.

3. **STRATEGIC RESULT.**

Execution of this Agreement will assist the County with its \_\_\_\_\_ strategy, as outlined in the Gunnison County Strategic Plan.

4. COMPENSATION, BONUS AND EXPENSES.

In consideration and exchange for Contractor's performance of the Services, during the Term, Gunnison County shall pay Contractor fees as more specifically not to exceed \_\_\_\_\_ and No/100 U. S. Dollars (\$\_\_\_\_\_). Payment shall be made by Gunnison County to Contractor within 45 days of receipt of an invoice.

The Compensation shall compensate Contractor for all charges, expenses, overhead, payroll costs, employee benefits, insurance subsistence, and profits, except as specifically set forth in this Agreement.

[IF THE TERM IS FOR MORE THAN 1 YEAR: This Agreement is subject to Gunnison County making an annual budget appropriation in an amount sufficient to fund this Agreement. If Gunnison County fails or refuses to make such an appropriation, Gunnison County reserves the right to terminate this Agreement pursuant to the Termination paragraph of this Agreement. ]

5. INSURANCE.

Contractor agrees that at all times during the Term of this Agreement, and for three (3) years after the date the Term of this Agreement expires or the date this Agreement is terminated, or any applicable warranty period, Contractor shall maintain, in full force and effect and at its sole cost and expense, the following insurance policies. Within thirty (30) days of the execution of this Agreement, Contractor will provide insurance certificates to Gunnison County, listing Gunnison County as an additional insured, for the coverages required by this paragraph, which shall state that such policies shall not be materially changed or cancelled without thirty (30) days prior notice to Gunnison County. Written notice shall be sent to the parties identified in the Notices section of this Agreement and sent thirty (30) days prior to any cancellation or non-renewal unless due to non-payment of premiums, in which case, notice shall be sent ten (10) days prior. If written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s).

- a. Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Contractor during the term of this Agreement.
- b. Comprehensive General Liability Insurance or the equivalent in an amount no less than Four Hundred Twenty-Four Thousand and No/100 U.S. Dollars (\$424,000.00) for injury to one person in any single occurrence; and no less than One Million One Hundred Ninety-Five Thousand and No/100 U.S. Dollars (\$1,195,000.00) for injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate).

- c. Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than Four Hundred Twenty-Four Thousand and No/100 U.S. Dollars (\$424,000.00) for injury to one person in any single occurrence; and no less than One Million One Hundred Ninety-Five Thousand and No/100 U.S. Dollars (\$1,195,000.00) for injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate).
- d. Professional Liability Insurance or the equivalent, such as Errors and Omissions coverage, in an amount no less than Four Hundred Twenty-Four Thousand and No/100 U.S. Dollars (\$424,000.00) for injury to one person in any single occurrence; and no less than One Million One Hundred Ninety-Five Thousand and No/100 U.S. Dollars (\$1,195,000.00) for any injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate).

The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado. Combinations of primary and excess coverage may be used to achieve minimum coverage limits. Excess/umbrella policy(ies) must follow form of the primary policy(ies) with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance. The County's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the County's rights or remedies under this Agreement.

If excluded from any policy coverage, this Agreement shall be specifically named an insured contract. If any policy is in excess of a deductible or self-insured retention, the County must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) must be included. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the County, excluding Professional Liability and Workers Compensation policies, if required.

For all coverages required under this Agreement, Contractor's insurer(s) shall waive subrogation rights against the County by policy endorsement. All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the County.

The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor to the County under this

Agreement. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

The insurance provisions of this Agreement shall survive expiration or termination of this Agreement.

6. INDEPENDENT CONTRACTOR.

In carrying out its obligations and activities under this Agreement, Contractor is acting as an independent contractor and not as an agent, partner, joint venture or employee of Gunnison County. Contractor does not have any authority to bind Gunnison County in any manner whatsoever.

**Contractor acknowledges and agrees that Contractor is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County.** Further, Contractor is obligated to pay all applicable federal, state and local taxes owed in relation to the services.

7. INDEMNIFICATION.

Contractor irrevocably and unconditionally agrees to indemnify, defend and hold harmless Gunnison County, its Commissioners, agents and employees of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) arising out of or related to any loss, cost, damage or injury, including death, of any person or damage to property of any kind caused by the misconduct or negligent acts, errors or omissions of Contractor or its employees, subcontractors or agents in connection with this Agreement. Further, the County shall not be liable to Contractor or its affiliates for any loss of anticipated business opportunities, contracts, revenues, profits or savings; damage to goodwill or reputation; or indirect, special or consequential loss or damage, arising out of or in connection with this Agreement, whether for breach of contract, in tort (including negligence), under statute or any other law, and Contractor expressly disclaims any such claims or damages as against the County.

In case of any claim that is subject to indemnification under this Agreement, Contractor will provide the County reasonably prompt notice of the relevant claim. Contractor will defend or settle, at its own expense, any demand, action, or suit on any claim subject to indemnification under this Agreement, through legal counsel selected by Contractor but approved by the County. Each party will cooperate in good faith with the other to facilitate the defense of any such claim and the County will tender the defense and settlement of any action or proceeding covered by this Section to Contractor or upon request. Claims may be settled without the consent of the County, unless the settlement includes an admission of wrongdoing, fault or liability by the County, whether express or implied.

This defense and indemnification obligation shall survive any termination or expiration of this Agreement.

8. SOLE SOURCE CONTRACTS. [ONLY USE ON CONTRACTS \$100,000 or more.]

If the Contractor has entered into a sole source contract or contracts with the State of Colorado or any of its political subdivisions as defined in Article XXVIII of the Colorado Constitution which including this contract in the aggregate on an annual basis are equal to or exceed the amount of \$100,000, then the following provisions apply:

- a. Because of a presumption of impropriety between contributions to any campaign and sole source government contracts, Contractor, on behalf of itself, any person who controls ten percent or more of the shares of or interest in the Contractor, and the Contractor's officers, directors and trustees (collectively, the "Contract Holder") shall contractually agree, for the duration of the contract and for two years thereafter, to cease making, causing to be made, or inducing by any means, a contribution, directly or indirectly, on behalf of the Contractor Holder or on behalf of his or her immediate family member and for the benefit of any political party or for the benefit of any candidate for any elected office of the state or any of its political subdivisions.
- b. The parties further agree that if a Contract Holder makes or causes to be made any contribution intended to promote or influence the result of an election on a ballot issue, the Contract Holder shall not be qualified to enter into a sole source government contract relating to that particular ballot issue.
- c. The parties agree that if a Contract Holder intentionally violates sections 15 or 17(2) of Article XXVIII of the Colorado Constitution, as contractual damages that Contract Holder shall be ineligible to hold any sole source government contract, or public employment with the state or any of its political subdivisions, for three years.
- d. These provisions shall not apply to the extent they have been enjoined or invalidated by a court of competent jurisdiction.

9. DISCRIMINATION.

The Contractor agrees to not discriminate against any person or class of persons by reason of age, race, color, sex, creed, religion, disability, national origin, sexual orientation or political affiliation in providing any services or in the use of any facilities provided for the public in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. Contractor shall further comply with the letter and spirit of the Colorado Anti-Discrimination Act of 1957, as amended, and any other laws and regulations respecting discrimination in unfair employment practices. Additionally, Contractor shall comply with such enforcement procedures as any governmental authority might demand that Gunnison County take for the purpose of complying with any such laws and regulations.

10. IMMIGRATION COMPLIANCE CERTIFICATION.

- a. Contractor certifies that Contractor does not and will not knowingly contract with or employ illegal aliens to work under this Agreement.
- b. Contractor certifies that Contractor has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work under this Agreement.
- c. Contractor certifies that it has attempted to verify the eligibility of its employees and subcontractors to work through the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security.
- d. Contractor agrees to comply with all reasonable requests made in the course of an investigation under C.R.S. § 8-17.5-102 by the Colorado Department of Labor and Employment.
- e. Contractor agrees to comply with the provisions of C.R.S. § 8-17.5-101 et seq.

11. AMERICANS WITH DISABILITIES ACT COMPLIANCE.

The Contractor represents and warrants to Gunnison County that at all times during the performance of this Agreement no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor upon which assurance Gunnison County relies.

12. MISCELLANEOUS.

- a. SEVERABILITY. If any clause or provision of this 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 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. The parties hereto understand and agree that the County is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, et seq., C.R.S. Nothing in this 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.

- d. **LEGAL AUTHORITY.** Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Contractor represents and warrants that he has been fully authorized by Contractor to execute the Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions of the Agreement. The County shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement to enter into the Agreement.
- e. **NO CONSTRUCTION AGAINST DRAFTING PARTY.** The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.
- f. **ORDER OF PRECEDENCE.** In the event of any conflicts between the language of the Agreement and any exhibits to it, the language of the Agreement controls.
- g. **SURVIVAL OF CERTAIN PROVISIONS.** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Contractor's obligations to provide insurance and to indemnify the County will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.
- h. **INUREMENT.** The rights and obligations of the parties herein set forth shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns permitted under this Agreement.
- i. **TIME IS OF THE ESSENCE.** The parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.
- j. **PARAGRAPH HEADINGS.** The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

### 13. DELEGATION AND ASSIGNMENT.

Contractor shall not delegate or assign its duties under this Agreement without the prior written consent of Gunnison County which consent Gunnison County may withhold in its discretion. Subject to the foregoing, the terms, covenants and conditions of this Agreement shall be binding on the successors and assigns of either party.

#### 14. TERMINATION.

Either party shall have the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other. Upon termination, Contractor shall be entitled to compensation for Services performed prior to the date of termination, per the compensation terms provided in this Agreement. Termination shall not affect or prejudice any rights or other remedy that a party may have with respect to the event giving rise to termination or any other rights or other remedy a party may have with respect to breach of this Agreement which existed at or before the date of termination.

#### 15. OWNERSHIP OF PROPERTY.

Any work product, information, materials, goods, or intellectual property generated as a result of the Services shall become the sole and exclusive property of the County, and Contractor agrees to relinquish any rights, implied or otherwise, to such property, including but not limited to any resulting intellectual property rights.

#### 16. WARRANTIES.

Contractor represents and warrants to the County as follows:

- a. The Services shall conform to applicable specifications and will be free from deficiencies and defects in materials, workmanship, design or performance, as applicable.
- b. All Services shall be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards.
- c. Contractor has the requisite ownership, rights and licenses to perform its obligations under this Agreement and to perform the Services free and clear from all liens, adverse claims, encumbrances and interests of any third party.
- d. There are no pending or threatened lawsuits, claims, disputes or actions adversely affecting the Services or Contractor's ability to perform its obligations under this Agreement.
- e. Performance of the Services shall not violate, infringe, or misappropriate any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right of any third party.
- f. Contractor has the right to and shall assign to County all third-party warranties and indemnities that Contractor receives in connection with any of the Services provided to County. To the extent that Contractor is not permitted to assign any warranties or indemnities to the County, Contractor agrees to specifically identify and enforce those warranties and indemnities on behalf of County to the extent Contractor is permitted to do so under the terms of the applicable third-party agreements.

17. WHEN RIGHTS AND REMEDIES NOT WAIVED.

In no event shall any action by either party constitute or be construed to be a waiver by the other party of any breach of covenant or default which may then exist on the part of the party alleged to be in breach, and the non-breaching party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

18. NO THIRD-PARTY BENEFICIARY.

Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the County or the Contractor receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

19. CONFLICT OF INTEREST.

The signatories to this Agreement aver to their knowledge, no employee of the County has any personal or beneficial interest whatsoever in the Services. Contractor has no beneficial interest, direct or indirect, that would conflict in any manner or degree with the performance of the Services, and Contractor shall not employ any person having such known interests. The Contractor shall also not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Contractor represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the County. The County, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Contractor written notice describing the conflict.

20. FORCE MAJEURE.

Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of an unforeseeable event outside the control of such party, and not caused by such party's negligence, including war or armed conflict, fire, flood, strike, riot or insurrection, terrorist attack, nuclear, chemical or biological attack, natural disaster, martial law, unreasonable delay of carriers, governmental order or regulation; PROVIDED, HOWEVER, the any delay caused by the Covid-19 Pandemic (or Endemic), or any other communicable disease pandemic or endemic, shall NOT be considered a force majeure event. If a force major event occurs, the time for performance shall be extended by mutual agreement of

the parties for a period of time as may be reasonably necessary to compensate for such delay, provided that if such performance still cannot be completed within such extended period of time, either party may terminate this Agreement and both parties will be released from any further obligation to the other.

21. NOTICES.

Any notice, demand or communication which either party may desire or be required to give to the other party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally or sent by certified first class US mail, postage prepaid, addressed as follows:

Gunnison County: County Manager  
Gunnison County  
200 E. Virginia  
Gunnison, Colorado 81230  
Phone: 970-641-0248

With a copy to: Board of County Commissioners  
of the County of Gunnison, Colorado  
200 E. Virginia  
Gunnison, Colorado 81230

Contractor: \_\_\_\_\_  
\_\_\_\_\_

Either party has the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

22. GOVERNING LAW.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Jurisdiction and venue for any legal proceedings related to this Agreement shall exclusively lie in the State of Colorado District Court located in Gunnison County, Colorado.

23. COUNTERPARTS: FACSIMILE AND ELECTRONIC TRANSMISSION.

This Agreement may be executed by facsimile and/or in any number of counterparts, any or all of which may contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the parties as though originally executed on one originally executed document. All facsimile counterparts shall be promptly followed with delivery of original executed counterparts.

This Agreement may also be executed by electronic means or signatures. Accordingly, the Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the County in the manner specified by the County. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

The parties agree that: (i) any notice or communication transmitted by electronic transmission, as defined below, shall be treated in all manner and respects as an original written document; (ii) any such notice or communication shall be considered to have the same binding and legal effect as an original document; and (iii) at the request of either party, any such notice or communication shall be re-delivered or re-executed, as appropriate, by the party in its original form. For purposes of this Agreement, the term “electronic transmission” means any form of communication not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, but specifically excluding text or instant messages.

#### 24. ENTIRE AGREEMENT.

This Agreement comprises the entire agreement between County and Contractor and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. No amendment to or modification of this Agreement will be binding unless in writing and signed by an authorized representative of each party.

Notwithstanding anything to the contrary herein, the County shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor’s or a subcontractor’s website or any provision incorporated into any click-through or online agreements related to the work unless that provision is specifically referenced in this Agreement.

#### 25. RECORDS.

Contractor shall maintain for a minimum of three (3) years, adequate financial and other records for reporting to County. Contractor shall be subject to financial audit by federal, state or county auditors or their designees. Contractor authorizes such audits and inspections of records during normal business hours, upon forty-eight (48) hours’ notice to Contractor. Contractor shall fully cooperate during such audit or inspections.

26. PUBLIC RECORD.

To the extent not prohibited by state or federal law, this Agreement is potentially subject to public release through the Colorado Open Records Act. The parties further acknowledge and understand that all work product or materials provided or produced under this Agreement, including items marked Proprietary or Confidential, may be subject to the Colorado Open Records Act., § 24-72-201, et seq., C.R.S.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date above written.

BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF GUNNISON, COLORADO

By: \_\_\_\_\_  
Jonathan Houck, Chairperson

By: \_\_\_\_\_  
Roland Mason, Vice Chairperson

By: \_\_\_\_\_  
Elizabeth Smith, Commissioner

ATTEST:

\_\_\_\_\_  
Deputy Clerk

[OR COUNTY MANAGER SIGNATURE]

CONTRACTOR

By:  \_\_\_\_\_

APPENDIX "A"

SCOPE OF SERVICES

Contractor shall perform and provide the following services:

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

**Agenda Item:** Approval for Amendment #1 to Colorado Department o

**Action Requested:** County Manager Signature Contract Amendment #1 LCO UPK

**Parties to the Agreement:** Colorado Department of Early Childhood

**Term Begins:**

**Term Ends:**

**Grant Contract #:** 23 QAAA 178558 - Am1 (1796

**Summary:**

Language added on Advanced Payments

**Fiscal Impact:**

**Submitted by:** Margaret Wacker

**Submitter's Email Address:** mwacker@gunnisoncounty.org

**Finance Review:**

Required

Not Required

Comments:

Reviewed by:

Discharge Date:

**County Attorney Review:**

Required

Not Required

Comments:

Appears legally sufficient. MRH

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 11/8/2022

Certificate of Insurance Required

Yes  No

**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 11/10/2022

Consent Agenda     Regular Agenda     Worksession

Time Allotted:

Agenda Date: 11/15/2022



**1. PARTIES**

This Amendment (the “Amendment”) to the Original Contract shown on the Signature and Cover Page for this Amendment (the “Contract”) is entered into by and between the Contractor, and the State.

**2. TERMINOLOGY**

Except as specifically modified by this Amendment, all terms used in this Amendment that are defined in the Contract shall be construed and interpreted in accordance with the Contract.

**3. AMENDMENT EFFECTIVE DATE AND TERM**

**A. Amendment Effective Date**

This Amendment shall not be valid or enforceable until the Amendment Effective Date shown on the Signature and Cover Page for this Amendment. The State shall not be bound by any provision of this Amendment before that Amendment Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred under this Amendment either before or after of the Amendment term shown in **§3.B** of this Amendment.

**B. Amendment Term**

The Parties’ respective performances under this Amendment and the changes to the Contract contained herein shall commence on the Amendment Effective Date shown on the Signature and Cover Page for this Amendment and shall terminate on the termination of the Contract.

**4. PURPOSE**

Contractor shall serve as the Local Coordinating Organization (LCO) for early childhood and family support programs and services provided to children and families within the community. They shall develop a unified plan with community partners for the successful rollout of Universal Pre-School (UPK) and longer-term birth to five goals for delivery of comprehensive early childhood services and supports for the catchment area. This Amendment shall amend Exhibit C.

**5. MODIFICATIONS**

The Contract and all prior amendments thereto, if any, are modified as follows:

**A. Exhibit C – Additional Provisions**

Exhibit C – Amendment #1, which is attached and incorporated by this Amendment, shall replace Exhibit C of the Original Contract.

**6. LIMITS OF EFFECT AND ORDER OF PRECEDENCE**

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments or other modifications to the Contract, if any, remain in full force and effect except as specifically modified in this Amendment. Except for the Special Provisions contained in the Contract, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract or any prior modification to the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The provisions of this Amendment shall only supersede, govern, and control over the Special Provisions contained in the Contract to the extent that this Amendment specifically modifies those Special Provisions.



## **ADDITIONAL PROVISIONS**

### **1. SERVICE PROVISIONS**

The Contractor shall provide the services according to the plans submitted in the “Statement of Work”, attached and incorporated herein by this reference as **EXHIBIT A**. In all cases, the descriptions, plans, timetables, tasks, duties, and responsibilities of the Contractor as described in the Statement of Work, shall be adhered to in the performance of the requirements of this contract. In the event of a conflict, the terms and conditions of this contract shall control over the Statement of Work. Any significant changes to the Statement of Work (SOW) require an amendment to the contract.

### **2. GOALS AND OBJECTIVES**

The Contractor shall be responsible for the achievement of any goals and objectives as specified within the Statement of Work (**EXHIBIT A**) of this contract unless written notice of any modifications are furnished by the State to the Contractor allowing adequate time for compliance during the term of this contract.

### **3. COPY OF SUBCONTRACT**

The Contractor shall provide to the State a copy of any executed subcontract between the Contractor and any provider of services to fulfill any requirements of this contract. Subcontracts shall be emailed to the Contract Representative upon execution.

### **4. PAYMENT**

In consideration of the provision of services and reporting and subject to all payment and price provisions and further subject to verification by the State of full and satisfactory compliance with the terms of this contract, the State shall pay to the Contractor an amount not to exceed the pre-approved amount pursuant to the process in Exhibit C, Section 12. General Accounting Encumbrance, of this contract.

- A.** The Contractor shall submit requests for payment to [CDEC\\_Invoicing@state.co.us](mailto:CDEC_Invoicing@state.co.us) no less than monthly on forms prescribed and provided by the State.
- B.** Payment shall be made on a cost reimbursement basis for services rendered.
- C.** It is understood any vacancy savings in the personnel category and/or any savings in any other category shall require written approval from the State prior to any redistribution of any savings by the Contractor. **ANY COST SAVINGS THAT ARE REDISTRIBUTED BY CONTRACTOR WITHOUT WRITTEN APPROVAL SHALL NOT BE REIMBURSED BY THE STATE.**
- D.** **IT IS UNDERSTOOD ANY COSTS THAT EXCEED THE CONTRACTED AMOUNT SHALL NOT BE PAID BY CDEC.** If Contractor has a legitimate need for additional funds, the Contractor shall request additional funds from the CDEC 60 days prior to projected depletion of contracted funds. CDEC shall review each request and notify Contractor in writing of approval or denial. Approval of additional funds shall require an official modification to the Contract by Amendment or Option Letter.
- E.** **Timely Invoicing** - Invoices shall be submitted no later than 30 days following the last day of the month. End of State Fiscal Year invoices are on a compressed timeframe. Invoices for all services provided prior to June 30th shall be invoiced by July 5th. Contractors who are unable to provide the invoice by July 5th shall notify the state of the amount to be booked as accounts payable by July 13th by sending an email to



[CDEC Invoicing@state.co.us](mailto:CDEC_Invoicing@state.co.us). Final invoices for services prior to June 30th shall be submitted by September 14th. Invoices received after September 14th may not be paid.

- F. The Contractor shall maintain source documentation to support all payment requested pursuant to this contract. All source documentation shall be provided to the State by the Contractor upon request.
- G. It is understood that the State reserves the right to offset funds pursuant to this contract based on the discovery of overpayment or improper use of funds by the Contractor. Overpayment or improper use of funds is interpreted to apply to specific terms of prior year contracts, and includes without limitation requirements of the Generally Accepted Accounting Principles (GAAP) issued by the American Institute of Certified Public Accountants, and applicable sections of the Colorado Revised Statutes.
- H. The State shall review monthly invoices throughout the fiscal year. If, after a number of months, the State determines the Contractor is not needing/using the funding allocated for the Contractor's work in the Contract, the State shall remove these funds from the contract budget by Option Letter for a proportional reduction of services with prior written notification to the Contractor.
- I. Advanced Payments
  - i. Contractor may request up to 25% of the allocated amount in Exhibit F for advanced payment by emailing their request to the Program Manager.
  - ii. Advanced payments shall be reconciled monthly to ensure all funds are accounted for and spent appropriately.
  - iii. Contractor shall submit backup documentation to support payments and reconciliation of advanced payments.
  - iv. The final reimbursement invoice for the Universal Preschool Program shall include a reconciliation of advanced payment funds and actual reimbursement, to ensure that the reconciliation is considered in the final payment amount for the fiscal year.
  - v. Any remaining advanced funds at the end of the fiscal year shall be reverted back to the State.

## **5. PARTICIPATION**

The Contractor representative(s) is required to participate in any Department of Early Childhood sponsored meetings related to this contract.

## **6. SUPPLANTING**

Payments made to the Contractor under this contract shall supplement and not supplant other state, local or federal expenditures for services associated with this contract.

## **7. TRAVEL**

- A. Mileage shall not exceed the Federal mileage rate per <https://www.gsa.gov/travel-resources>.
- B. Per Diem shall not exceed Federal GSA per diem rates for the area of travel per <https://www.gsa.gov/travel-resources>.
- C. Hotel rates cannot exceed any rate established for conference attendance.



**D.** Usage of airfare or Out of State Travel requires pre-approval from CDEC.

**8. SUBRECIPIENT**

Contractors determined to be a Sub-recipient of federal funds shall complete the sub-recipient performance report and assessment survey at: <https://forms.gle/QTXGEabvipymdsfd8> upon contract execution. Failure to complete the performance report and assessment survey shall delay payment to the Contractor.

**9. CRITICAL INCIDENT REPORTING**

Within 48 hours of the occurrence of a critical incident involving any child or family and/or an on duty agency staff member of any family support program staff funded through the Department of Early Childhood (CDEC), the agency must report in writing the details of the critical incident to the CDEC Program Manager for the involved family support program. Critical incidents may include, but are not limited to, awareness of an egregious incident of abuse and/or neglect, near fatality, or fatality of any child currently enrolled in a family support program; involuntary termination of a program staff’s employment; criminal allegations involving program staff and related to his/her employment; negative media attention about the family support program; any major injury or threat to the security of an agency staff member while on duty and visiting an enrolled child or family.

**10. MANDATED REPORTING**

- A.** All program staff are required by law to report suspected child abuse and neglect. Mandatory reporters must report suspected child abuse and neglect to the local county child welfare agency, the local law enforcement agency, or by calling the child abuse reporting hotline system at 1-844-CO-4KIDS (1-844-264-5437).
- B.** All program staff are required to take the online mandatory reporter training on the Colorado Department of Human Services (CDHS) Child Welfare Training System: <https://www.coloradocwts.com/mandated-reporter-training>.

**11. GENERAL ACCOUNTING ENCUMBRANCE (GAE)**

- II.** Payment for Local Coordinating Organizations (LCO) for the Universal Pre-School (UPK) Program to all contractors shall be made as incurred, in whole or in part, from the total available funds to be utilized for the following:
  - i)** Personnel – Salary and Fringe Expenses
  - ii)** Consultant Costs
  - iii)** Technology Costs
  - iv)** Operating Expenses
  - v)** Travel – In-State Mileage and Travel Expenses
  - vi)** Indirect

**III.** Please refer to Page 1 for the amount available under the GAE for the current fiscal year.



- IV.** Payment to Contractor is made from available funds encumbered and shared across multiple contractors. All LCO shall have access to the GAE. The State may increase or decrease the total funds encumbered at its sole discretion and without formal notice to Contractor. No minimum payment is guaranteed to Contractor. The liability of the State for such payments is limited to the encumbered amount remaining of such funds.
- V.** In order to receive reimbursement for any services, Contractor shall submit a request for anticipated expenses for pre-approval. The request shall be made, and approval received 30 days prior to the delivery of services.
- VI.** Invoices shall be submitted separately for pre-approved Local Coordinating Organization expenditures.
- i)** The Contractor shall submit requests for payment to [CDEC\\_Invoicing@state.co.us](mailto:CDEC_Invoicing@state.co.us).

## **12. GIFT CARDS**

The Distribution of Gift Cards, where applicable, shall adhere to the following:

- A. The contractor agency must have a written Gift Card Distribution Policy in place and this plan must be approved by the Department of Early Childhood before gift cards may be purchased. The policy must include maintaining an audit log of gift card purchases and disbursements and a process for routine reconciliations.
- B. The contractor agency's gift card policy must ensure that gift cards cannot be redeemed for cash and must restrict the recipient from using gift cards for alcohol, firearms, tobacco, lottery tickets, or entertainment.
- C. Gift Cards must be distributed to recipients within five (5) business days of purchase.
- D. Gift Cards should be given at the conclusion of an event or upon completion of an activity or milestone.
- E. Contractor agency staff shall have recipients sign a form that includes the following: Date, Name of Gift Card Recipient, Purpose of Gift Card, Signature of Gift Card recipient acknowledging receipt of Gift Card and Gift Card Amount.
- F. The contractor cannot request reimbursement for the cost of gift cards until distribution of the gift cards has been made to recipients. Additionally, the contractor must maintain adequate documentation to show a record of all gift card distributions.
- G. The contractor shall be held responsible for inappropriate use of gift cards.



VENDOR CONTACT INFORMATION SHEET

Legal Name of Vendor as it should appear on the Contract/Purchase Order including any dba:

Gunnison County

Address: 220 N. Spruce Street

City: Gunnison State: CO Zip Code: 81230 County: Gunnison

FEIN #: 84-60007700 State of Incorporation Colorado

Unique Entity Identifier (UEI) (From SAM.gov) NSN9FAGKEDJ9 Fiscal Year End Date (MM/DD) 12/2023

Type of Entity (please mark one):

- Individual, Professional Corporation (PC), Sole Proprietor, Not-For-Profit Corporation, Limited Liability Company (LLC), Joint Venture, For-Profit, Limited Liability Partnership (LLP), Government

Primary Contact to Receive ALL Correspondence:

CFO or Financial Contact:

Name: Margaret Wacker Title: Community Health Manager Email: mwacker@gunnisoncounty.org Phone: 970.641.7913 Name: Jody Wise Title: Senior Accountant Email: jwise@gunnisoncounty.org Phone: 970.641.7679

Individual Signing Contract:

Invoice Contact:

Name: Matthew Birnie Title: County Manager Email: mbirnie@gunnisoncounty.org Phone: 970.641.0248 Name: Jody Wise Title: Senior Accountant Email: jwise@gunnisoncounty.org Phone: 970.641.7679

Additional Contacts for DocuSign Review:

The Department of Early Childhood collects signatures via DocuSign. Please list below any individuals that need to be included in the DocuSign process prior to the final signature (example: Director's Assistant, Attorney, etc):

Name: Melanie Bollig Title: Administrative Assistant III Email: mbollig@gunnisoncounty.org Sign or CC? CC Vendor Specific Instructions for Emails of Preliminary Approval/DocuSign (example: PI/Faculty Member Name):

Is your agency set up for Electronic Deposit with the State of CO? Yes X No

If Yes, please list the last 4 digits of the account number payments should be sent to: 9411

How long does your agency and/or board need to review and return the signed contract? 2 weeks

IMPORTANT – When submitted with a Solicitation, please complete the following:

Vendor should read the entire Solicitation document before submitting a Bid/Proposal/Quote. Solicitation is subject to the conditions stipulated and in accordance with the specifications set forth and/or attached to the Solicitation. All Solicitations shall be quoted F.O.B. destination, unless otherwise specified, to the delivery location or job site listed in the Solicitation.

ELECTRONIC OR PRINTED SIGNATURE FROM AUTHORIZED SIGNATORY

Date



**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

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**Agenda Item:** Approval for Contractor Agreement; Walter A. Sorre

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**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:**

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

Gunnison County sits as the County Board of Equalization and has the authority to appoint an independent referee.

**Fiscal Impact:** Yes

**Submitted by:** Donita Bishop

**Submitter's Email Address:** dbishop@gunnisoncounty.org

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**Finance Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\PSolheim

Discharge Date: 11/9/2022

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**County Attorney Review:**

Required

Not Required

Comments:

Legally sufficient. MRH

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 11/8/2022

Certificate of Insurance Required

Yes  No

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**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 11/10/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted:

Agenda Date: 11/15/2022

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## CONTRACTOR AGREEMENT

This CONTRACTOR AGREEMENT ("Agreement") made effective this 6TH day of OCTOBER, 2022, by and between the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO, whose address is 200 E. VIRGINIA AVE., GUNNISON, CO 81230 ("Gunnison County") and WALTER A. SORRENTINO, whose address is 25587 CONIFER ROAD, SUITE 105-223, CONIFER, CO 80433 ("Contractor").

### RECITALS

WHEREAS, Gunnison County sits as the County Board of Equalization ("CBOE") pursuant to C.R.S. § 39-8-101; and

WHEREAS, the CBOE pursuant to C.R.S. § 39-8-102(2)(i) has the authority to appoint independent referees experienced in property valuation to conduct hearings that review the valuations for assessment of all taxable property in the County ("Hearing Officer"); and

WHEREAS, The Contractor is experienced in property valuation and desires to provide professional services as the Hearing Officer for the CBOE, as more fully described in his proposal for services, attached and incorporated into this Agreement as Appendix A ("Services"); and

WHEREAS, Gunnison County in its role as the CBOE desires to engage Contractor to provide Services according to this Agreement.

### AGREEMENT

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

#### 1. SERVICES.

Contractor shall furnish all materials, labor, supervision, supplies and equipment to commence, diligently pursue, and complete the Services as more specifically set forth on Appendix "A". All Services shall be performed in a timely manner and in accordance with generally accepted standards for Contractor's profession and all applicable federal, state and local laws and regulations affecting the Services or the subject matter thereof. Contractor acknowledges that this is a non-exclusive Agreement, and Gunnison County may contract with additional or other providers able to furnish the same or similar services as it deems appropriate to do so.

#### 2. TERM.

The term of this Agreement shall commence on OCTOBER 1, 2022 and shall terminate on October 1, 2023, unless sooner terminated or replaced as provided herein.

### 3. STRATEGIC RESULT.

Execution of this Agreement will assist Gunnison County with fulfilling its duties as the CBOE as required by C.R.S. § 39-8-101 et. seq.

### 4. COMPENSATION, BONUS AND EXPENSES.

In consideration and exchange for Contractor's performance of the Services, during the Term, Gunnison County shall pay Contractor fees at SIXTY-FIVE U.S. DOLLARS PER HOUR (\$65.00/hour) for Services described as billable hours in Appendix A, these billable hours specifically exclude travel time to and from Gunnison County offices at 200 E. Virginia Ave., Gunnison, CO 81230.

Travel time to and from Gunnison County offices shall be reimbursed at the 2022 IRS vehicular mileage rate of SIXTY-TWO-and-ONE-HALF U.S. CENTS PER MILE (\$0.625/mile), with a limit on each one-way distance travelled of one-hundred and fifty miles (150 miles) as proposed in Appendix A. Gunnison County shall also reimburse Contractor for overnight stays in Gunnison that are reasonably necessary during Contractor's provision of Services. Payment shall be made by Gunnison County to Contractor within 45 days of receipt of an invoice.

The Compensation shall compensate Contractor for all charges, expenses, overhead, payroll costs, employee benefits, insurance subsistence, and profits, except as specifically set forth herein.

### 5. INSURANCE.

Contractor agrees that at all times during the Term of this Agreement, and for three (3) years after the date the Term of this Agreement expires or the date this Agreement is terminated, or any applicable warranty period, Contractor shall maintain, in full force and effect and at its sole cost and expense, the following insurance policies. Within thirty (30) days of the execution of this Agreement, Contractor will provide insurance certificates to Gunnison County, listing Gunnison County as an additional insured, for the coverages required by this paragraph, which shall state that such policies shall not be materially changed or cancelled without thirty (30) days prior notice to Gunnison County. Written notice shall be sent to the parties identified in the Notices section of this Agreement and sent thirty (30) days prior to any cancellation or non-renewal unless due to non-payment of premiums, in which case, notice shall be sent ten (10) days prior. If written notice is unavailable from the insurer, Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s).

- a. Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Contractor during the term of this Agreement.
- b. Comprehensive General Liability Insurance or the equivalent in an amount no less than Four Hundred Twenty-Four Thousand and No/100 U.S. Dollars (\$424,000.00) for injury to one person in any single occurrence; and no less than One Million One Hundred Ninety-Five Thousand and No/100 U.S. Dollars (\$1,195,000.00) for injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate).
- c. Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than Four Hundred Twenty-Four Thousand and No/100 U.S. Dollars (\$424,000.00) for injury to one person in any single occurrence; and no less than One Million One Hundred Ninety-Five Thousand and No/100 U.S. Dollars (\$1,195,000.00) for injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate).
- d. Professional Liability Insurance or the equivalent, such as Errors and Omissions coverage, in an amount no less than Four Hundred Twenty-Four Thousand and No/100 U.S. Dollars (\$424,000.00) for injury to one person in any single occurrence; and no less than One Million One Hundred Ninety-Five Thousand and No/100 U.S. Dollars (\$1,195,000.00) for any injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate).

The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado. Combinations of primary and excess coverage may be used to achieve minimum coverage limits. Excess/umbrella policy(ies) must follow form of the primary policy(ies) with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance. The County's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the County's rights or remedies under this Agreement.

If excluded from any policy coverage, this Agreement shall be specifically named an insured contract. If any policy is in excess of a deductible or self-insured retention, the County must be notified by the Contractor. Contractor shall be responsible for the payment of any deductible or self-insured retention. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) must be included. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the County, excluding Professional Liability and Workers Compensation policies, if required.

For all coverages required under this Agreement, Contractor's insurer(s) shall waive subrogation rights against the County by policy endorsement. All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. Contractor shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Contractor agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the County.

The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor to the County under this Agreement. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

The insurance provisions of this Agreement shall survive expiration or termination of this Agreement.

#### 6. INDEPENDENT CONTRACTOR.

In carrying out its obligations and activities under this Agreement, Contractor is acting as an independent contractor and not as an agent, partner, joint venture or employee of Gunnison County. Contractor does not have any authority to bind Gunnison County in any manner whatsoever.

**CONTRACTOR ACKNOWLEDGES AND AGREES THAT CONTRACTOR IS NOT ENTITLED TO: (I) UNEMPLOYMENT INSURANCE BENEFITS; OR (II) WORKERS COMPENSATION COVERAGE, FROM GUNNISON COUNTY.** Further, Contractor is obligated to pay federal and state income tax on any moneys paid it related to the Services.

#### 7. INDEMNIFICATION.

Contractor agrees to indemnify, defend and hold harmless Gunnison County, its Commissioners, agents and employees of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) arising out of or related to any loss, cost, damage or injury, including death, of any person or damage to property of any kind caused by the misconduct or negligent acts, errors or omissions of Contractor or its employees, subcontractors or agents in connection with this Agreement.

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

## 8. DISCRIMINATION.

The Contractor agrees not to discriminate against any person or class of persons by reason of age, race, color, sex, creed, religion, disability, national origin, sexual orientation or political affiliation in providing any services or in the use of any facilities provided for the public in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. Contractor shall further comply with the letter and spirit of the Colorado Anti-Discrimination Act of 1957, as amended, and any other laws and regulations respecting discrimination in unfair employment practices. Additionally, Contractor shall comply with such enforcement procedures as any governmental authority might demand that Gunnison County take for the purpose of complying with any such laws and regulations.

## 9. ADA COMPLIANCE.

The Contractor assures Gunnison County that at all times during the performance of this Agreement no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor upon which assurance Gunnison County relies.

## 10. CONTRACTOR REPRESENTATIONS AND WARRANTIES.

- a. Contractor represents and warrants that, pursuant to C.R.S. § 39-8-102(2)(i), during the property tax year in which Contractor shall be appointed as independent referee Contractor does not represent, and has not represented, any taxpayer in the county where Contractor will be appointed as an independent referee in any matter relating to the protest and appeal of property valuation or to the abatement or refund of property taxes.
- b. Contractor represents and warrants that, pursuant to C.R.S. § 39-8-102(2)(i), Contractor shall not represent any taxpayer who appears in any hearing before Contractor in any matter subsequent relating to the protest and appeal of property valuation or to the abatement or refund of property taxes.

Contractor represents and warrants that all Centers for Disease Control and Prevention (CDC), federal, state, local and Gunnison County mandates regarding coronavirus preventative measures shall be complied with during the course of this Agreement, including but not limited to, the use of face coverings and social distancing.

## 11. MISCELLANEOUS.

- a. **SEVERABILITY.** If any clause or provision of this 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 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 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.

#### 12. DELEGATION AND ASSIGNMENT.

This is a personal services contract with Contractor and, therefore, Contractor shall not delegate or assign its duties under this Agreement without the prior written consent of Gunnison County which consent Gunnison County may withhold in its discretion. Subject to the foregoing, the terms, covenants and conditions of this Agreement shall be binding on the successors and assigns of either party.

#### 13. TERMINATION.

Either party shall have the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other. Upon termination, Contractor shall be entitled to compensation for Services performed prior to the date of termination, per the compensation terms described in Section 4 above.

#### 14. NOTICES.

Any notice, demand or communication which either party may desire or be required to give to the other party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally or sent by certified first class US mail, postage prepaid, addressed as follows:

Gunnison County: County Manager  
Gunnison County  
200 E. Virginia Ave.  
Gunnison, Colorado 81230  
Phone: 970-641-0248

With a copy to: Board of County Commissioners  
of the County of Gunnison, Colorado  
200 E. Virginia Ave.  
Gunnison, Colorado 81230

Contractor: Walter A. Sorrentino  
25587 Conifer Rd.

Suite 105-223  
Conifer, CO 80433

Either party has the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

15. GOVERNING LAW.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Exclusive jurisdiction and venue for any legal proceedings related to this Agreement shall be in the State of Colorado District Court, Gunnison County, Colorado.

16. COUNTERPARTS: FACSIMILE TRANSMISSION.

This Agreement may be executed by facsimile and/or in any number of counterparts, any or all of which may contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the parties as though originally executed on one originally executed document. All facsimile counterparts shall be promptly followed with delivery of original executed counterparts.

17. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, proposals, negotiations and representations pertaining to the obligations to be performed hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date above written.

BOARD OF COUNTY COMMISSIONERS OF THE  
COUNTY OF GUNNISON, COLORADO

By: \_\_\_\_\_  
Jonathan Houck, Chairperson

ATTEST:

\_\_\_\_\_  
Deputy Clerk

CONTRACTOR

By:   
\_\_\_\_\_

Walter A. Sorrentino

**APPENDIX A  
SCOPE OF SERVICES**

Walter A. Sorrentino  
457 Bell Road PO Box 236 Shawnee, Colorado 80475-0236  
Home 303.816.0669 Mobile 303.995.4917

**Hearings Officer**

Problems facing the Board hearing and addressing taxpayer appeals of property valuations used to determine ad valorem taxes appear to be based in cost-effectiveness. This scope of work attempts to recognize restricted county budgets and the need hear property valuation appeals in the most cost-effective method possible.

I will make myself available, in person, to hear all appeals submitted by Gunnison County taxpayers concerning the valuations assigned to their properties. Every day hearings are scheduled I will travel to the Gunnison County offices where I will be assigned a work area, preferably in the assessor's office. I would like access to an up-to-date hard copy or electronic file of the Assessor's Reference Library as published by the Division of Property Taxation. A suitable laptop commuter loaded with the necessary forms and software for the effective recording of hearings and submission of recommendations for valuation assignments to the Board for their consideration. I do will not remain in Gunnison beyond standard office hours nor burden the County budget with the cost of overnight accommodations.

I will work for an hourly compensation for my services of **\$65.00 per hour**. Billable hours will include time spent hearing appeals as well as the time required to complete summaries and value recommendations for consideration by the Board. Travel time to and from Gunnison will not be included in billed hours. I will use the ~~2020~~ IRS standard vehicular mileage rate ~~\$0.56~~ per mile to compensate for travel costs; I estimate distance traveled, one-way, to be approximately 150 miles.

2022



\$ 0625

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

**Agenda Item:** Approval for Contractor Agreement; Gunnison Valley

**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:**

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

drivers education

**Fiscal Impact:**

**Submitted by:** Kari Commerford

**Submitter's Email Address:** kcommerford@gunnisoncounty.org

**Finance Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\PSolheim

Discharge Date: 11/9/2022

**County Attorney Review:**

Required

Not Required

Comments:

Legally sufficient. MRH

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 11/8/2022

Certificate of Insurance Required

Yes  No

**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 11/10/2022

Consent Agenda     Regular Agenda     Worksession

Time Allotted:

Agenda Date: 11/15/2022

## CONTRACTOR AGREEMENT

THIS CONTRACTOR AGREEMENT ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Board of County Commissioners of the County of Gunnison, Colorado, whose address is 200 East Virginia Ave., Gunnison, CO 81230 ("Gunnison County") and \_\_\_\_\_, whose address is \_\_\_\_\_ ("Contractor").

### RECITALS

WHEREAS, the Contractor desires to provide services according to this Agreement as identified in the Scope of Work, attached and incorporated as Appendix A ("Services"); and

WHEREAS, Gunnison County desires to engage Contractor to provide such Services pursuant to this Agreement.

### AGREEMENT

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

1. SERVICES.

Contractor shall furnish all materials, labor, supervision, supplies and equipment to commence, diligently pursue, and complete the Services as more specifically set forth in Appendix A. All Services shall be performed in a timely manner and in accordance with generally accepted standards for Contractor's profession and all applicable federal, state and local laws and regulations affecting the Services or the subject matter thereof. Contractor acknowledges that this is a non-exclusive Agreement, and Gunnison County may contract with additional or other providers able to furnish the same or similar services as it deems appropriate to do so.

2. TERM.

The term of this Agreement shall commence on \_\_\_\_\_, \_\_\_\_\_ and shall terminate on \_\_\_\_\_, \_\_\_\_\_ (the "Term"), unless sooner terminated or replaced as provided herein.

3. STRATEGIC RESULT.

Execution of this Agreement will assist the County with its \_\_\_\_\_ strategy, as outlined in the Gunnison County Strategic Plan.

#### 4. COMPENSATION, BONUS AND EXPENSES.

In consideration and exchange for Contractor's performance of the Services during the Term, Gunnison County shall pay Contractor fees as more specifically not to exceed \_\_\_\_\_ and No/100 U. S. Dollars (\$\_\_\_\_\_) (the "Compensation"). Payment shall be made by Gunnison County to Contractor within 45 days of receipt of an invoice.

The Compensation shall compensate Contractor for all charges, expenses, overhead, payroll costs, employee benefits, insurance subsistence, and profits, except as specifically set forth herein.

#### 5. SUBJECT TO ANNUAL APPROPRIATIONS. *[This section shall only apply if the term in Section 2 is longer than one year.]*

This Agreement is subject to Gunnison County making an annual budget appropriation in an amount sufficient to fund this Agreement. If Gunnison County fails or refuses to make such an appropriation, Gunnison County reserves the right to terminate this Agreement pursuant to Section 15 of this Agreement.

#### 6. INSURANCE.

Contractor agrees that at all times during the Term of this Agreement that Contractor shall carry and maintain, in full force and effect and at its sole cost and expense, the following insurance policies. Within thirty (30) days of the execution of this Agreement, Contractor will provide insurance certificates to Gunnison County, listing Gunnison County as an additional insured, for the coverage's required herein which shall state that such policies shall not be materially changed or cancelled without thirty (30) days prior notice to Gunnison County.

- a. Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Contractor during the term of this Agreement.
- b. Comprehensive General Liability Insurance or the equivalent for any injury to one person in any single occurrence, Three Hundred Eighty-Seven Thousand and No/100 U.S. Dollars (\$387,000.00); and for an injury to two or more persons in any single occurrence, the sum of One Million Ninety-Three Thousand and No/100 U.S. Dollars (\$1,093,000.00).
- c. Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than Three Hundred Eighty-Seven Thousand and No/100 U.S. Dollars (\$387,000.00) for any injury to one person in any single occurrence and in an amount no less than One Million Ninety-Three Thousand and No/100 U.S. Dollars (\$1,093,000.00) for any injury to two or more persons in any single occurrence.

## 7. INDEPENDENT CONTRACTOR.

In carrying out its obligations and activities under this Agreement, Contractor is acting as an independent contractor and not as an agent, partner, joint venturer or employee of Gunnison County. Contractor does not have any authority to bind Gunnison County in any manner whatsoever.

**Contractor acknowledges and agrees that Contractor is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County.** Further, Contractor is obligated to pay federal and state income tax on any moneys paid it related to the services.

## 8. INDEMNIFICATION.

Contractor agrees to indemnify, defend and hold harmless Gunnison County, its Commissioners, agents and employees of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) arising out of or related to any loss, cost, damage or injury, including death, of any person or damage to property of any kind caused by the misconduct or negligent acts, errors or omissions of Contractor or its employees, subcontractors or agents in connection with this Agreement.

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

## 9. SOLE SOURCE CONTRACTS. *[This section shall only apply if this is a sole source contract or contract with the State of Colorado and exceeds \$100,000.00 annually.]*

If the Contractor has entered into a sole source contract or contracts with the State of Colorado or any of its political subdivisions as defined in Article XXVIII of the Colorado Constitution, which including this contract in the aggregate on an annual basis is/are equal to or exceed the amount of \$100,000.00, then the following provisions apply:

- a. Because of a presumption of impropriety between contributions to any campaign and sole source government contracts, Contractor, on behalf of itself, any person who controls ten percent or more of the shares of or interest in the Contractor, and the Contractor's officers, directors and trustees (collectively, the "Contract Holder") shall contractually agree, for the duration of the contract and for two years thereafter, to cease making, causing to be made, or inducing by any means, a contribution, directly or indirectly, on behalf of the Contractor Holder or on behalf of his or her immediate family member and for the benefit of any political party or for the benefit of any candidate for any elected office of the state or any of its political subdivisions.

- b. The parties further agree that if a Contract Holder makes or causes to be made any contribution intended to promote or influence the result of an election on a ballot issue, the Contract Holder shall not be qualified to enter into a sole source government contract relating to that particular ballot issue.
- c. The parties agree that if a Contract Holder intentionally violates sections 15 or 17(2) of Article XXVIII of the Colorado Constitution, as contractual damages that Contract Holder shall be ineligible to hold any sole source government contract, or public employment with the state or any of its political subdivisions, for three years.
- d. These provisions shall not apply to the extent they have been enjoined or invalidated by a court of competent jurisdiction.

#### 10. DISCRIMINATION.

The Contractor agrees to not discriminate against any person or class of persons by reason of age, race, color, sex, creed, religion, disability, national origin, sexual orientation or political affiliation in providing any services or in the use of any facilities provided for the public in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. Contractor shall further comply with the letter and spirit of the Colorado Anti-Discrimination Act of 1957, as amended, and any other laws and regulations respecting discrimination in unfair employment practices. Additionally, Contractor shall comply with such enforcement procedures as any governmental authority might demand that Gunnison County take for the purpose of complying with any such laws and regulations.

#### 11. IMMIGRATION COMPLIANCE CERTIFICATION.

- a. Contractor certifies that Contractor does not and will not knowingly contract with or employ illegal aliens to work under this Agreement.
- b. Contractor certifies that Contractor has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work under this Agreement.
- c. Contractor certifies that it has attempted to verify the eligibility of its employees and subcontractors to work through the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security.
- d. Contractor agrees to comply with all reasonable requests made in the course of an investigation under C.R.S. 8-17.5-102 by the Colorado Department of Labor and Employment.
- e. Contractor agrees to comply with the provisions of C.R.S. 8-17.5-101 et seq.

## 12. ADA COMPLIANCE.

The Contractor represents and warrants to Gunnison County that at all times during the performance of this Agreement no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor upon which assurance Gunnison County relies.

## 13. MISCELLANEOUS.

- a. SEVERABILITY. If any clause or provision of this 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 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 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.

## 14. DELEGATION AND ASSIGNMENT.

This is a personal services contract with Contractor and, therefore, Contractor shall not delegate or assign its duties under this Agreement without the prior written consent of Gunnison County which consent Gunnison County may withhold in its discretion. Subject to the foregoing, the terms, covenants and conditions of this Agreement shall be binding on the successors and assigns of either party.

## 15. TERMINATION.

Either party shall have the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other. Upon termination, Contractor shall be entitled to compensation for Services performed prior to the date of termination, per the compensation terms outlined in Appendix A.

## 16. NOTICES.

Any notice, demand or communication which either party may desire or be required to give to the other party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally or sent by certified first class US mail, postage prepaid, addressed as follows:

Gunnison County: County Manager  
Gunnison County  
200 E. Virginia Ave.  
Gunnison, Colorado 81230  
Phone: 970-641-0248

With a copy to: Board of County Commissioners  
Gunnison County  
200 E. Virginia Ave.  
Gunnison, Colorado 81230

Contractor: \_\_\_\_\_  
\_\_\_\_\_

Either party has the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

17. GOVERNING LAW.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Exclusive jurisdiction and venue for any legal proceedings related to this Agreement shall be in the State of Colorado District Court, Gunnison County, Colorado.

18. COUNTERPARTS: FACSIMILE TRANSMISSION.

This Agreement may be executed by facsimile and/or in any number of counterparts, any or all of which may contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the parties as though originally executed on one originally executed document. All facsimile counterparts shall be promptly followed with delivery of original executed counterparts.

19. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, proposals, negotiations and representations pertaining to the obligations to be performed hereunder.

20. PUBLIC RECORD.

To the extent not prohibited by state or federal law, this Agreement is potentially subject to public release through the Colorado Open Records Act.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date above written.

BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF GUNNISON, COLORADO

By: \_\_\_\_\_  
Jonathan Houck, Chairperson

By: \_\_\_\_\_  
Roland Mason, Vice Chairperson

By: \_\_\_\_\_  
Elizabeth Smith, Commissioner

ATTEST:

\_\_\_\_\_  
Deputy Clerk

CONTRACTOR

By: \_\_\_\_\_

APPENDIX "A"

SCOPE OF SERVICES

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

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**Agenda Item:** Approval for Colorado Department of Early Childhood

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**Action Requested:** County Manager Signature

**Parties to the Agreement:** Colorado Department of Early Childhood

**Term Begins:**

**Term Ends:**

**Grant Contract #:** 23 QAAA 178787

**Summary:**

New contract with CDEC for Emerging and Expanding child care access grants for Gunnison and Hinsdale Counties.

**Fiscal Impact:** 18793

**Submitted by:** Margaret Wacker

**Submitter's Email Address:** mwacker@gunnisoncounty.org

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**Finance Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\PSolheim

Discharge Date: 11/9/2022

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**County Attorney Review:**

Required

Not Required

Comments:

Appears legally sufficient. MRH

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 11/9/2022

Certificate of Insurance Required

Yes  No

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**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 11/10/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted:

Agenda Date: 11/15/2022

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## STATE OF COLORADO DEPARTMENT OF EARLY CHILDHOOD CONTRACT

### SIGNATURE AND COVER PAGES

<b>CMS #:</b> 23 QAAA 178787	<b>eClearance#:</b> 2220969
<b>State Agency</b> Colorado Department of Early Childhood	<b>Contractor</b> Gunnison County  Contractor’s State of Incorporation: CO
<b>Contract Maximum Amount</b> Initial Term 11/1/2022-12/30/2024 <span style="float: right;">\$18,793*</span>  And \$11,389,807 pooled GAE shared amongst various contractors as described in Contract, see Exhibit C Section 12.  Extension Terms None.  Maximum Amount for All Fiscal Years <span style="float: right;">\$18,793</span>	<b>Contract Performance Beginning Date</b> The later of the Effective Date or 11/1/2022  <b>Initial Contract Expiration Date</b> 12/30/2024  Except as stated in <b>§2D</b> , the total duration of this Contract, including the exercise of any options to extend, shall not exceed <b>5 Years</b> from its Performance Beginning Date.
<b>Pricing/Funding</b>  Price Structure: Cost Reimbursement Contractor shall invoice: Monthly Fund Source: Federal Funds, Coronavirus State and Local Fiscal Recovery Funds, SLFRP0126, CFDA 21.027	<b>Options</b>  The State shall have the following options if indicated with “Yes,” as further described in §2.C and §5.B.v: Option to Extend Term per §2.C: Yes Option to Increase or Decrease Maximum Amount per §5.B.v: Yes
<b>Insurance</b> Contractor shall maintain the following insurance if indicated with “Yes,” as further described in §10: Worker’s Compensation: Yes General Liability: Yes Automobile Liability: <b>Yes</b> Protected Information: <b>Yes</b> Professional Liability Insurance: <b>No</b> Cyber/Net. Security-Privacy Liability Insurance: <b>Yes</b> Crime Insurance: <b>No</b>	<b>Miscellaneous</b> Authority to enter into this Contract exists in: 26-1-111 C.R.S. Law-Specified Vendor Statute (if any): 26-6.5-104(c) C.R.S. Procurement Method: Exempt Solicitation Number (if any): N/A



<p><b>State Representative</b> Charles Ruda, QRIS Coordinator Colorado Department of Early Childhood 1575 Sherman Street, 1st Floor Denver, CO 80203 Phone: 303.866.4453 Email: Charles.Ruda@state.co.us</p>	<p><b>Contractor Representative</b> Matthew Birnie, County Manager Gunnison County 220 North Spruce Street Gunnison, CO 81230 Phone: 970.641.0248 Email: mbirnie@gunnisoncounty.org</p>
<p><b>Exhibits</b> The following Exhibits are attached and incorporated into this Contract: Exhibit A - Statement of Work Exhibit B - Budget Exhibit C - Additional Provisions Exhibit D - HIPPA Business Associate Agreement Exhibit E - Supplemental Provisions for Federal Awards Exhibit F - SLFRF Subrecipient Provisions</p>	
<p><b>Contract Purpose</b> House Bill 20B-1002 Emergency Relief Grant Programs authorized the Emerging and Expanding child care grant program. The purpose of the Grant program is to expand access and availability of licensed child care throughout the State. Senate Bill 22-213 has extended the Emerging and Expanding child care grant program. The Early Childhood Council shall create a process for soliciting, vetting, awarding, and monitoring emerging and expanding grants.</p>	

**Signature Page Begins On Next Page**

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**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

Each person signing this Contract represents and warrants that he or she is duly authorized to execute this Contract and to bind the Party authorizing his or her signature.

<p style="text-align: center;"><b>CONTRACTOR</b> Gunnison County</p> <hr/> <p style="text-align: center;">By: Matthew Birnie, County Manager</p> <p style="text-align: center;">Date: _____</p>	<p style="text-align: center;"><b>STATE OF COLORADO</b> Jared S. Polis, Governor Department of Early Childhood Lisa Roy, Ph.D., Executive Director</p> <hr/> <p style="text-align: center;">By: Mary Alice Cohen, Deputy Executive Director, Program Delivery</p> <p style="text-align: center;">Date: _____</p>
<p style="text-align: center;">2nd State or Contractor Signature if Needed</p> <hr/> <p style="text-align: center;">By: Name &amp; Title of Person Signing for Signatory</p> <p style="text-align: center;">Date: _____</p>	<p style="text-align: center;"><b>LEGAL REVIEW</b> Philip J. Weiser, Attorney General</p> <hr/> <p style="text-align: center;">By: _____ Assistant Attorney General</p> <p style="text-align: center;">Date: _____</p>
<p>In accordance with §24-30-202 C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p style="text-align: center;"><b>STATE CONTROLLER</b> <b>Robert Jaros, CPA, MBA, JD</b></p> <p style="text-align: center;">By: _____ Andrea Eurich/Toni Williamson</p> <p style="text-align: center;">Effective Date: _____</p>	

-- Signature and Cover Pages End --



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### **1. PARTIES**

This Contract is entered into by and between Contractor named on the Signature and Cover Pages for this Contract (the “Contractor”), and the STATE OF COLORADO acting by and through the Department of Early Childhood (the “State” or “CDEC”). Contractor and the State agree to the terms and conditions in this Contract.

### **2. TERM AND EFFECTIVE DATE**

#### **A. Effective Date**

This Contract shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Contract before the Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract.



**B. Initial Term**

The Parties' respective performances under this Contract shall commence on the Contract Performance Beginning Date shown on the Signature and Cover Pages for this Contract and shall terminate on the Initial Contract Expiration Date shown on the Signature and Cover Pages for this Contract (the "Initial Term") unless sooner terminated or further extended in accordance with the terms of this Contract.

**C. Extension Terms - State's Option**

If the Signature and Cover Pages for this Contract shows that the State has the Option to Extend Term, then the State, at its discretion, shall have the option to extend the performance under this Contract beyond the Initial Term for a period, or for successive periods, at the same rates and under the same terms specified in the Contract (each such period an "Extension Term"). In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to §21 "Sample Option Letter." The State may include and incorporate a revised budget with the option letter, as long as the revised budget does not unilaterally change rates or terms specified in the Contract. Except as stated in §2.D, the total duration of this Contract, including the exercise of any options to extend, shall not exceed 5 years from its Performance Beginning Date, or the number of years specified on the Signature and Cover Pages if such number is less than 5 years, absent prior approval from the Chief Procurement Officer in accordance with the Colorado Procurement Code.

**D. End of Term Extension**

If this Contract approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor as provided in §15, may unilaterally extend such Initial Term or Extension Term for a period not to exceed 2 months (an "End of Term Extension" or "Holdover"), regardless of whether additional Extension Terms are available or not. Any such extension shall be under the same terms and conditions of the operative Contract including, but not limited to, prices, rates, and service delivery requirements. The provisions of this Contract in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of the Contract.

**E. Early Termination in the Public Interest**

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in whole or in part. A determination that this Contract should be terminated in the public interest



shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Contract by the State for Breach of Contract by Contractor, which shall be governed by §12.A.i.

i. Method and Content

The State shall notify Contractor of such termination in accordance with §15. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in §12.A.i.a.

iii. Payments

If the State terminates this Contract in the public interest, the State shall pay Contractor an amount equal to the percentage of the total reimbursement payable under this Contract that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Contract is less than 60% completed, as determined by the State, the State may reimburse Contractor for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Contract, incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

### **3. DEFINITIONS**

The following terms shall be construed and interpreted as follows:

A. "Breach of Contract" means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.



B. “Business Day” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays as listed in §24-11-101(1) C.R.S.

C. “Chief Procurement Officer” means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202, C.R.S. to procure or supervise the procurement of all supplies and services needed by the state.

D. “CJI” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under 24-72-302 C.R.S.

E. “Contract” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto. For purposes of clarification and the removal of any doubt, subject to any future modifications thereto, the Signature and Cover Pages and Sections 1 through 21, as identified in the Table of Contents herein above, shall constitute the “main body” of this Contract exclusively.

F. “Contract Funds” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.

G. “CORA” means the Colorado Open Records Act, §§24-72-200.1 et. seq., C.R.S.

H. “Deliverable” means the outcome to be achieved or output to be provided, in the form of a tangible object or software that is produced as a result of Contractor’s Work that is intended to be delivered to the State by the Contractor.

I. “Effective Date” means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Contract. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature and Cover Page for this Contract.

J. “End of Term Extension” means the time period defined in §2.D.

K. “Exhibits” means the exhibits and attachments included with this Contract as shown on the Signature and Cover Pages for this Contract..



L. “Extension Term” means the time period defined in §2.C.

M. “Goods” means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.

N. “Incident” means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, et. seq., C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.

O. “Initial Term” means the time period defined in §2.B.

P. “Party” means the State or Contractor, and “Parties” means both the State and Contractor.

Q. “PCI” means payment card information including any data related to credit card holders’ names, credit card numbers, or other credit card information as may be protected by state or federal law.

R. “PHI” means any individually identifiable health information, transmitted or maintained in electronic or any form or medium, including but not limited to demographic information,, (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.

S.. “PII” means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501



and 24-73-101, C.R.S. “PII” shall also mean “personal identifying information” as set forth in § 24-74-102, et. Seq., C.R.S.

T. “Services” means the services to be performed by Contractor as set forth in this Contract, and shall include any services to be rendered by Contractor in connection with the Goods.

U. “State Confidential Information” means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, Educational Records, Substance Use Disorder Information, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.

V. “State Fiscal Rules” means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.

W. “State Fiscal Year” means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.

X. “State Records” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.

Y. “Subcontractor” means any third-parties engaged by Contractor to aid in performance of the Work.

Z. “Tax Information” means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.

AA. “Work” means the Goods delivered and Services performed pursuant to this Contract.



BB. “Work Product” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Contract that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

#### **4. STATEMENT OF WORK**

Contractor shall complete the Work as described in this Contract and in accordance with the provisions of the Exhibits. The State shall have no liability to compensate Contractor for the delivery of any goods or the performance of any services that are not specifically set forth in this Contract.

#### **5. PAYMENTS TO CONTRACTOR**

##### **A. Maximum Amount**

Payments to Contractor are limited to the unpaid, obligated balance of the Contract Funds. The State shall not pay Contractor any amount under this Contract that exceeds the Contract Maximum for that term shown on the Signature and Cover Pages for this Contract.

##### **B. Payment Procedures**

###### **i. Invoices and Payment**

a. The State shall pay Contractor in the amounts and in accordance with the Exhibits.

b. Contractor shall initiate payment requests by invoice to the State, in a form and manner approved by the State. Invoicing is a material component of Contract performance and corresponding Deliverables. Invoices shall be due to the State within 45 days of work performed by the Contractor, unless otherwise stated in the Exhibits hereto. Invoicing shall be done accurately and per any specifications set forth in the Exhibits hereto. Time is of the essence in this regard. If Contractor fails to timely and/or properly invoice the State, the State may not be obligated to pay the bill resulting from said invoice. Failure to timely and/or properly invoice the State is a material breach of this Contract which would be cause for the State to refuse payment and/or terminate the contract on these grounds in whole or in part, at the State’s discretion.



c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Contractor and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Contractor shall make all changes necessary to correct that invoice.

d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Contract.

ii. Interest

Amounts not paid by the State within 45 days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Contractor shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Payment Disputes

If Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the State in writing of its dispute within 30 days following the earlier to occur of Contractor's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Contractor and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Contractor beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Contract Funds the State's obligation to pay Contractor shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Contract shall be made only from Contract Funds, and the State's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to



fund this Contract, the State may, upon written notice, terminate this Contract, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Contract were terminated in the public interest as described in §2.E.

v. Option to Increase Maximum Amount

If the Signature and Cover Pages for this Contract show that the State has the Option to Increase or Decrease Maximum Amount, then the State, at its discretion, shall have the option to increase or decrease the statewide quantity of Goods and Services based upon the rates established in this Contract, and increase or decrease the maximum amount payable accordingly. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to §21 “Sample Option Letter.” Delivery of Goods and performance of Services shall continue at the same rates and terms as described in this Contract. The State may include and incorporate a revised budget with the option letter, as long as the revised budget does not unilaterally change rates or terms specified in the Contract.

**6. REPORTING - NOTIFICATION**

A. Quarterly Reports.

In addition to any reports required pursuant to §17 or pursuant to any other Exhibit, for any contract having a term longer than three months, Contractor shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Contract. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State at the time or times specified by the State in this Contract, or, if no time is specified in this Contract, not later than five Business Days following the end of each calendar quarter.

B. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Contract or may affect Contractor’s ability to perform its obligations under this Contract, Contractor shall, within 5 days after being served, notify the State of such action and deliver copies of such pleading or document to the State’s principal representative identified on the Signature and Cover Pages for this Contract.



C. Performance Outside the State of Colorado or the United States, §24-102-206 C.R.S.

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State, in accordance with §15 and in a form designated by the State, within 20 days following the earlier to occur of Contractor’s decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a Breach of Contract. This section shall not apply if the Contract Funds include any federal funds.

**7. CONTRACTOR RECORDS**

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the “Contractor Records”). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: (i) the date three years after the date this Contract expires or is terminated, (ii) final payment under this Contract is made, (iii) the resolution of any pending Contract matters, or (iv) if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the “Record Retention Period”).

B. Inspection

Contractor shall permit the State, the federal government, and any duly authorized agent of a governmental entity, to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor’s office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two Business Days’ notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State, the federal government, and any other duly authorized agent of a governmental agency, in its discretion, may monitor Contractor’s performance of its obligations under this



Contract using procedures as determined by the State. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

**D. Final Audit Report**

Contractor shall promptly submit to the State a copy of any final audit report of an audit performed on Contractor's records that relates to or affects this Contract or the Work, whether the audit is conducted by Contractor or a third party.

**8. CONFIDENTIAL INFORMATION-STATE RECORDS**

**A. Confidentiality**

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Contract, permitted by law or approved in writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Contract as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Contract, if applicable. Contractor shall immediately forward any request or demand for State Records to the State's Principal Representative.

**B. Other Entity Access and Nondisclosure Agreements**

Contractor may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times



the agent, employee, assign or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions if requested by the State.

C. Use, Security, and Retention

Contractor shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information. Contractor shall provide the State with access, subject to Contractor's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Contract, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Contractor becomes aware of any Incident, Contractor shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that Contractor and its Subcontractors are not the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State, at no additional cost to the State. The State may adjust or direct modifications to this plan in its sole discretion, and Contractor shall make all modifications as directed by the State. If Contractor cannot produce its analysis and plan within the allotted time, the State, in its discretion, may perform such analysis and produce a remediation plan, and Contractor shall reimburse the State for the actual costs thereof. The State may, in its sole discretion and at Contractor's sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with the results of such audit and evidence of Contractor's planned remediation in response to any negative findings.



E. Data Protection and Handling

Contractor shall ensure that all State Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

F. Safeguarding PII

IF CONTRACTOR OR ANY OF ITS SUBCONTRACTORS WILL OR MAY RECEIVE PII UNDER THIS CONTRACT, CONTRACTOR SHALL PROVIDE FOR THE SECURITY OF SUCH PII, IN A MANNER AND FORM ACCEPTABLE TO THE STATE, INCLUDING, WITHOUT LIMITATION, STATE NON-DISCLOSURE REQUIREMENTS, USE OF APPROPRIATE TECHNOLOGY, SECURITY PRACTICES, COMPUTER ACCESS SECURITY, DATA ACCESS SECURITY, DATA STORAGE ENCRYPTION, DATA TRANSMISSION ENCRYPTION, SECURITY INSPECTIONS, AND AUDITS. CONTRACTOR SHALL BE A “THIRD-PARTY SERVICE PROVIDER” AS DEFINED IN §24-73-103(1)(I), C.R.S. AND SHALL MAINTAIN SECURITY PROCEDURES AND PRACTICES CONSISTENT WITH §§24-73-101 ET SEQ., C.R.S. IN ADDITION, AS SET FORTH IN § 24-74-102, ET. SEQ., C.R.S., CONTRACTOR, INCLUDING, BUT NOT LIMITED TO, CONTRACTOR’S EMPLOYEES, AGENTS AND SUBCONTRACTORS, AGREES NOT TO SHARE ANY PII WITH ANY THIRD PARTIES FOR THE PURPOSE OF INVESTIGATING FOR, PARTICIPATING IN, COOPERATING WITH, OR ASSISTING WITH FEDERAL IMMIGRATION ENFORCEMENT. IF CONTRACTOR IS GIVEN DIRECT ACCESS TO ANY STATE DATABASES CONTAINING PII, CONTRACTOR SHALL EXECUTE, ON BEHALF OF ITSELF AND ITS EMPLOYEES, THE CERTIFICATION DESCRIBED IN SECTION 21 BELOW ON AN ANNUAL BASIS CONTRACTOR’S DUTY AND OBLIGATION TO CERTIFY AS SET FORTH IN SECTION 21 BELOW SHALL CONTINUE AS LONG AS CONTRACTOR HAS DIRECT ACCESS TO ANY STATE DATABASES CONTAINING PII. IF CONTRACTOR USES ANY SUBCONTRACTORS TO PERFORM SERVICES REQUIRING DIRECT ACCESS TO STATE DATABASES CONTAINING PII, THE CONTRACTOR SHALL REQUIRE SUCH SUBCONTRACTORS TO EXECUTE AND DELIVER THE CERTIFICATION TO THE STATE ON AN ANNUAL BASIS, SO LONG AS THE SUBCONTRACTOR HAS ACCESS TO STATE DATABASES CONTAINING PII.

**9. CONFLICTS OF INTEREST**

A. Actual Conflicts of Interest

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Contractor under this



Contract. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of Contract.

**B. Apparent Conflicts of Interest**

Contractor acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Contract.

**C. Disclosure to the State**

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Contract.

**D.** Contractor acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Contractor further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Contract.

**10. INSURANCE**

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Contract to the extent that such insurance policies are required as shown on the Signature and Cover Page for this Contract. All insurance policies required by this Contract shall be issued by insurance companies as approved by the State. These insurance requirements shall not be construed as caps or limitations on liability.

**A. Workers' Compensation**

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment.



**B. General Liability**

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any one fire.

**C. Automobile Liability**

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

**D. Protected Information**

Liability insurance covering all civil, regulatory, and statutory damages, contractual damages, data breach management exposure, and all loss income or extra expense as a result of actual or alleged breach, violation or infringement of a right to privacy, consumer data protection law, confidentiality or other legal protection for personal information as well as State Confidential Information with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$2,000,000 general aggregate.
- iii. Notwithstanding sections D(i) and (ii) above, if Contractor has State Confidential Information for 10 or fewer individuals or revenues of \$250,000 or less, Contractor shall maintain limits of not less than \$50,000.
- iv. Notwithstanding sections D(i) and (ii) above, if Contractor has State Confidential Information for 25 or fewer individuals or revenues of \$500,000 or less, Contractor shall maintain limits of not less than \$100,000.

**E. Professional Liability Insurance**

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- i. \$1,000,000 each occurrence; and



- ii. \$1,000,000 general aggregate.

F. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

G. Cyber/Network Security and Privacy Liability

Liability insurance covering civil, regulatory, and statutory damages, contractual damages, data breach management exposure, and any loss of income or extra expense as a result of actual or alleged breach, violation or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$2,000,000 general aggregate.

H. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor and Subcontractors.

I. Primacy of Coverage

Coverage required of Contractor and each Subcontractor shall be primary and noncontributory over any insurance or self-insurance program carried by Contractor or the State.

J. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §15 within seven days of Contractor's receipt of such notice.

K. Subrogation Waiver

All insurance policies secured or maintained by Contractor or its Subcontractors in relation to this Contract shall include clauses stating that each carrier shall waive all rights of \



recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

**L. Public Entities**

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §§24-10-101, et seq., C.R.S. (the "GIA"), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor maintains at all times during the terms of this Contract, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

**M. Certificates**

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within seven Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within seven Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within seven Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

**11. BREACH OF CONTRACT**

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in the Contract in order to protect the public interest of the State; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.



## 12. REMEDIES

### A. State's Remedies

If Contractor is in breach under any provision of this Contract and fails to cure such breach, the State, following the notice and cure period set forth in §11, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Contract or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

#### i. Termination for Breach of Contract

In the event of Contractor's uncured breach, the State may terminate this entire Contract or any part of this Contract. Contractor shall continue performance of this Contract to the extent not terminated, if any.

#### a. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Contract's terms. At the request of the State, Contractor shall assign to the State all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor but in which the State has an interest. At the State's request, Contractor shall return materials owned by the State in Contractor's possession at the time of any termination. Contractor shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

#### b. Payments

Notwithstanding anything to the contrary, the State shall only pay Contractor for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Contract had been terminated in the public interest under §2.E.



c. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor, and the State may withhold payment to Contractor for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Contractor is determined. The State may withhold any amount that may be due Contractor as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Contractor after the suspension of performance.

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Contractor's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, as approved by the State, (i) secure that right to use such Work for the State and Contractor; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the State.



**B. Contractor's Remedies**

If the State is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in §11 and the dispute resolution process in §14, shall have all remedies available at law and equity.

**13. STATE'S RIGHT OF REMOVAL**

The State retains the right to demand, at any time, regardless of whether Contractor is in breach, the immediate removal of any of Contractor's employees, agents, or subcontractors from the work whom the State, in its sole discretion, deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Contract is deemed by the State to be contrary to the public interest or the State's best interest.

**14. DISPUTE RESOLUTION**

**A. Initial Resolution**

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

**B. Resolution of Controversies**

If the initial resolution described in §14.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of Colorado Department of Human Services (CDHS) as described in §24-102-202(3), C.R.S. for resolution in accordance with the provisions of §24-106-109, C.R.S., and §§24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the Executive Director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

**15. NOTICES AND REPRESENTATIVES**

Each individual identified on the Signature and Cover Pages shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's principal representative at the address set forth on the Signature and Cover Pages for this Contract or (C) as an email with read receipt requested to the



principal representative at the email address, if any, set forth on the Signature and Cover Pages for this Contract. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this section without a formal amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

## **16. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION**

### **A. Work Product**

#### **i. Copyrights**

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Contractor hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Contractor cannot make any of the assignments required by this section, Contractor hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

#### **ii. Patents**

In addition, Contractor grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Contractor that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.



### iii. Assignments and Assistance

Whether or not Contractor is under contract with the State at the time, Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of “works made for hire” under 17 U.S.C.S. §101, the Parties intend the Work Product to be a work made for hire. Contractor assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

#### B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Contract, all State Records, documents, text, software, (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and information provided by or on behalf of the State to Contractor are the exclusive property of the State (collectively, “State Materials”). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor’s obligations in this Contract without the prior written consent of the State. Upon termination of this Contract for any reason, Contractor shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

#### C. Exclusive Property of Contractor

Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, “Contractor Property”). Contractor Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: (i) entered into as exhibits to this Contract; (ii) obtained by the State from the applicable third-party vendor; or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.



## **17. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State’s contract management system (“Contract Management System” or “CMS”). Contractor’s performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller Policies.

## **18. GENERAL PROVISIONS**

### **A. Assignment**

Contractor’s rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor’s rights and obligations approved by the State shall be subject to the provisions of this Contract

### **B. Subcontracts**

Unless other restrictions are required elsewhere in this Contract, Contractor shall not enter into any subcontract in connection with its obligations under this Contract without providing notice to the State. The State may reject any such subcontract, and Contractor shall terminate any subcontract that is rejected by the State and shall not allow any Subcontractor to perform any Work after that Subcontractor’s subcontract has been rejected by the State. Contractor shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.

### **C. Binding Effect**

Except as otherwise provided in §18.A., all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties’ respective successors and assigns.

### **D. Authority**

Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party’s obligations have been duly authorized.



#### E. Captions and References

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

#### F. Counterparts

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

#### G. Entire Understanding

This Contract represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.

#### H. Digital Signatures

If any signatory signs this Contract using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

#### I. Modification

Except as otherwise provided in this Contract, any modification to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

#### J. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Contract to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.



**K. Order of Precedence**

In the event of a conflict or inconsistency between this Contract and any Exhibits or attachments such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- i. HIPAA Business Associate Agreement (if any).
- ii. Federal Provisions (if any).
- iii. Colorado Special Provisions in §19 of the main body of this Contract.
- iv. Information Technology Provisions Exhibit (if any).
- v. The provisions of the other sections of the main body of this Contract.
- vi. PII Certification (if any)
- viii. Any other Exhibit(s) shall take precedence in alphabetical order.

**L. External Terms and Conditions**

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Contract.

**M. Severability**

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with the intent of the Contract.

**N. Survival of Certain Contract Terms**

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of the Contract shall survive the termination or expiration of the Contract and shall be enforceable by the other Party.

**O. Taxes**

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), et seq. C.R.S.



(Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Contract.

**P. Third Party Beneficiaries**

Except for the Parties' respective successors and assigns described in §18.A., this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

**Q. Waiver**

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

**R. CORA Disclosure**

To the extent not prohibited by federal law, this Contract and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

**S. Standard and Manner of Performance**

Contractor shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

**T. Licenses, Permits, and Other Authorizations.**

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Contract, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all licenses, certifications, permits and other authorizations required to perform their obligations in relation to this Contract.



U. Indemnification

i. Applicability

This entire §18.U does not apply to Contractor if Contractor is a “public entity” within the meaning of the GIA.

ii. General Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the “Indemnified Parties”), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys’ fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Contract.

iii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §8 may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys’ fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §8.

iv. Intellectual Property Indemnification

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys’ fees and costs) incurred by the Indemnified Parties in relation to any claim that any Deliverable, Good or Service, software, or Work Product provided by Contractor under this Contract (collectively, “IP Deliverables”), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. Contractor’s obligations hereunder shall not extend to the combination of any IP Deliverables provided by Contractor with any other product, system, or method, unless the other product, system, or method is **(a)** provided by Contractor or Contractor’s subsidiaries or affiliates; **(b)** specified by Contractor to work with the IP Deliverables; **(c)** reasonably required in order to use the IP Deliverables in its intended manner and the infringement could not have been avoided by substituting another reasonably available product, system, or method capable of performing the same function; or **(d)** is reasonably expected to be used in combination with the IP Deliverables.



V. Accessibility

- i. Contractor shall comply with and the Work Product provided under this Contract shall be in compliance with all applicable provisions of §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established by the Governor’s Office Of Information Technology (OIT), pursuant to Section §24-85-103 (2.5), C.R.S. Contractor shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.
- ii. Contractor shall indemnify, save, and hold harmless the state, its employees, agents and assignees (collectively, the “Indemnified Parties”), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys’ fees and related costs) incurred by any of the Indemnified Parties in relation to Contractor’s failure to comply with §§24-85-101, *et seq.*, C.R.S., or the *Accessibility Standards for Individuals with a Disability* as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.
- iii. The State may require Contractor’s compliance to the State’s Accessibility Standards to be determined by a third party selected by the State to attest to Contractor’s Work Product and software is in compliance with §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability* as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.

W. Other

- i. Compliance with State and Federal Law, Regulations, & Executive Orders

Contractor shall comply with all State and, if Federal funding is involved, Federal law, regulations, executive orders, State and Federal Awarding Agency policies, procedures, directives, and reporting requirements at all times during the term of this Contract.

**19. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)**

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then this Contract shall not be valid until it has been approved by the State’s Chief Information Officer or designee.



**B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.**

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

**C. GOVERNMENTAL IMMUNITY.**

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

**D. INDEPENDENT CONTRACTOR.**

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

**E. COMPLIANCE WITH LAW.**

Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.



**F. CHOICE OF LAW, JURISDICTION, AND VENUE.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

**G. PROHIBITED TERMS.**

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109, C.R.S.

**H. SOFTWARE PIRACY PROHIBITION.**

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

**J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.**

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for



debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, et seq., C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State’s discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

## **20. DEPARTMENT OF EARLY CHILDHOOD PROVISIONS**

### **A. Exclusion, Debarment and/or Suspension**

Contractor represents and warrants that Contractor, its employees, agents, assigns, or Subcontractors, are not presently excluded from participation, debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or otherwise ineligible to participate in a “federal health care program” as defined in 42 U.S.C. § 1320a-7b(f) or in any other government payment program by any federal or State of Colorado department or agency. If Contractor, its employees, agents, assigns, or Subcontractors, are excluded from participation, or becomes otherwise ineligible to participate in any such program during the term of this Contract, Contractor shall notify the State in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to Contractor, the State may immediately terminate this Contract.

### **B. Emergency Planning**

If Contractor provides Work that is an extension of State work performed as part of the State of Colorado Emergency Operations Plan or for a publicly funded safety net program, as defined by C.R.S. § 24-33.5-701 et seq., Contractor shall perform the Work in accordance with the State’s Emergency Operations Plan or continuity of operations plan in the event of an emergency. If requested, Contractor shall provide a plan and reporting information to ensure compliance with the State’s Emergency Operations Plan and C.R.S. § 24-33.5-701 et seq.

### **C. Restrictions on Public Benefits**

If applicable, Contractor shall comply with C.R.S. §§ 24-76.5-101 – 103 exactly as the State is required to comply with C.R.S. §§ 24-76.5-101 – 103.



**D. Discrimination**

Contractor shall not:

- i. discriminate against any person on the basis of gender, race, ethnicity, religion, national origin, age, sexual orientation, gender identity, citizenship status, education, disability, socio-economic status, or any other identity.
- ii. exclude from participation in, or deny benefits to any qualified individual with a disability, by reason of such disability.

Any person who thinks he/she has been discriminated against as related to the performance of this Contract has the right to assert a claim, Colorado Civil Rights Division, C.R.S. §24-34-301, et seq.

**E. Criminal Background Check**

Pursuant to C.R.S. §27-90-111 and CDHS Policy VI-2.4, any independent contractor, and its agent(s), who is designated by the Executive Director or the Executive Director's designee to be a contracting employee under C.R.S. §27-90-111, who has direct contact with vulnerable persons in a state-operated facility, or who provides state-funded services that involve direct contact with vulnerable persons in the vulnerable person's home or residence, shall:

- i. submit to and successfully pass a criminal background check, and
- ii. report any arrests, charges, or summonses for any disqualifying offense as specified by C.R.S. §27-90-111 to the State.

Any Contractor or its agent(s), who does not comply with C.R.S. §27-90-111 and CDHS Policy VI-2.4, may, at the sole discretion of the State, be suspended or terminated.

**F. Fraud Policy**

Contractor shall comply with the current CDHS Fraud Policy.

**G. C-Stat - Performance Based Program Analysis and Management Strategy (C-Stat Strategy)**

Without any additional cost to the State, Contractor shall collect and maintain Contract performance data, as determined solely by the State. Upon request, Contractor shall provide the Contract performance data to the State. This provision does not allow the State to impose unilateral changes to performance requirements.



H. COVID-19 Pandemic

CDEC operates many facilities across the State and with regard to the COVID-19 Pandemic, Contractor may be subject to local or state public health orders, Department policy, individual facility policy, or any other requirement that could impose additional requirements on the Contractor. If so, Contractor shall promptly comply upon notice.

**21. THIRD PARTY CERTIFICATION FOR ACCESS TO PII THROUGH A DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S, if Contractor is to be granted access to Personal Identifying Information through a database or automated network that is not publicly available information, Contractor certifies, and will certify annually, under penalty of perjury that Contractor has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

If Contractor’s agents, employees, assigns or Subcontractors require certification pursuant to § 24-74-105, C.R.S., Contractor shall require annually that its agents, employees, assigns or Subcontractors sign and date the following certifications as applicable, which shall be made available to the State upon request:

**For an individual:** *Pursuant to § 24-74-105, C.R.S., I hereby certify under the penalty of perjury that I have not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.*

**For and entity/organization:** *Pursuant to § 24-74-105, C.R.S., I, \_\_\_\_\_, on behalf of \_\_\_\_\_ (legal name of entity / organization) (the “Organization”), hereby certify under the penalty of perjury that the Organization has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.*

*I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Organization.*



**SAMPLE OPTION LETTER (IF APPLICABLE)**

<b>State Agency</b> Insert Department's or IHE's Full Legal Name	<b>Option Letter Number</b> Insert the Option Number (e.g. "1" for the first option)
<b>Contractor</b> Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc...	<b>Original Contract Number</b> Insert CMS number or Other Contract Number of the Original Contract
<b>Current Contract Maximum Amount</b>	<b>Option Contract Number</b> Insert CMS number or Other Contract Number of this Option
Initial Term State Fiscal Year 20xx \$0.00	<b>Contract Performance Beginning Date</b> Month Day, Year
Extension Terms State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00	
Total for All State Fiscal Years \$0.00	<b>Current Contract Expiration Date</b> Month Day, Year

**1. OPTIONS:**

- A. Option to extend for an Extension Term
- B. Option to change the quantity of Goods under the Contract
- C. Option to change the quantity of Services under the Contract
- D. Option to modify Contract rates
- E. Option to initiate next phase of the Contract

**2. REQUIRED PROVISIONS:**

**A. For use with Option 1(A):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.

**B. For use with Options 1(B and C):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to Increase/Decrease the quantity of the Goods/Services or both at the rates stated in the Original Contract, as amended.

**C. For use with Option 1(D):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to modify the Contract rates specified in Exhibit/Section Number/Letter. The Contract rates attached to this Option Letter replace the rates in the Original Contract as of the Option Effective Date of this Option Letter.

**D. For use with Option 1E:** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc, which shall begin on Insert start date and end on Insert ending date at the cost/price specified in Section Number.

**E. For use with all Options that modify the Contract Maximum Amount:** The Contract Maximum Amount table on the Contract's Signature and Cover Page is hereby deleted and replaced with the Current Contract Maximum Amount table shown above.

**3. Option Effective Date:**

The effective date of this Option Letter is upon approval of the State Controller or \_\_\_\_\_, whichever is later.

<p><b>STATE OF COLORADO</b> INSERT-Name of Agency or IHE INSERT-Name &amp; Title of Head of Agency or IHE</p> <p><u>SAMPLE ONLY – DO NOT SIGN</u> By: Name &amp; Title of Person Signing for Agency or IHE</p> <p>Date: <u>SAMPLE ONLY – DO NOT SIGN</u></p>	<p>In accordance with §24-30-202 C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p><b>STATE CONTROLLER</b></p> <p><u>SAMPLE ONLY – DO NOT SIGN</u> Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval</p> <p>Option Effective Date: <u>SAMPLE ONLY – DO NOT SIGN</u></p>
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**STATEMENT OF WORK (SOW)**  
**EMERGING AND EXPANDING CHILD CARE GRANT PROGRAM**

**GUNNISON-HINSDALE EARLY CHILDHOOD COUNCIL**  
**220 N. SPRUCE STREET**  
**GUNNISON, CO 81230**

**NOVEMBER 1, 2022 – DECEMBER 30, 2024**

## **INTRODUCTION/BACKGROUND**

House Bill 20B-1002 Emergency Relief Grant Programs authorized the Emerging and Expanding child care grant program. The purpose of the Grant program is to expand access and availability of licensed child care throughout the State. Senate Bill 22-213 has extended the Emerging and Expanding child care grant program. Grants must be obligated prior and expended on or before December 30, 2024. The Early Childhood Council shall create a process for soliciting, vetting, awarding, and monitoring emerging and expanding grants.

## **SCOPE OF WORK**

The Scope of Work shall include activities and deliverables related to administering the Expanding & Emerging Child Care Grant Program.

## **PERIOD OF PERFORMANCE**

The period of performance is the November 1, 2022 – December 30, 2024.

Disclaimer: Any dates in the statement of work or other exhibit that extend beyond the Contract Expiration Date are for planning and informational purposes only, and do not formally extend the Contract Expiration Date



**WORK PLAN**

Work Plan					
OUTCOMES, BENCHMARKS, AND MILESTONES					
<b>Outcome statement:</b>	Expand access and availability of licensed childcare				
Key Activity A: Increase awareness of grant program and deliver grants to eligible recipients					
Tasks	Time Period	Deliverable	Measurement	Person(s) Responsible	Budget Category
Recruit Programs Award Grants Provide supports and trainings needed for programs to expand licensed capacity.	November 1, 2022 through December 30, 2024	Signed MOUs	Number of new licensed Child Care slots	Council Staff	Personnel & Fringe Travel Supplies/Operating
Support Programs through the completion of projects to expand licensed capacity.	November 1, 2022 through December 30, 2024	Licensed Child Care slots.	Number of new licensed Child Care slots.	Council Staff	Personnel & Fringe Travel Supplies/Operating
Key Activity B: Monitor Projects					
Tasks	Time Period	Deliverable	Measurement	Person(s) Responsible	Budget Category
Maintain documentation of project progress including but not limited to zoning requests, permits, and final inspections.	November 1, 2022 through December 30, 2024	Provide documents to the Department upon request by Department staff	Documentations of project.	Council Staff	Personnel & Fringe Travel
Key Activity C: Collaborate with the Department and Relevant Stakeholders					
Tasks	Time Period	Deliverable	Measurement	Person(s) Responsible	Budget Category
Meet with Department staff, Technical Assistance Vendor, and other relevant program stakeholders.	November 1, 2022 through December 30, 2024	Meet with Department and/or stakeholders upon request by Department staff	Fruitful staff meetings.	Council Staff	Personnel & Fringe

## **SCHEDULE/MILESTONES**

Between November 2022 and December 2024, the Council will engage programs and provide supports to programs participating in the Emerging and Expanding Child Care Grant Program. Grants awarded to Early Childhood Programs may be used for the purpose of expanding capacity and allowable costs as follows: An Award from the grant program may be used for costs associated with expanding an open and operating child care center or family child care home or to assist an eligible entity with startup of a new child care center or family child care home. Allowable costs can include (but are not limited to) staff training, background check fees, cleaning supplies, educational supplies, and Capital expenses related to the expansion or startup of child care programs.

The Council expects to support at least 2 programs in Gunnison County to become licensed or expand capacity through the emerging and expanding grant program.

## **ACCEPTANCE CRITERIA**

The acceptance of all deliverables shall reside with the Colorado Department of Early Childhood (CDEC), E&E. The designated program manager shall monitor all deliverables in order to ensure the completeness of each stage of the project and that the scope of work has been met. The CDEC program manager shall either sign off on the approval, or reply to the vendor, in writing, advising what tasks must still be accomplished.



**Colorado Department of Early Childhood  
BUDGET WITH JUSTIFICATION FORM**

<b>Contractor Name</b>	Gunnison County
<b>Budget Period</b>	November 1, 2022 - December 30, 2024
<b>Project Name</b>	Gunnison Hinsdale Early Childhood Council - Emerging and Expanding

<b>Program Contact Name, Title</b>	Lana Athey - Co-Coordinator Gunnison Hinsdale Early Childhood Council
<b>Phone</b>	970.642.4667
<b>Email</b>	<a href="mailto:lathey@gunnisoncounty.org">lathey@gunnisoncounty.org</a>
<b>Fiscal Contact Name, Title</b>	Jody Wise, Senior Accountant
<b>Phone</b>	970.641.7679
<b>Email</b>	<a href="mailto:jwise@gunnisoncountygov">jwise@gunnisoncountygov</a>

Expenditure Categories						
Personnel Services - Salaried Employees						FY2023-2025
Position Title	Description of Work and Fringe Benefits Include: Health insurance, including medical, dental, vision. FICA. Workmen's compensation. Retirement contributions, unemployment, EAP	Gross or Annual Salary	Fringe	Number of Months on Project	Percent of Time on Project	Total Amount Requested from CDEC
Council Co-Coordinator/Lana Athey	Coordinates council meetings, council member outreach, leads planning processes, completes quarterly reports, writes grants, and provides some quality improvement navigating.	\$66,019	\$26,520	26	4%	\$8,020
Corrine Jaeger Quality Improvement Coach	Outreaches to childcare providers and FFN caregivers, provides direct coaching and training for childcare providers and some quality improvement navigating.	\$64,418	\$12,002	26	4%	\$7,120
<b>Total Personnel Services (including fringe benefits)</b>						<b>\$15,140</b>
Contractors/Consultants (payments to third parties or entities)						FY2023-2025
Name	Description of Item					Requested from CDEC
	CDEC shall not reimburse for any costs in this category.					\$0
<b>Total Contractors/Consultants</b>						<b>\$0</b>
Travel						FY2023-2025
Item	Description of Item					Requested from CDEC
Travel	Site visitation and trainings					\$1,000
<b>Total Travel</b>						<b>\$1,000</b>
Supplies & Operating Expenses						FY2023-2025
Item	Description of Item					Requested from CDEC
Advertising	Newspaper, Radio, and Social Media Ads					\$1,500
Incentives	Incentives for completing Pre-Licensing trainings and other professional development offered by the council					\$1,153
<b>Total Supplies &amp; Operating Expenses</b>						<b>\$2,653</b>
Training and Technical Assistance						FY2023-2025
Item	Description of Item					Requested from CDEC
	CDEC shall not reimburse for any costs in this category.					\$0
<b>Total Training and Technical Assistance</b>						<b>\$0</b>
Items that cannot be included in Modified Total Direct Costs (MTDC)						FY2023-2025
Item	Description of Item					Requested from CDEC
	CDEC shall not reimburse for any costs in this category.					\$0
<b>Total Items that cannot be included in MTDC</b>						<b>\$0</b>
<b>TOTAL DIRECT COSTS</b>						<b>\$18,793</b>
<b>MODIFIED TOTAL DIRECT COSTS (MTDC)</b>						<b>\$18,793</b>
Uniform Guidance § 200.68 - MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward. MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000.						
Indirect Costs						FY2023-2025
[not to exceed 10% unless Negotiated Federal Indirect Cost rate or Negotiated State Indirect Cost rate is attached]						
Item	Description of Item					Requested from CDEC
Indirect Cost Rate	CDEC shall not reimburse for any costs in this category.					\$0
<b>Total Indirect</b>						<b>\$0</b>
<b>TOTAL</b>						<b>\$18,793</b>



## **ADDITIONAL PROVISIONS**

### **1. SERVICE PROVISIONS**

The Contractor shall provide the services according to the plans submitted in the “Statement of Work”, attached and incorporated herein by this reference as **EXHIBIT A**. In all cases, the descriptions, plans, timetables, tasks, duties, and responsibilities of the Contractor as described in the Statement of Work, shall be adhered to in the performance of the requirements of this contract. In the event of a conflict, the terms and conditions of this contract shall control over the Statement of Work. Any significant changes to the Statement of Work (SOW) require an amendment to the contract.

### **2. GOALS AND OBJECTIVES**

The Contractor shall be responsible for the achievement of any goals and objectives as specified within the Statement of Work (**EXHIBIT A**) of this contract unless written notice of any modifications are furnished by the State to the Contractor allowing adequate time for compliance during the term of this contract.

### **3. COPY OF SUBCONTRACT**

The Contractor shall provide to the State a copy of any executed subcontract between the Contractor and any provider of services to fulfill any requirements of this contract. Subcontracts shall be emailed to the Contract Representative upon execution.

### **4. PAYMENT**

In consideration of the provision of services and reporting and subject to all payment and price provisions and further subject to verification by the State of full and satisfactory compliance with the terms of this contract, the State shall pay to the Contractor an amount not to exceed the amount specified in the Budget (**EXHIBIT B**), of this contract.

- A.** The Contractor shall submit requests for payment to [CDEC\\_Invoicing@state.co.us](mailto:CDEC_Invoicing@state.co.us) no less than monthly on forms prescribed and provided by the State.
- B.** Payment shall be made on a cost reimbursement basis for services rendered.
- C.** It is understood any vacancy savings in the personnel category and/or any savings in any other category shall require written approval from the State prior to any redistribution of any savings by the Contractor. **ANY COST SAVINGS THAT ARE REDISTRIBUTED BY CONTRACTOR WITHOUT WRITTEN APPROVAL SHALL NOT BE REIMBURSED BY THE STATE.**
- D.** **IT IS UNDERSTOOD ANY COSTS THAT EXCEED THE CONTRACTED AMOUNT SHALL NOT BE PAID BY CDEC.** If Contractor has a legitimate need for additional funds, the Contractor shall request additional funds from the CDEC 60 days prior to projected depletion of contracted funds. CDEC shall review each request and notify Contractor in writing of approval or denial. Approval of additional funds shall require an official modification to the Contract by Amendment or Option Letter.
- E.** Timely Invoicing - Invoices shall be submitted no later than 30 days following the last day of the month. End of State Fiscal Year invoices are on a compressed timeframe. Invoices for all services provided prior to June 30th shall be invoiced by July 5th. Contractors who are unable to provide the invoice by July 5th shall notify the state of the amount to be booked as accounts payable by July 13th by sending an email to [CDEC\\_Invoicing@state.co.us](mailto:CDEC_Invoicing@state.co.us). Final invoices for services prior to June 30th shall be submitted by September 14th. Invoices received after September 14th may not be paid.



- F. The Contractor shall maintain source documentation to support all payment requested pursuant to this contract. All source documentation shall be provided to the State by the Contractor upon request.
- G. It is understood that the State reserves the right to offset funds pursuant to this contract based on the discovery of overpayment or improper use of funds by the Contractor. Overpayment or improper use of funds is interpreted to apply to specific terms of prior year contracts, and includes without limitation requirements of the Generally Accepted Accounting Principles (GAAP) issued by the American Institute of Certified Public Accountants, and applicable sections of the Colorado Revised Statutes.
- H. The State shall review monthly invoices throughout the fiscal year. If, after a number of months, the State determines the Contractor is not needing/using the funding allocated for the Contractor's work in the Contract, the State shall remove these funds from the contract budget by Option Letter for a proportional reduction of services with prior written notification to the Contractor.

## **5. PARTICIPATION**

The Contractor representative(s) is required to participate in any Department of Early Childhood sponsored meetings related to this contract.

## **6. SUPPLANTING**

Payments made to the Contractor under this contract shall supplement and not supplant other state, local or federal expenditures for services associated with this contract.

## **7. BUDGET CHANGES**

Contractor may request in writing adjustments to the direct costs in the current year budget (**EXHIBIT B**) not to exceed 10% of the total budget. Requests shall be made in the form of a written budget revision request to the appropriate program staff. Written approval for the budget revision shall be required prior to any changes to the budget related to the budget revision request. The total dollar amount of the contract budget cannot be changed as a result of the budget revision request. Budget adjustment requests over 10%, adding new expense lines, and/or changes to the total dollar amount of the budget require a formal amendment. No adjustments to the Indirect Costs portion of the budget are allowable without a formal amendment.

Contractor may request in writing up to a 5% increase to the "Gross or Annual Salary" of an individual employee if a position currently listed in the contract becomes vacant and the new incoming employee shall be hired at a higher or lower salary. No increase within the salary range is authorized without prior written approval from CDEC. Adding additional staff requires an amendment to the contract. Vacancy savings cannot be used to change salary amounts for existing personnel without an amendment. Any change to personnel requires prior written approval from CDEC staff. This process shall never change the Contract Maximum Amount. Contractor must use available unused funds from either vacancy savings or another category within the contract. The revision request may not at any time compromise the integrity of the funded program as determined by CDEC program staff.

## **8. TRAVEL**

A. Mileage shall not exceed the Federal mileage rate per <https://www.gsa.gov/travel-resources>.



B. Per Diem shall not exceed Federal GSA per diem rates for the area of travel per <https://www.gsa.gov/travel-resources>.

C. Hotel rates cannot exceed any rate established for conference attendance.

D. Usage of airfare or Out of State Travel requires pre-approval from CDEC.

## **9. SUBRECIPIENT**

Contractors determined to be a Sub-recipient of federal funds shall complete the sub-recipient performance report and assessment survey at: <https://forms.gle/QTXGEabvipymdsfd8> upon contract execution. Failure to complete the performance report and assessment survey shall delay payment to the Contractor.

## **10. CRITICAL INCIDENT REPORTING**

Within 48 hours of the occurrence of a critical incident involving any child or family and/or an on duty agency staff member of any family support program staff funded through the Department of Early Childhood (CDEC), the agency must report in writing the details of the critical incident to the CDEC Program Manager for the involved family support program. Critical incidents may include, but are not limited to, awareness of an egregious incident of abuse and/or neglect, near fatality, or fatality of any child currently enrolled in a family support program; involuntary termination of a program staff's employment; criminal allegations involving program staff and related to his/her employment; negative media attention about the family support program; any major injury or threat to the security of an agency staff member while on duty and visiting an enrolled child or family.

## **11. MANDATED REPORTING**

- A. All program staff are required by law to report suspected child abuse and neglect. Mandatory reporters must report suspected child abuse and neglect to the local county child welfare agency, the local law enforcement agency, or by calling the child abuse reporting hotline system at 1-844-CO-4KIDS (1-844-264-5437).
- B. All program staff are required to take the online mandatory reporter training on the Colorado Department of Human Services (CDHS) Child Welfare Training System: <https://www.coloradocwts.com/mandated-reporter-training>.

## **12. GENERAL ACCOUNTING ENCUMBRANCE (GAE)**

- i. **Emerging and Expanding Child Care Grant Program (EECCG)** pursuant to HB20B-1002 and Senate Bill 22-213 Emergency Relief Grant Programs shall be used to expand access and availability of licensed child care throughout the state. An award from the grant may be used for costs associated with expanding an open and operating child care center or family child care home. Eligible entities also include family, friends, or neighbors who provide license-exempt child care, but are actively obtaining a license through the Colorado Department of Early Childhood Licensing and Administration Unit.
- ii. Please refer to Page 1 for the amount available under the GAE for the current fiscal year.



- B. Payment to Contractor is made from available funds encumbered and shared across multiple contractors. The State may increase or decrease the total funds encumbered at its sole discretion and without formal notice to Contractor. No minimum payment is guaranteed to Contractor. The liability of the State for such payments is limited to the encumbered amount remaining of such funds.
  
- C. Invoices shall be submitted separately for pre-approved expenditures.
  - i. The Contractor shall submit requests for payment to [CDEC\\_Invoicing@state.co.us](mailto:CDEC_Invoicing@state.co.us).

### **13. GIFT CARDS**

The Distribution of Gift Cards, where applicable, shall adhere to the following:

- A. The contractor agency must have a written Gift Card Distribution Policy in place and this plan must be approved by the Department of Early Childhood before gift cards may be purchased. The policy must include maintaining an audit log of gift card purchases and disbursements and a process for routine reconciliations.
- B. The contractor agency's gift card policy must ensure that gift cards cannot be redeemed for cash and must restrict the recipient from using gift cards for alcohol, firearms, tobacco, lottery tickets, or entertainment.
- C. Gift Cards must be distributed to recipients within five (5) business days of purchase.
- D. Gift Cards should be given at the conclusion of an event or upon completion of an activity or milestone.
- E. Contractor agency staff shall have recipients sign a form that includes the following: Date, Name of Gift Card Recipient, Purpose of Gift Card, Signature of Gift Card recipient acknowledging receipt of Gift Card and Gift Card Amount.
- F. The contractor cannot request reimbursement for the cost of gift cards until distribution of the gift cards has been made to recipients. Additionally, the contractor must maintain adequate documentation to show a record of all gift card distributions.
- G. The contractor shall be held responsible for inappropriate use of gift cards.



## **HIPAA BUSINESS ASSOCIATE AGREEMENT**

This HIPAA Business Associate Agreement (“Agreement”) between the State and Contractor is agreed to in connection with, and as an exhibit to, the Contract. For purposes of this Agreement, the State is referred to as “Covered Entity” and the Contractor is referred to as “Business Associate”. Unless the context clearly requires a distinction between the Contract and this Agreement, all references to “Contract” shall include this Agreement.

### **1. PURPOSE**

Covered Entity wishes to disclose information to Business Associate, which may include Protected Health Information (“PHI”). The Parties intend to protect the privacy and security of the disclosed PHI in compliance with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Pub. L. No. 104-191 (1996) as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) enacted under the American Recovery and Reinvestment Act of 2009 (“ARRA”) Pub. L. No. 111-5 (2009), implementing regulations promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. Parts 160, 162 and 164 (the “HIPAA Rules”) and other applicable laws, as amended. Prior to the disclosure of PHI, Covered Entity is required to enter into an agreement with Business Associate containing specific requirements as set forth in, but not limited to, Title 45, Sections 160.103, 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and all other applicable laws and regulations, all as may be amended.

### **2. DEFINITIONS**

The following terms used in this Agreement shall have the same meanings as in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

The following terms used in this Agreement shall have the meanings set forth below:

- a. Business Associate. “Business Associate” shall have the same meaning as the term “business associate” at 45 C.F.R. 160.103, and shall refer to Contractor.
- b. Covered Entity. “Covered Entity” shall have the same meaning as the term “covered entity” at 45 C.F.R. 160.103, and shall refer to the State.
- c. Information Technology and Information Security. “Information Technology” and “Information Security” shall have the same meanings as the terms “information technology” and “information security”, respectively, in §24-37.5-102, C.R.S.

Capitalized terms used herein and not otherwise defined herein or in the HIPAA Rules shall have the meanings ascribed to them in the Contract.



### 3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

a. Permitted Uses and Disclosures.

- i. Business Associate shall use and disclose PHI only to accomplish Business Associate's obligations under the Contract.
- i. To the extent Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with any and all requirements of Subpart E that apply to Covered Entity in the performance of such obligation.
- ii. Business Associate may disclose PHI to carry out the legal responsibilities of Business Associate, provided, that the disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that:
  - A. the information will remain confidential and will be used or disclosed only as Required by Law or for the purpose for which Business Associate originally disclosed the information to that person, and;
  - B. the person notifies Business Associate of any Breach involving PHI of which it is aware.
- iii. Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity. Business Associate may de-identify any or all PHI created or received by Business Associate under this Agreement, provided the de-identification conforms to the requirements of the HIPAA Rules.

d. Minimum Necessary. Business Associate, its Subcontractors and agents, shall access, use, and disclose only the minimum amount of PHI necessary to accomplish the objectives of the Contract, in accordance with the Minimum Necessary Requirements of the HIPAA Rules including, but not limited to, 45 C.F.R. 164.502(b) and 164.514(d).

e. Impermissible Uses and Disclosures.

- i. Business Associate shall not disclose the PHI of Covered Entity to another covered entity without the written authorization of Covered Entity.
- ii. Business Associate shall not share, use, disclose or make available any Covered Entity PHI in any form via any medium with or to any person or entity beyond the boundaries or jurisdiction of the United States without express written authorization from Covered Entity.

f. Business Associate's Subcontractors.

- i. Business Associate shall, in accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractors who create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to safeguarding PHI.



- ii. Business Associate shall provide to Covered Entity, on Covered Entity's request, a list of Subcontractors who have entered into any such agreement with Business Associate.
- iii. Business Associate shall provide to Covered Entity, on Covered Entity's request, copies of any such agreements Business Associate has entered into with Subcontractors.
- g. Access to System. If Business Associate needs access to a Covered Entity Information Technology system to comply with its obligations under the Contract or this Agreement, Business Associate shall request, review, and comply with any and all policies applicable to Covered Entity regarding such system including, but not limited to, any policies promulgated by the Office of Information Technology and available at <http://oit.state.co.us/about/policies>.
- h. Access to PHI. Business Associate shall, within ten days of receiving a written request from Covered Entity, make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.524.
- i. Amendment of PHI.
  - i. Business Associate shall within ten days of receiving a written request from Covered Entity make any amendment to PHI in a Designated Record Set as directed by or agreed to by Covered Entity pursuant to 45 C.F.R. 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526.
  - ii. Business Associate shall promptly forward to Covered Entity any request for amendment of PHI that Business Associate receives directly from an Individual.
- j. Accounting Rights. Business Associate shall, within ten days of receiving a written request from Covered Entity, maintain and make available to Covered Entity the information necessary for Covered Entity to satisfy its obligations to provide an accounting of Disclosure under 45 C.F.R. 164.528.
- k. Restrictions and Confidential Communications.
  - i. Business Associate shall restrict the Use or Disclosure of an Individual's PHI within ten days of notice from Covered Entity of:
    - A. a restriction on Use or Disclosure of PHI pursuant to 45 C.F.R. 164.522; or
    - B. a request for confidential communication of PHI pursuant to 45 C.F.R. 164.522.
  - ii. Business Associate shall not respond directly to an Individual's requests to restrict the Use or Disclosure of PHI or to send all communication of PHI to an alternate address.
  - iii. Business Associate shall refer such requests to Covered Entity so that Covered Entity can coordinate and prepare a timely response to the requesting Individual and provide direction to Business Associate.



- l. Governmental Access to Records. Business Associate shall make its facilities, internal practices, books, records, and other sources of information, including PHI, available to the Secretary for purposes of determining compliance with the HIPAA Rules in accordance with 45 C.F.R. 160.310.
  
- m. Audit, Inspection and Enforcement.
  - i. Business Associate shall obtain and update at least annually a written assessment performed by an independent third party reasonably acceptable to Covered Entity, which evaluates the Information Security of the applications, infrastructure, and processes that interact with the Covered Entity data Business Associate receives, manipulates, stores and distributes. Upon request by Covered Entity, Business Associate shall provide to Covered Entity the executive summary of the assessment.
  - ii. Business Associate, upon the request of Covered Entity, shall fully cooperate with Covered Entity's efforts to audit Business Associate's compliance with applicable HIPAA Rules. If, through audit or inspection, Covered Entity determines that Business Associate's conduct would result in violation of the HIPAA Rules or is in violation of the Contract or this Agreement, Business Associate shall promptly remedy any such violation and shall certify completion of its remedy in writing to Covered Entity.
  
- n. Appropriate Safeguards.
  - i. Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provided in this Agreement.
  - ii. Business Associate shall safeguard the PHI from tampering and unauthorized disclosures.
  - iii. Business Associate shall maintain the confidentiality of passwords and other data required for accessing this information.
  - iv. Business Associate shall extend protection beyond the initial information obtained from Covered Entity to any databases or collections of PHI containing information derived from the PHI. The provisions of this section shall be in force unless PHI is de-identified in conformance to the requirements of the HIPAA Rules.
  
- o. Safeguard During Transmission.
  - i. Business Associate shall use reasonable and appropriate safeguards including, without limitation, Information Security measures to ensure that all transmissions of PHI are authorized and to prevent use or disclosure of PHI other than as provided for by this Agreement.
  - ii. Business Associate shall not transmit PHI over the internet or any other insecure or open communication channel unless the PHI is encrypted or otherwise safeguarded with a FIPS-compliant encryption algorithm.



p. Reporting of Improper Use or Disclosure and Notification of Breach.

- i. Business Associate shall, as soon as reasonably possible, but immediately after discovery of a Breach, notify Covered Entity of any use or disclosure of PHI not provided for by this Agreement, including a Breach of Unsecured Protected Health Information as such notice is required by 45 C.F.R. 164.410 or a breach for which notice is required under §24-73-103, C.R.S.
- ii. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach.
- iii. Business Associate shall, as soon as reasonably possible, but immediately after discovery of any Security Incident that does not constitute a Breach, notify Covered Entity of such incident.
- iv. Business Associate shall have the burden of demonstrating that all notifications were made as required, including evidence demonstrating the necessity of any delay.

q. Business Associate's Insurance and Notification Costs.

- i. Business Associate shall bear all costs of a Breach response including, without limitation, notifications, and shall maintain insurance to cover:
  - A. loss of PHI data;
  - B. Breach notification requirements specified in HIPAA Rules and in §24-73-103, C.R.S.; and
  - C. claims based upon alleged violations of privacy rights through improper use or disclosure of PHI.
- ii. All such policies shall meet or exceed the minimum insurance requirements of the Contract or otherwise as may be approved by Covered Entity (e.g., occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status, and notice of cancellation).
- iii. Business Associate shall provide Covered Entity a point of contact who possesses relevant Information Security knowledge and is accessible 24 hours per day, 7 days per week to assist with incident handling.
- iv. Business Associate, to the extent practicable, shall mitigate any harmful effect known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of this Agreement.

r. Subcontractors and Breaches.



- i. Business Associate shall enter into a written agreement with each of its Subcontractors and agents, who create, receive, maintain, or transmit PHI on behalf of Business Associate. The agreements shall require such Subcontractors and agents to report to Business Associate any use or disclosure of PHI not provided for by this Agreement, including Security Incidents and Breaches of Unsecured Protected Health Information, on the first day such Subcontractor or agent knows or should have known of the Breach as required by 45 C.F.R. 164.410.
  - ii. Business Associate shall notify Covered Entity of any such report and shall provide copies of any such agreements to Covered Entity on request.
- s. Data Ownership.
- i. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.
  - ii. Upon request by Covered Entity, Business Associate immediately shall provide Covered Entity with any keys to decrypt information that the Business Association has encrypted and maintains in encrypted form, or shall provide such information in unencrypted usable form.
- t. Retention of PHI. Except upon termination of this Agreement as provided in Section 5, below, Business Associate and its Subcontractors or agents shall retain all PHI throughout the term of this Agreement, and shall continue to maintain the accounting of disclosures required under Section 3.h, above, for a period of six years.

#### 4. OBLIGATIONS OF COVERED ENTITY

- a. Safeguards During Transmission. Covered Entity shall be responsible for using appropriate safeguards including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of PHI transmitted pursuant to this Agreement, in accordance with the standards and requirements of the HIPAA Rules.
- b. Notice of Changes.
  - a.
    - i. Covered Entity maintains a copy of its Notice of Privacy Practices on its website. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission to use or disclose PHI, to the extent that it may affect Business Associate's permitted or required uses or disclosures.
    - ii. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522, to the extent that it may affect Business Associate's permitted use or disclosure of PHI.

#### 5. TERMINATION

- b. Breach.



- i. In addition to any Contract provision regarding remedies for breach, Covered Entity shall have the right, in the event of a breach by Business Associate of any provision of this Agreement, to terminate immediately the Contract, or this Agreement, or both.
  - ii. Subject to any directions from Covered Entity, upon termination of the Contract, this Agreement, or both, Business Associate shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Business Associate in which Covered Entity has an interest.
- u. Effect of Termination.
- i. Upon termination of this Agreement for any reason, Business Associate, at the option of Covered Entity, shall return or destroy all PHI that Business Associate, its agents, or its Subcontractors maintain in any form, and shall not retain any copies of such PHI.
  - ii. If Covered Entity directs Business Associate to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.
  - iii. If Business Associate believes that returning or destroying the PHI is not feasible, Business Associate shall promptly provide Covered Entity with notice of the conditions making return or destruction infeasible. Business Associate shall continue to extend the protections of Section 3 of this Agreement to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

## 6. INJUNCTIVE RELIEF

Covered Entity and Business Associate agree that irreparable damage would occur in the event Business Associate or any of its Subcontractors or agents use or disclosure of PHI in violation of this Agreement, the HIPAA Rules or any applicable law. Covered Entity and Business Associate further agree that money damages would not provide an adequate remedy for such Breach. Accordingly, Covered Entity and Business Associate agree that Covered Entity shall be entitled to injunctive relief, specific performance, and other equitable relief to prevent or restrain any Breach or threatened Breach of and to enforce specifically the terms and provisions of this Agreement.

## 7. LIMITATION OF LIABILITY

Any provision in the Contract limiting Contractor's liability shall not apply to Business Associate's liability under this Agreement, which shall not be limited.

## 8. DISCLAIMER

Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement or the HIPAA Rules will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made and actions taken by Business Associate regarding the safeguarding of PHI.



## 9. CERTIFICATION

Covered Entity has a legal obligation under HIPAA Rules to certify as to Business Associate's Information Security practices. Covered Entity or its authorized agent or contractor shall have the right to examine Business Associate's facilities, systems, procedures, and records, at Covered Entity's expense, if Covered Entity determines that examination is necessary to certify that Business Associate's Information Security safeguards comply with the HIPAA Rules or this Agreement.

## 10. AMENDMENT

- a. Amendment to Comply with Law. The Parties acknowledge that state and federal laws and regulations relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide procedures to ensure compliance with such developments.
  - i. In the event of any change to state or federal laws and regulations relating to data security and privacy affecting this Agreement, the Parties shall take such action as is necessary to implement the changes to the standards and requirements of HIPAA, the HIPAA Rules and other applicable rules relating to the confidentiality, integrity, availability and security of PHI with respect to this Agreement.
  - ii. Business Associate shall provide to Covered Entity written assurance satisfactory to Covered Entity that Business Associate shall adequately safeguard all PHI, and obtain written assurance satisfactory to Covered Entity from Business Associate's Subcontractors and agents that they shall adequately safeguard all PHI.
  - i. iii. Upon the request of either Party, the other Party promptly shall negotiate in good faith the terms of an amendment to the Contract embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Rules, or other applicable rules.
  - ii. iv. Covered Entity may terminate this Agreement upon 30 days' prior written notice in the event that:
    - A. Business Associate does not promptly enter into negotiations to amend the Contract and this Agreement when requested by Covered Entity pursuant to this Section; or
    - B. Business Associate does not enter into an amendment to the Contract and this Agreement, which provides assurances regarding the safeguarding of PHI sufficient, in Covered Entity's sole discretion, to satisfy the standards and requirements of the HIPAA, the HIPAA Rules and applicable law.
- v. Amendment of Appendix. The Appendix to this Agreement may be modified or amended by the mutual written agreement of the Parties, without amendment of this Agreement. Any modified or amended Appendix agreed to in writing by the Parties shall supersede and replace any prior version of the Appendix.



## 11. ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS

Covered Entity shall provide written notice to Business Associate if litigation or administrative proceeding is commenced against Covered Entity, its directors, officers, or employees, based on a claimed violation by Business Associate of HIPAA, the HIPAA Rules or other laws relating to security and privacy or PHI. Upon receipt of such notice and to the extent requested by Covered Entity, Business Associate shall, and shall cause its employees, Subcontractors, or agents assisting Business Associate in the performance of its obligations under the Contract to, assist Covered Entity in the defense of such litigation or proceedings. Business Associate shall, and shall cause its employees, Subcontractor's and agents to, provide assistance, to Covered Entity, which may include testifying as a witness at such proceedings. Business Associate or any of its employees, Subcontractors or agents shall not be required to provide such assistance if Business Associate is a named adverse party.

## 12. INTERPRETATION AND ORDER OF PRECEDENCE

Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules. In the event of an inconsistency between the Contract and this Agreement, this Agreement shall control. This Agreement supersedes and replaces any previous, separately executed HIPAA business associate agreement between the Parties.

## 13. SURVIVAL

Provisions of this Agreement requiring continued performance, compliance, or effect after termination shall survive termination of this contract or this agreement and shall be enforceable by Covered Entity.



## **APPENDIX TO HIPAA BUSINESS ASSOCIATE AGREEMENT**

This Appendix (“Appendix”) to the HIPAA Business Associate Agreement (“Agreement”) is an appendix to the Contract and the Agreement. For the purposes of this Appendix, defined terms shall have the meanings ascribed to them in the Agreement and the Contract. Unless the context clearly requires a distinction between the Contract, the Agreement, and this Appendix, all references to “Contract” or “Agreement” shall include this Appendix.

### **1. PURPOSE**

This Appendix sets forth additional terms to the Agreement. Any sub-section of this Appendix marked as “Reserved” shall be construed as setting forth no additional terms.

### **2. ADDITIONAL TERMS**

- a. Additional Permitted Uses. In addition to those purposes set forth in the Agreement, Business Associate may use PHI for the following additional purposes:
  - i. Reserved.
- b. Additional Permitted Disclosures. In addition to those purposes set forth in the Agreement, Business Associate may disclose PHI for the following additional purposes:
  - i. Reserved.
- c. Approved Subcontractors. Covered Entity agrees that the following Subcontractors or agents of Business Associate may receive PHI under the Agreement:
  - i. Reserved.
- d. Definition of Receipt of PHI. Business Associate’s receipt of PHI under this Contract shall be deemed to occur, and Business Associate’s obligations under the Agreement shall commence, as follows:
  - i. Reserved.
- e. Additional Restrictions on Business Associate. Business Associate agrees to comply with the following additional restrictions on Business Associate’s use and disclosure of PHI under the Contract:
  - i. Reserved.
- f. Additional Terms. Business Associate agrees to comply with the following additional terms under the Agreement:
  - i. Reserved.



**EXHIBIT E - Supplemental Provisions for Federal Awards**

For the purposes of this Exhibit only, Contractor is also identified as “Subrecipient.” This Contract has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions for Federal Awards, the Special Provisions, the Contract or any attachments or exhibits incorporated into and made a part of the Contract, the Supplemental Provisions for Federal Awards shall control. In the event of a conflict between the Supplemental Provisions for Federal Awards and the FFATA Supplemental Provisions (if any), and/or exhibit regarding SLFRF Federal Provisions, the terms re FFATA and/or SLFRF shall control. If the source of the funding of the Contract is a grant, these Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

1) Federal Award Identification

- i. Subrecipient: **Gunnison County;**
- ii. Subrecipient Unique Entity Identifier (UEI) number: **NSN9FAGKEDJ9;**
- iii. The Federal Award Identification Number (FAIN) is **SLFRP0126;**
- iv. The Federal award date is **03/01/2021;**
- v. The subaward period of performance start date is **November 1, 2022** and end date is **December 30, 2024;**
- vi. Federal Funds:

Contract or Fiscal Year	Amount of Federal funds obligated by this Contract	Total amount of Federal funds obligated to the Subrecipient	Total amount of the Federal Award committed to Subrecipient by CDEC
<b>FY23- FY25</b>	<b>\$18,793*</b>	<b>\$18,793*</b>  <b>*An appropriation for HB 20B-1002 - Emerging and Expanding Child Care Grant Program (EECCG) General Accounting Encumbrance (GAE) is hereby added to this contract in the amount of \$11,389,807, subject to appropriated funds which is split among other Early Childhood Council (ECC) EECCG vendors. See Exhibit C, Section 12. GENERAL ACCOUNTING ENCUMBRANCE (GAE).</b>	<b>\$18,793*</b>

- vii. Federal award project description: **Funds were given to respond to the COVID-19 public health emergency or its negative economic impact);**
  - viii. The name of the Federal awarding agency is **U.S. Department of Treasury**; the name of the pass-through entity is the State of Colorado, Department of Early Childhood (CDEC); and the contact information for the awarding official is **Jesse Burne, Division of Early Learning Access and Quality (DELAQ) Director, [Jesse.Burne@state.co.us](mailto:Jesse.Burne@state.co.us), 720.501.8394;**
  - ix. The Catalog of Federal Domestic Assistance (CFDA) number is **21.027**, name is **Coronavirus State and Local Fiscal Recovery Funds**, and dollar amount is **\$3,828,761,789.90;**
  - x. This award **is not** for research & development;
  - xi. The indirect cost rate for the Federal award (including if the de minimis rate is charged per 2 CFR §200.414 Indirect (F&A) costs) is pre-determined based upon the State of Colorado and CDEC cost allocation plan.
- 2) All requirements imposed by CDEC on Subrecipient so that the Federal award is used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award, are stated in **General Provisions, Exhibit A – Statement of Work, Exhibit C – Additional Provisions, Exhibit F – SLFRF Subrecipient Provisions Exhibit.**
  - 3) Any additional requirements that CDEC imposes on Subrecipient in order for CDEC to meet its own responsibility to the Federal awarding agency, including identification of any required financial and performance reports, are stated in **General Provisions, Exhibit A – Statement of Work, Exhibit C – Additional Provisions, Exhibit F – SLFRF Subrecipient Provisions Exhibit.**
  - 4) Subrecipient’s approved indirect cost rate is **the de minimis rate of 10%.**
  - 5) Subrecipient must permit CDEC and auditors to have access to Subrecipient’s records and financial statements as necessary for CDEC to meet the requirements of 2 CFR §200.331 Requirements for pass-through entities, §§ 200.300 Statutory and National Policy Requirements through §200.309 Period of performance, and Subpart F—Audit Requirements of this Part.
  - 6) The appropriate terms and conditions concerning closeout of the subaward are listed in Section 16 of this Exhibit and **General Provisions, Exhibit A – Statement of Work, Exhibit C – Additional Provisions, Exhibit F – SLFRF Subrecipient Provisions Exhibit.**
  - 7) **Performance and Final Status.** Subrecipient shall submit all financial, performance, and other reports to CDEC no later than **30** calendar days after the period of performance end date or sooner termination of this Contract containing an evaluation and review of Subrecipient’s performance and the final status of Subrecipient’s obligations hereunder.

**8) Matching Funds**

If a box below is checked, the accompanying provision applies.

- i.  Subrecipient is not required to provide matching funds.
- ii.  Subrecipient shall provide matching funds as stated in N/A. Subrecipient shall have raised the full amount of matching funds prior to the Effective Date and shall report to CDEC regarding the status of such funds upon request. Subrecipient’s obligation to pay all or any part of any matching funds, whether direct or contingent, only extends to funds duly and lawfully appropriated for the purposes of this Contract by the authorized representatives of the Subrecipient and paid into the Subrecipient’s treasury or bank account. Subrecipient represents to CDEC that the amount designated as matching funds has been legally appropriated for the purposes of this Contract by its authorized representatives and paid into its treasury or bank account. Subrecipient does not by this Contract irrevocably pledge present cash reserves for payments in future fiscal years, and this Contract is not intended to create a multiple-fiscal year debt of the Subrecipient. Subrecipient shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Subrecipient’s laws or policies.

## 1. DEFINITIONS.

- 1.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
- 1.1.1. “Award” means an award of Federal financial assistance, and the Contract setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
- 1.1.1.1. Awards may be in the form of:
- 1.1.1.1.2. Grants;
- 1.1.1.1.3. Contracts;
- 1.1.1.1.4. Cooperative Contracts, which do not include cooperative research and development Contracts (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 1.1.1.1.5. Loans;
- 1.1.1.1.6. Loan Guarantees;
- 1.1.1.1.7. Subsidies;
- 1.1.1.1.8. Insurance;
- 1.1.1.1.9. Food commodities;
- 1.1.1.1.10. Direct appropriations;
- 1.1.1.1.11. Assessed and voluntary contributions; and
- 1.1.1.1.12. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.
- 1.1.1.1.13. Any other items specified by OMB in policy memoranda available at the OMB website or other source posted by the OMB.
- 1.1.1.2. Award *does not* include:
- 1.1.1.2.1. Technical assistance, which provides services in lieu of money;
- 1.1.1.2.2. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 1.1.1.2.3. Any award classified for security purposes; or
- 1.1.1.2.4. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
- 1.1.2. “Contract” means the Contract to which these Federal Provisions are attached and includes all Award types in § of this Exhibit.
- 1.1.3. “Contractor” means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
- 1.1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
- 1.1.5. “Entity” means:
- 1.1.5.1. If the source of funding is a Grant:
- 1.1.5.1.1. a Non-Federal Entity;

- 1.1.5.1.2. a foreign public entity;
  - 1.1.5.1.3. a foreign organization;
  - 1.1.5.1.4. a non-profit organization;
  - 1.1.5.1.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
  - 1.1.5.1.6. a foreign non-profit organization (only for 2 CFR part 170) only);
  - 1.1.5.1.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
  - 1.1.5.1.8. a foreign for-profit organization (for 2 CFR part 170 only).
- 1.1.5.2. If the source of funding is not a Grant:
- 1.1.5.2.1. all of the following as defined at 2 CFR part 25, subpart C;
  - 1.1.5.2.2. A governmental organization, which is a State, local government, or Indian Tribe;
  - 1.1.5.3. a foreign public entity;
  - 1.1.5.4. a domestic or foreign non-profit organization;
  - 1.1.5.5. a domestic or foreign for-profit organization; and
  - 1.1.5.6. a Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.1.6. “Executive” means an officer, managing partner or any other employee in a management position.
- 1.1.7. If the source of funding is a Grant, “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1. If the source of funding is not a Grant, “Federal Award Identification Number (FAIN)” means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.1.8. “FFATA” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.1.9. “Federal Provisions” means these Federal Provisions subject to the Transparency Act and Uniform Guidance, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.
- 1.1.10. If the source of funding is a Grant, “Grant” as used herein is the Contract to which these Federal Provisions are attached.
- 1.1.11. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached if the source of funding is a Grant.
- 1.1.12. “Non-Federal Entity means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
- 1.1.13. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
- 1.1.13.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
  - 1.1.13.2. Is not organized primarily for profit; and
  - 1.1.13.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 1.1.14. “OMB” means the Executive Office of the President, Office of Management and Budget.

- 1.1.15. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 1.1.16. “Prime Recipient” means a Colorado State agency or institution of higher education that receives an Award, or, of the source of funding is a Grant it is that agency or institution identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 1.1.17. “Subaward” means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101 or 2 CFR 200.38, as applicable. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- 1.1.18. “Subrecipient” or, if the source of funding is a Grant, “Subgrantee” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee. The term does not include an individual who is a beneficiary of a federal program.
- 1.1.19. “Subrecipient Parent DUNS Number” means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.1.20. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.1.21. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a), as applicable) and includes the following:
- 1.1.21.1. Salary and bonus;
  - 1.1.21.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
  - 1.1.21.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
  - 1.1.21.4. Change in present value of defined benefit and actuarial pension plans;
  - 1.1.21.5. Above-market earnings on deferred compensation which is not tax-qualified;
  - 1.1.21.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.1.22. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act may also be referred to as FFATA.
- 1.1.23. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which, unless the source of funding is a Grant, supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

1.1.24. “Vendor” means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

## **2. COMPLIANCE.**

2.1. Contractor/Grantee shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, including, but not limited to, all applicable Federal Laws and regulations required by this Federal Award. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado, at its discretion, may provide written notification to Contractor/Grantee of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

## **3. SYSTEM FOR AWARD MANAGEMENT (SAM) AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS.**

3.1. SAM. Contractor/Grantee shall maintain the currency of its information in SAM until the Contractor/Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Contractor/Grantee shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.

3.2. DUNS. Contractor/Grantee shall provide its DUNS number to its Prime Recipient, and shall update Contractor’s/Grantee’s information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor’s/Grantee’s information.

## **4. TOTAL COMPENSATION.**

4.1. Contractor/Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

4.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more if the source of funding is a Grant, or otherwise \$25,000 or more if the source of funding is not a Grant; and

4.1.2. In the preceding fiscal year, Contractor/Grantee received:

4.1.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

4.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act if the source of funding is a Grant or otherwise \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act if the source of funding is not a Grant; and

4.1.2.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

## **5. REPORTING.**

5.1. If Contractor/Grantee is a Subrecipient of the Award pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Contract/Grant price. The reporting requirements in this Exhibit are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract/Grant and shall become part of Contractor’s/Grantee’s obligations under this Contract/Grant.

## 6. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR REPORTING.

- 6.1. If the source of funding is a Grant, Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements.
- 6.2. If the source of funding is not a Grant, Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
- 6.3. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

## 7. SUBRECIPIENT REPORTING REQUIREMENTS.

- 7.1. If Contractor/Grantee is a Subrecipient, Contractor/Grantee shall report as set forth below.
  - 7.1.1. To SAM. A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number (FAIN) assigned by a Federal agency to a Prime Recipient no later than the end of the month following the month in which the Subaward was made:
    - 7.1.1.1. Subrecipient DUNS Number;
    - 7.1.1.2. Subrecipient DUNS Number if more than one electronic funds transfer (EFT) account;
    - 7.1.1.3. Subrecipient parent's organization DUNS Number;
    - 7.1.1.4. Subrecipient's address, including: Street Address, City, State, Country, Zip (+ 4 if source of funding is a Grant or as otherwise directed per SAM directives for proper reporting), and Congressional District;
    - 7.1.1.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
    - 7.1.1.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.
  - 7.1.2. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract/Grant, the following data elements:
    - 7.1.2.1. Subrecipient's DUNS Number as registered in SAM.
    - 7.1.2.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

## 8. PROCUREMENT STANDARDS.

- 8.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.

- 8.2. If the source of funding is a Grant: Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- 8.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## **9. ACCESS TO RECORDS.**

- 9.1. A Subrecipient shall permit Recipient/Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.311-200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

## **10. SINGLE AUDIT REQUIREMENTS.**

- 10.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.
  - 10.1.1. Election. A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance 2 CFR 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 CFR 200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
  - 10.1.2. Exemption. If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
  - 10.1.3. Subrecipient Compliance Responsibility. A Subrecipient shall procure or otherwise arrange for the audit required by Subpart F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with 2 CFR 200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Subpart F-Audit Requirements.

## **11. CONTRACT/GRANT PROVISIONS FOR SUBRECIPIENT CONTRACTS.**

- 11.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Contractors/Grantees that are Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Contract/Grant.

- 11.1.1. [Applicable to federally assisted construction contracts.] Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.
- 11.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).
- 11.1.3. Rights to Inventions Made Under a contract/grant or agreement. If the Federal Award meets the definition of “funding agreement”/ “funding Contract” under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,”/”funding Contract”, the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the Federal Awarding Agency.
- 11.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardee(s) to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).
- 11.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 11.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 11.1.7. Never contract with the enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never contract with the enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered contracts, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
- 11.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

## **12. CERTIFICATIONS.**

- 12.1. Unless prohibited by Federal statutes or regulations, Recipient/Prime Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

## **13. EXEMPTIONS.**

- 13.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 13.2. A Contractor/Grantee with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

## **14. EVENT OF DEFAULT AND TERMINATION.**

- 14.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Contract/Grant and the State of Colorado may terminate the Contract/Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract/Grant, at law or in equity.
- 14.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:
  - 14.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
  - 14.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
  - 14.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
  - 14.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or
  - 14.2.5. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

EXHIBIT END



## **SLFRF SUBRECIPIENT PROVISIONS EXHIBIT (CDEC)**

This Exhibit and the Appendices hereto apply regarding the use of State and Local Fiscal Recovery Funds (SLFRF) to comply with requirements established by the U.S. Department of Treasury and the Colorado Department of Personnel & Administration, Office of the State Controller re the Colorado Department of Early Childhood (CDEC).

This SLFRF Provisions Exhibit may supplement other Exhibit(s) to the instant Agreement. In the event that terms on prior Exhibit(s) to the instant Agreement conflict with this SLFRF Provisions Exhibit, this Exhibit shall control and take precedence.

The Contractor/Vendor/Other Agency entity with which the Colorado Department of Early Childhood (CDEC) is contracting per this Agreement may be referred to as “Subrecipient” herein, the designation per controlling law and mandates. This “Subrecipient” designation shall apply in this context notwithstanding prior definition(s) of any entity to this agreement as “Contractor” or any other title.

Subrecipient must agree to and comply with the terms of these SLFRF Provisions in order to receive and use these funds. Subrecipient shall execute not only the instant Agreement, but also specifically the Certification Agreement appendix to the instant Exhibit. A failure to also separately execute the Certification Agreement appendix hereto shall not relieve Subrecipient of the rules/obligations set forth herein; such a clerical error must be promptly remedied upon discovery by notifying the CDEC office/program contact, who can then assist with the logistics of mandatory signing, which shall retroactively apply.

In the event that Subrecipient is/was in receipt of SLFRF funding from CDEC prior to execution of the instant Exhibit, Subrecipient understands that its obligations set forth herein with regards to that funding shall retroactively apply.

The regulations and requirements surrounding receipt and use of SLFRF funding is an evolving subject matter as established by the U.S. Department of Treasury and put into established policy by the Colorado Department of Personnel & Administration, Office of the State Controller for use with CDEC Agreements. As such, Subrecipient agrees to execute any additional Agreements/Amendments as required by CDEC to establish and/or update these procedures. Subrecipient agrees to accept written notice from CDEC of updates to these requirements and to comply with same forthwith, even if prior to or without a formal Amendment to the Agreement to update this Exhibit or the rules/requirements established herein. Regardless, if CDEC requests that Subrecipient execute an Amendment to formalize implementation of and/or acknowledgment of updates to this Exhibit, Subrecipient shall promptly comply.

Subrecipient agrees to stay abreast of and comply with the most current iterations of the requirements re SLFRF funding set forth on <https://osc.colorado.gov/american-rescue-plan-act> (see SLFRF Grant Agreement Templates Tab).

## **APPENDIX 1 TO SLFRF EXHIBIT- BUDGET SUPPLEMENT**

### **1. BUDGET BY US TREASURY EXPENDITURE CATEGORY**

1.1 Expenditure Categories identified in this Appendix will determine what is reported on as outlined in the all following Appendices to this Exhibit.

<b>Project Number</b>	<b>Project Title</b>	<b>US Treasury Expenditure Category Number and Name</b>	<b>Budget</b>
	<b>Emerging and Expanding Child Care Grant Program</b>	<b>2.11 Healthy Childhood Environments: Child Care</b>	<b>\$18,793</b>
<b>Total</b>			<b>\$18,793</b>

### **2. BUDGET BY FUNCTION**

### **3. EXPENDITURE CATEGORY MODIFICATIONS**

- 1.1 Increases or decreases in any Expenditure Category must be requested and approved by the State Agency by using the SLFRF Expenditure Modification Form. This form can be found at: <https://osc.colorado.gov/american-rescue-plan-act> (see SLFRF Grant Agreement Templates Tab). *In no event may this be used to modify the overall total of this Agreement or otherwise any non SLFRF expenditures.*

## **APPENDIX 2 TO SLFRF EXHIBIT- FEDERAL PROVISIONS SUPPLEMENT**

### **1. APPLICABILITY OF PROVISIONS.**

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
- 1.2. The State of Colorado is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's Final Rule, and reporting requirements, as applicable.
- 1.3. Additionally, any subrecipient that issues a subaward to another entity (2<sup>nd</sup> tier subrecipient), must hold the 2<sup>nd</sup> tier subrecipient accountable to these provisions and adhere to reporting requirements.
- 1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

**2. DEFINITIONS.**

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
- 2.1.1. “Award” means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
- 2.1.2. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
- 2.1.3. “Entity” means:
- 2.1.3.1. a Non-Federal Entity;
- 2.1.3.2. a foreign public entity;
- 2.1.3.3. a foreign organization;
- 2.1.3.4. a non-profit organization;
- 2.1.3.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
- 2.1.3.6. a foreign non-profit organization (only for 2 CFR part 170) only);
- 2.1.3.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
- 2.1.3.8. a foreign for-profit organization (for 2 CFR part 170 only).
- 2.1.4. “Executive” means an officer, managing partner or any other employee in a management position.
- 2.1.5. “Expenditure Category (EC)” means the category of eligible uses as defined by the US Department of Treasury in “Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds” report available at [www.treasury.gov](http://www.treasury.gov).
- 2.1.6. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
- 2.1.7. “Grant” means the Grant to which these Federal Provisions are attached.
- 2.1.8. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached.
- 2.1.9. “Non-Federal Entity means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
- 2.1.10. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

- 2.1.10.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
- 2.1.10.2. Is not organized primarily for profit; and
- 2.1.10.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.11. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.12. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.13. “Prime Recipient” means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.14. “Subaward” means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.15. “Subrecipient” or “Subgrantee” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.16. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
  - 2.1.16.1. Salary and bonus;
  - 2.1.16.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
  - 2.1.16.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;

- 2.1.16.4. Change in present value of defined benefit and actuarial pension plans;
- 2.1.16.5. Above-market earnings on deferred compensation which is not tax-qualified;
- 2.1.16.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.17. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 2.1.18. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

### **3. COMPLIANCE.**

- 3.1. Grantee shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado, at its discretion, may provide written notification to Grantee of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3.2. Per US Treasury Final Award requirements, grantee programs or services must not include terms or conditions that undermine efforts to stop COVID-19 or discourage compliance with recommendations and CDC guidelines.

### **4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS.**

- 4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
- 4.2. DUNS. Grantee shall provide its DUNS number to its Prime Recipient, and shall update Grantee’s information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Grantee’s information.

### **5. TOTAL COMPENSATION.**

- 5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

- 5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and
- 5.1.2. In the preceding fiscal year, Grantee received:
  - 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
  - 5.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
  - 5.1.2.3. 5.1.2.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

## **6. REPORTING.**

- 6.1. If Grantee is a Subrecipient of the Award pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

## **7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.**

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below \$30,000 no reporting required; if more than \$30,000 and less than \$50,000 then FFATA reporting is required; and, \$50,000 and above SLFRF reporting is required.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

## **8. SUBRECIPIENT REPORTING REQUIREMENTS.**

- 8.1. Grantee shall report as set forth below.

8.1.1. Grantee shall use the SLFRF Subrecipient Quarterly Report Workbook as referenced in Appendix 4 to report to the State Agency within ten (10) days following each quarter ended September, December, March and June. Additional information on specific requirements are detailed in the SLFRF Subrecipient Quarterly Report Workbooks and "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at [www.treasury.gov](http://www.treasury.gov).

### **EC 1 – Public Health**

#### **All Public Health Projects**

- a) Description of structure and objectives
- b) Description of relation to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Capital Expenditures
  - i. Presence of capital expenditure in project
  - ii. Total projected capital expenditure
  - iii. Type of capital expenditure
  - iv. Written justification
  - v. Labor reporting

#### **COVID-19 Interventions and Mental Health (1.4, 1.11, 1.12, 1.13)**

- a) Amount of total project used for evidence-based programs
- b) Evaluation plan description

#### **COVID-19 Small Business Economic Assistance (1.8)**

- a) Number of small businesses served

#### **COVID-19 Assistance to Non-Profits (1.9)**

- a) Number of non-profits served

#### **COVID-19 Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (1.10)**

- a) Sector of employer
- b) Purpose of funds

### **EC 2 – Negative Economic Impacts**

#### **All Negative Economic Impacts Projects**

- a) Description of project structure and objectives
- b) Description of project's response to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Amount of total project used for evidence-based programs and description of evaluation plan (*not required for 2.5, 2.8, 2.21-2.24, 2.27-2.29, 2.31, 2.34-2.36*)
- e) Number of workers enrolled in sectoral job training programs
- f) Number of workers completing sectoral job training programs
- g) Number of people participating in summer youth employment programs
- h) Capital Expenditures
  - i. Presence of capital expenditure in project
  - ii. Total projected capital expenditure
  - iii. Type of capital expenditure
  - iv. Written justification
  - v. Labor reporting

#### **Household Assistance (2.1-2.8)**

- a) Number of households served
- b) Number of people or households receiving eviction prevention services (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*
- c) Number of affordable housing units preserved or developed (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*

#### **Healthy Childhood Environments (2.11-2.13)**

- a) Number of children served by childcare and early learning *(Federal guidance may change this requirement in July 2022)*
- b) Number of families served by home visiting *(Federal guidance may change this requirement in July 2022)*

#### **Education Assistance (2.14, 2.24-2.27)**

- a) National Center for Education Statistics (“NCES”) School ID or NCES District ID
- b) Number of students participating in evidence-based programs *(Federal guidance may change this requirement in July 2022)*

#### **Housing Support (2.15, 2.16, 2.18)**

- a) Number of people or households receiving eviction prevention services *(Federal guidance may change this requirement in July 2022)*
- b) Number of affordable housing units preserved or developed *(Federal guidance may change this requirement in July 2022)*

#### **Small Business Economic Assistance (2.29-2.33)**

- a) Number of small businesses served

#### **Assistance to Non-Profits (2.34)**

- a) Number of non-profits served

#### **Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (2.35-2.36)**

- a) Sector of employer
- b) Purpose of funds
- c) If other than travel, tourism and hospitality (2.36) – description of hardship

#### **EC 3 – Public Health – Negative Economic Impact: Public Sector Capacity**

##### **Payroll for Public Health and Safety Employees (EC 3.1)**

- a) Number of government FTEs responding to COVID-19

##### **Rehiring Public Sector Staff (EC 3.2)**

- a) Number of FTEs rehired by governments

#### **EC 4 – Premium Pay**

##### **All Premium Pay Projects**

- a) List of sectors designated as critical by the chief executive of the jurisdiction, if beyond those listed in the final rule
- b) Numbers of workers served
- c) Employer sector for all subawards to third-party employers
- d) Written narrative justification of how premium pay is responsive to essential work during the public health emergency for non-exempt workers or those making over 150 percent of the state/county’s average annual wage
- e) Number of workers to be served with premium pay in K-12 schools

#### **EC 5 – Infrastructure Projects**

##### **All Infrastructure Projects**

- a) Projected/actual construction start date (month/year)

- b) Projected/actual initiation of operations date (month/year)
- c) Location (for broadband, geospatial data of locations to be served)
- d) Projects over \$10 million
  - i. Prevailing wage certification or detailed project employment and local impact report
  - ii. Project labor agreement certification or project workforce continuity plan
  - iii. Prioritization of local hires
  - iv. Community benefit agreement description, if applicable

**Water and sewer projects (EC 5.1-5.18)**

- a) National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
- b) Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
- c) Median Household Income of service area
- d) Lowest Quintile Income of the service area

**Broadband projects (EC 5.19-5.21)**

- a) Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
  - i. If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
  - ii. Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
- b) Additional programmatic data will be required for broadband projects and will be defined in a subsequent version of the US Treasury Reporting Guidance, including, but not limited to (*Federal guidance may change this requirement in July 2022*):
  - i. Number of households (broken out by households on Tribal lands and those not on Tribal lands) that have gained increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, with the number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download and number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
  - ii. Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) that have projected increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization, with the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download;

- and number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.
- iii. Narrative identifying speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering, technology to be deployed, miles of fiber, cost per mile, cost per passing, number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download, number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload, and number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization. Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

### All Expenditure Categories

- a) Program income earned and expended to cover eligible project costs
- 8.1.2. A Subrecipient shall report the following data elements to Prime Recipient no later than five days after the end of the month following the month in which the Subaward was made.
- 8.1.2.1. Subrecipient DUNS Number;
- 8.1.2.2. Subrecipient DUNS Number if more than one electronic funds transfer (EFT) account;
- 8.1.2.3. Subrecipient parent's organization DUNS Number;
- 8.1.2.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 8.1.2.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 8.1.2.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.
- 8.1.3. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, the following data elements:
- 8.1.3.1. Subrecipient's DUNS Number as registered in SAM.

- 8.1.3.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
- 8.1.3.3. Narrative identifying methodology for serving disadvantaged communities. See the "Project Demographic Distribution" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at [www.treasury.gov](http://www.treasury.gov). This requirement is applicable to all projects in Expenditure Categories 1 and 2.
- 8.1.3.4. Narrative identifying funds allocated towards evidenced-based interventions and the evidence base. See the "Use of Evidence" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at [www.treasury.gov](http://www.treasury.gov). See section 8.1.1 for relevant Expenditure Categories.
- 8.1.3.5. Narrative describing the structure and objectives of the assistance program and in what manner the aid responds to the public health and negative economic impacts of COVID-19. This requirement is applicable to Expenditure Categories 1 and 2. For aid to travel, tourism, and hospitality or other impacted industries (EC 2.11-2.12), also provide the sector of employer, purpose of funds, and if not travel, tourism and hospitality a description of the pandemic impact on the industry.
- 8.1.3.6. Narrative identifying the sector served and designated as critical to the health and well-being of residents by the chief executive of the jurisdiction and the number of workers expected to be served. For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county's average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is higher, OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions, include justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19 but should not include personally identifiable information. This requirement applies to EC 4.1, and 4.2.
- 8.1.3.7. For infrastructure projects (EC 5) or capital expenditures in any expenditure category, narrative identifying the projected construction start date (month/year), projected initiation of operations date (month/year), and location (for broadband, geospatial location data).
  - 8.1.3.7.1. For projects over \$10 million:
    - 8.1.3.7.1.1. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less than those prevailing,

as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the Agreement work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing (1) the number of employees of Contractors and sub-contractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.

- 8.1.3.7.1.2. A Subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing: (1) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (2) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (3) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.
- 8.1.3.7.1.3. Whether the project prioritizes local hires.
- 8.1.3.7.1.4. Whether the project has a Community Benefit Agreement, with a description of any such agreement.

8.1.4. Subrecipient also agrees to comply with any reporting requirements established by the US Treasury, Governor's Office and Office of the State Controller. The State of

Colorado may need additional reporting requirements after this agreement is executed. If there are additional reporting requirements, the State will provide notice of such additional reporting requirements via Appendix 5– SLFRF Reporting Modification Form.

#### **9. PROCUREMENT STANDARDS.**

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.
- 9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

#### **10. ACCESS TO RECORDS.**

- 10.1. A Subrecipient shall permit Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

#### **11. SINGLE AUDIT REQUIREMENTS.**

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

- 11.1.1. Election. A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance 2 CFR 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 CFR 200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. Exemption. If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3. Subrecipient Compliance Responsibility. A Subrecipient shall procure or otherwise arrange for the audit required by Subpart F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with 2 CFR 200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Subpart F-Audit Requirements.

## 12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

- 12.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Grantees that are Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.
  - 12.1.1. [Applicable to federally assisted construction Agreements.] Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of "federally assisted construction Agreement" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.
  - 12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).

- 12.1.3. Rights to Inventions Made Under a grant or agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements,” and any implementing regulations issued by the Federal Awarding Agency.
- 12.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 12.1.7. Never Agreement with the enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never Agreement with the enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

12.1.9. Title VI of the Civil Rights Act. The Subgrantee, Contractor, Subcontractor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S. C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CRF Part 22, and herein incorporated by reference and made part of this Agreement or agreement.

### **13. CERTIFICATIONS.**

13.1. Subrecipient Certification. Subrecipient shall sign a "State of Colorado Agreement with Recipient of Federal Recovery Funds" Certification Form in separate Appendix hereto and submit to State Agency with signed grant agreement.

13.2. Unless prohibited by Federal statutes or regulations, Prime Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

### **14. EXEMPTIONS.**

14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

14.2. A Grantee with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

### **15. EVENT OF DEFAULT AND TERMINATION.**

15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

- 15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:
- 15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
  - 15.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
  - 15.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
  - 15.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or
  - 15.2.5. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

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**APPENDIX 3 TO SLFRF EXHIBIT- SUBRECIPIENT CERTIFICATION**  
**AGREEMENT**

**AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS**

Section 602(b) of the Social Security Act (the Act), as added by section 9901 of the American Rescue Plan Act (ARPA), Pub. L. No. 117-2 (March 11, 2021), authorizes the Department of the Treasury (Treasury) to make payments to certain Subrecipients from the Coronavirus State Fiscal Recovery Fund. The State of Colorado has signed and certified a separate agreement with Treasury as a condition of receiving such payments from the Treasury. This agreement is between your organization and the State and your organization is signing and certifying the same terms and conditions included in the State's separate agreement with Treasury. Your organization is referred to as a Subrecipient.

As a condition of your organization receiving federal recovery funds from the State, the authorized representative below hereby (i) certifies that your organization will carry out the activities listed in section 602(c) of the Act and (ii) agrees to the terms attached hereto. Your organization also agrees to use the federal recovery funds as specified in bills passed by the General Assembly and signed by the Governor.

Under penalty of perjury, the undersigned official certifies that the authorized representative has read and understood the organization's obligations in the Assurances of Compliance and Civil Rights Requirements, that any information submitted in conjunction with this assurances document is accurate and complete, and that the organization is in compliance with the nondiscrimination requirements.

Subrecipient Name: Gunnison County

Authorized Representative: Matthew Birnie

Title: County Manager

Signature: \_\_\_\_\_

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS  
TERMS AND CONDITIONS

1. Use of Funds.
  - a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 602(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.
  - b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this subaward is shown on page one of this Agreement. Subrecipient may use funds to cover eligible costs incurred, as set forth in Treasury's implementing regulations, during this period of performance.
3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award. Subrecipient also agrees to comply with any reporting requirements established by the Governor's Office and Office of the State Controller. The State will provide notice of such additional reporting requirements via separate Appendix hereto – Reporting Modification Form.
4. Maintenance of and Access to Records
  - a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
  - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.
  - c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs. Subrecipient shall follow guidance on administrative costs issued by the Governor's Office and Office of the State Controller.

Cost Sharing. Cost sharing or matching funds are not required to be provided by

7. Subrecipient.
8. Conflicts of Interest. The State of Colorado understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Subrecipient and Contractors must disclose in writing to the Office of the State Controller or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. The Office of the State Controller shall disclose such conflict to Treasury.
9. Compliance with Applicable Law and Regulations.
  - a. Subrecipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
  - b. Federal regulations applicable to this award include, without limitation, the following:
    - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
    - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
    - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
    - iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and Subcontractors described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
    - v. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.

- vi. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
  - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
  - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
  - ix. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
  - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
  - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
  - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
  - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

Remedial Actions. In the event of Subrecipient's noncompliance with section 602 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any

10. additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.
11. Hatch Act. Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.
13. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number SLFRF0126 awarded to the State of Colorado by the U.S. Department of the Treasury.”
14. Debts Owed the Federal Government.
  - a. Any funds paid to the Subrecipient (1) in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.
  - b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury’s initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.
15. Disclaimer.
  - a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or Subcontractor under this award.

- b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.

16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
  - i. A member of Congress or a representative of a committee of Congress;
  - ii. An Inspector General;
  - iii. The Government Accountability Office;
  - iv. A Treasury employee responsible for Agreement or grant oversight or management;
  - v. An authorized official of the Department of Justice or other law enforcement agency;
  - vi. A court or grand jury; or
  - vii. A management official or other employee of Subrecipient, Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

1. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees, Subrecipients, and Contractors to adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

## ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

### ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance, regulated programs, licenses, procurement Agreements by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Subrecipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.
3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR

6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Contractors, Subcontractors, successors, transferees, and assignees:

*The sub-grantee, Contractor, Subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.*

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.
7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.

9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of discrimination, please so state.
10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub- Subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

#### **APPENDIX 4 TO SLFRF EXHIBIT- SLFRF SUBRECIPIENT QUARTERLY REPORT REQUIREMENTS**

##### **1. SLFRF SUBRECIPIENT QUARTERLY REPORT WORKBOOK**

- 1.1 The SLFRF Subrecipient Quarterly Report Workbook must be submitted to the State Agency within ten (10) days following each quarter ended September, December, March and June. The SLFRF Subrecipient Quarterly Report Workbook can be found at: <https://osc.colorado.gov/american-rescue-plan-act> (see SLFRF Grant Agreement Templates Tab).
- 1.2 The requirements set forth in this Appendix 4 do not apply if the instant Agreement is between two Colorado State Agencies.





Colorado Department of Early Childhood
VENDOR CONTACT INFORMATION SHEET

Legal Name of Vendor as it should appear on the Contract/Purchase Order including any dba:

Gunnison County

Address: 220 N. Spruce Street
City: Gunnison State: CO Zip Code: 81230 County: Gunnison
FEIN #: 84-60007700 State of Incorporation: Colorado
DUNS #: 133115220 Fiscal Year End Date: 2023

Type of Entity (please mark one):

- Individual
Professional Corporation (PC)
Sole Proprietor
Not-For-Profit Corporation
Limited Liability Company (LLC)
Joint Venture
For-Profit
Limited Liability Partnership (LLP)
Government (checked)

Primary Contact to Receive ALL Correspondence:

Name: Margaret Wacker
Title: Community Services Supervisor
Email: mwacker@gunnisoncounty.org
Phone: 970-61-7913

CFO or Financial Contact:

Name: Jody Wise
Title: Accountant
Email: jwise@gunnisoncounty.org
Phone: 970-641-7679

Invoice Contact:

Name: Jody Wise
Title: Accountant
Email: jwise@gunnisoncounty.org
Phone: 970-641-7679

Individual Signing Contract:

Name: Matthew Birnie
Title: County Manager
Email: mbirnie@gunnisoncounty.org
Phone: 970-641-0248

Additional Contacts for DocuSign Review:

The Department of Early Childhood collects signatures via DocuSign. Please list below any individuals that need to be included in the DocuSign process prior to the final signature (example: Director's Assistant, Attorney, etc):

Name: Melanie Bollig
Email: mbollig@gunnisoncounty.org
Sign or CC? CC

Is your agency set up for Electronic Deposit with the State of CO? Yes X No

If Yes, please list the last 4 digits of the account number payments should be sent to: 9411

How long does your agency and/or board need to review and return the signed contract? 2 weeks

IMPORTANT - When submitted with a Solicitation, please complete the following:

Vendor should read the entire Solicitation document before submitting a Bid/Proposal/Quote. Solicitation is subject to the conditions stipulated and in accordance with the specifications set forth and/or attached to the Solicitation. All Solicitations shall be quoted F.O.B. destination, unless otherwise specified, to the delivery location or job site listed in the Solicitation.

[Handwritten Signature]
ELECTRONIC OR PRINTED SIGNATURE FROM AUTHORIZED SIGNATORY

4-05-2022
Date

**State of Colorado**  
**Contract Management Information**  
**Vendor Disclosure Statement**  
Colorado Revised Statutes § 24-102-206

**Contract Performance Outside of the United States or Colorado**

---

*Prior to contracting*, or as a requirement for the solicitation of any contract for services from the State of Colorado, a prospective vendor is required to disclose the following information in a statement of work.

---

**Completing this Form**

- To the extent the following information has **not previously disclosed** in a statement of work, a prospective vendor shall complete this Vendor Disclosure Statement and return it to the contracting state agency or institution of higher education (IHE).
- This Disclosure Statement is not required for contracts under Medicare, the “Colorado Medical Assistance Act”, Articles 4 to 6 of Title 25.5, CRS, the “Children’s Basic Health Plan Act”, Article 8 of Title 25.5, CRS, or the “Colorado Indigent Care Program”, Part I of Article 3 of Title 25.5, CRS.
- This Disclosure Statement is not required for Construction contracts.

---

1. Solicitation or Contract Routing Number: \_\_\_\_\_

Vendor Name: \_\_\_\_\_

State Agency/IHE Name: Colorado Department of Early Childhood

2. Where will the services under the contract, including any subcontracts, be performed?  
List all country(ies) and state(s).

\_\_\_\_\_

3. If it is anticipated that services under the contract, or any subcontracts, will be performed outside of the United States or the State of Colorado, explain why it is necessary or advantageous to go outside the United States or the State of Colorado to perform the contract or any subcontracts.

\_\_\_\_\_

---

Signature

---

Date

---

Printed Name

---

Title

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

**Agenda Item:** Approval for Trade Contractor Agreement; Christoph

**Action Requested:** County Manager Signature

**Parties to the Agreement:** Christopher Klein Construction

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

Expansion of the horse stall building to replace the quonset stall building as planned in the Fairgrounds Master Plan

**Fiscal Impact:** 294317

**Submitted by:** John Cattles

**Submitter's Email Address:** jcattles@gunnisoncounty.org

**Finance Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\PSolheim

Discharge Date: 11/4/2022

**County Attorney Review:**

Required

Not Required

Comments:

Appears legally sufficient. BOCC should be reminded to initial changes in addition to signing at signature page. MRH

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 11/4/2022

Certificate of Insurance Required

Yes  No

**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 11/10/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted:

Agenda Date: 11/15/2022

## TRADE CONTRACTOR AGREEMENT

THIS AGREEMENT is made this 2nd day of November, 2011 by and between the Board of County Commissioners of the County of Gunnison, State of Colorado (the "County"), and Christopher Klein Construction ("Contractor").

In consideration of the mutual covenants, agreements, conditions and undertakings hereinafter specified, the County and Contractor agree as follows:

**Section 1. Scope of Work.** Contractor shall perform all work in accordance with **Exhibit A**, which is attached hereto and incorporated by this reference, including furnishing all supervision, labor, equipment and materials therefor (the "Project").

**Section 2. Contract Documents.** The Contract Documents, which comprise the entire agreement and contract between the County and Contractor, consist of this Agreement and Exhibit A; Invitation for Bids/Request for Proposal, Bid Schedule Performance and Payment Bond, Notice of Award; Notice to Proceed; general conditions, special conditions, measurement, payment, and technical specifications and drawings; and any modifications, change orders or other such revisions properly authorized after the execution of this Agreement.

**Section 3. Agreement Price.** The County has appropriated the money necessary to fund this project. The County shall pay the Contractor in current funds for the performance of the work, subject to any additions and deletions, by written change order, the total sum not to exceed Two Hundred Ninety-Four Three Hundred and Seventeen Dollars (294,317.00) (the "Original Contract Amount"). Notwithstanding anything to the contrary contained in this Agreement, no change order or other form of directive by the County requiring additional compensable work to be performed, which causes the aggregate amount payable under this Agreement to exceed the amount appropriated for the Original Contract Amount, unless the Contractor is given written assurance by the County via an Amendment that lawful appropriations have been made by the County to cover the cost of the additional work.

**Section 4. Non-appropriation.** Pursuant to Article X, Section 20 of the Colorado Constitution and C.R.S. § 29-1-110, as amended, the financial obligations of the County as set forth herein after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise available. This Agreement is automatically terminated on January 1st of the first fiscal year for which funds are not appropriated. The County shall give the Contractor written notice of such non-appropriation. Financial obligations of the County payable after the current Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available, pursuant to the Constitution for annual funding appropriation.

**Section 5. Times and Methods of Payment.**

a. Progress payments shall be made in proportion to services rendered and shall be due and owing within thirty (30) days of Contractor's submittal of a monthly invoice. If the County

objects to any invoices submitted by Contractor, the County will so advise Contractor in writing giving the reason within fourteen (14) days of receipt of such invoice.

b. If the County fails to make payments due Contractor within sixty (60) days after receipt and acceptance of Contractor's bill, Contractor may, after giving seven (7) days' written notice to the County, suspend services under this Agreement until Contractor's outstanding bills have been paid in full.

**Section 6. Retainage.** An amount equal to five percent (5%) of all progress payments shall be retained by the County until the Project is completed satisfactorily and finally accepted by the County.

**Section 7. Final Payment.** The County shall make final payment, including release of retainage, to Contractor when the Project is complete and finally accepted by the County.

**Section 8. Final Acceptance.** Final acceptance of the Project shall follow inspection and approval of Contractor's performance by the County, along with inspection by appropriate governmental officials pursuant to local, state and federal requirements, if necessary. The County shall have the right and authority to determine the acceptability of Contractor's performance for conformity with this Agreement, which determination shall be conclusive and binding upon Contractor. Final acceptance by the County is subject to the provisions of this Contract and C.R.S. § 38-26-107, as amended, and in no manner affects or releases any warranties or guarantees with Contractor or manufacturers of Project equipment.

The Project, when presented to the County for final acceptance, shall be delivered free from any and all claims or encumbrances whether then in existence or later established by law, statute, ordinance or otherwise. No claim or encumbrance against the Project or the Project site shall be outstanding or otherwise unsettled at the time of final acceptance. The right to assert any claim or encumbrance against the Project, after final acceptance by the County and final payment to Contractor, is hereby waived by Contractor on behalf of itself and any subcontractor, laborer, materialman, equipment supplier, manufacturer or other person.

**Section 9. Commencement and Completion of Performance.** This agreement shall run for the term of October 28<sup>th</sup>, 2022 thru June 30<sup>th</sup>, 2023. The services called for shall commence on October 28<sup>th</sup>, 2022 and end on June 30<sup>th</sup>, 2023 (180 workable working days). Contractor shall commence any work requested by the County within ten (10) days of notification by the County. In the event Contractor fails to commence work within this time period, the County may take over the work and prosecute the same to completion. The date of beginning and the time for completion of the work are essential conditions of this Agreement. Contractor shall proceed with the work at such rate of progress to insure full completion within the contract time. It is expressly understood and agreed by and between the County and Contractor that the contract time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work during the period such work is to be performed. If Contractor shall fail to complete the work within the contract time, or extension of time granted by the County, then Contractor shall pay to the County the amount of liquidated damages and not as penalty the sum of Zero Dollars (\$0.00) for each calendar day that Contractor shall be in default after June 30<sup>th</sup>, 2023. The County will charge Contractor and may deduct from the partial and final payment for the work, all architectural, engineering and

construction management expenses incurred by the County in connection with any work accomplished after the specified completion date.

Contractor will not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to the following, and Contractor has promptly given written notice of such delay to the County:

- a. to any preference, priority or allocation order duly issued by the County; and
- b. to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including, but not restricted to, unforeseen conditions, acts of God or of the public enemy, acts of the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather.

**Section 10. Termination.**

a. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided, that no such termination may be effected unless the other party is given:

- i. not less than ten (10) calendar days' written notice of intent to terminate, and
- ii. an opportunity for consultation with the terminating party prior to termination.

b. This Agreement may be terminated in whole or in part in writing by the County for its convenience.

c. Upon receipt of a termination action pursuant to paragraphs a. and b. above, Contractor shall promptly discontinue all services affected (unless the notice directs otherwise), and the County may take over the work and prosecute the same to completion by agreement with another party or otherwise.

d. **Pandemics.** The Contractor shall abide by any local, state, and federal health orders in effect or instituted during the term of this Agreement. The Contractor is expected to implement any such changes effective immediately. Failure to abide by such requirements may result in termination of the Agreement.

**Section 11. Taxes, Licenses, Permits and Regulations.** In all operations connected with the Project, Contractor shall pay all fees, charges and taxes imposed by law and shall obtain all licenses and permits necessary for completion of the Project, paying all fees therefore, unless otherwise specified by the County. The County shall assist Contractor to determine which licenses and permits are required for completion of the Project.

The County is exempt from Colorado state sales and use taxes on materials to be permanently incorporated in the work. Accordingly, taxes for which the County is exempt shall not be included in the Agreement Price. The County shall, upon request, furnish Contractor with

a copy of its Certificate of Tax Exemption. Contractor and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an exemption certificate and purchase the materials tax free. Pursuant to C.R.S. § 39-26-708, Contractor and subcontractors shall be liable to the State of Colorado for exempt taxes paid due to failure to apply for exemption certificates or for failure to use said certificates. Contractor shall comply with all laws, ordinances, codes, rules and regulations of all governmental authorities, whether local, state or federal, relating to the performance of work on the Project and, particularly, in complying with those laws concerning the environment, workers' compensation, safety and health, state labor and materials, and equal employment opportunity.

**Section 12. Independent Contractor.** In carrying out its obligations and activities under this Agreement, Contractor is acting as an independent contractor and not as an agent, partner, joint venture or employee of Gunnison County. Contractor does not have any authority to bind Gunnison County in any manner whatsoever. Contractor acknowledges and agrees that Contractor is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County. Further, Contractor is obligated to pay all applicable federal, state and local taxes owed in relation to the services.

**Section 13. Indemnification.** The Contractor shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the County, its elected and appointed officials, officers, employees, and agents, and their insurers, and employees, from and against all liability, claims, demands, suits, actions or proceedings of any kind, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any loss of any kind whatsoever, which arise out of or are in any manner connected with this Contract, including workers' compensation claims, in any way resulting from or arising from the services rendered by the Contractor, its employees, agents or subcontractors, or others for whom the Contractor is legally liable, under this Contract; provided, however, that the Contractor need not indemnify or save harmless the County, its elected and appointed officials, officers, employees, and agents, from damages resulting from the negligence of the County's elected and appointed officials, officers, employees, and agents, and their insurers, and employees. The County cannot and by this Contract does not agree to indemnify, hold harmless, exonerate or assume the defense of the Contractor or any other person or entity whatsoever, for any purpose whatsoever.

The Contractor shall, to the fullest extent permitted by law, defend, investigate, handle, respond to, and provide defense for and defend against, any such liability, claims or demands, at the sole expense of the Contractor, or, at the option of the County, agrees to pay the County or reimburse the County for the defense costs incurred by the County in connection with any such liability, claims or demands. The Contractor shall, to the fullest extent permitted by law, defend and bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent.

This indemnification provision is intended to comply with C.R.S. § 13-21-111.5(6), as amended, and shall be read as broadly as permitted to satisfy that intent.

**Section 14. Insurance.** The Contractor agrees to procure and maintain, during the life of this Contract, a policy or policies of insurance against all liability, claims, demands and other

obligations assumed by the Contractor, pursuant to Section 1 of Exhibit A. Such insurance shall be in addition to any other insurance requirements imposed by this Contract or by law. The Contractor shall not be relieved of any liability, claims, demands or other obligations assumed, pursuant to Section 1 of Exhibit A, by reason of its failure to procure and maintain, during the life of this Contract, insurance in sufficient amounts, durations or types.

The Contractor shall procure and maintain, during the life of this Contract, for itself and any subcontractor, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the County. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Contractor, pursuant to this Agreement. In the case of a claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

a. Workers' Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Contractor during Term of this Agreement. Evidence of qualified self-insured status may be substituted for the workers' compensation requirements of this Paragraph.

b. Commercial General Liability Insurance to be written with a limit of liability of not less than One Million Dollars (\$1,000,000) for all damages arising out of bodily injury, personal injury (including coverage for employee and contractual acts), including death, at any time resulting therefrom, arising out of any one occurrence, and not less than Two Million Dollars (\$2,000,000) general aggregate for all damages arising out of bodily injury, including death, at any time resulting therefrom, during the policy period. This policy shall also include coverage for blanket contractual and independent contractor risks.

The limits of Commercial General Liability Insurance for broad-form property damage (including products and completed operations) shall be not less than One Million Dollars (\$1,000,000) for all damages arising out of injury to or destruction of property in any one occurrence, and not less than Two Million Dollars (\$2,000,000) for all damages arising out of injury to or destruction of property, including the County's property during the policy period.

The Commercial General Liability Insurance policy shall include coverage for explosion, collapse and underground hazards. The policy shall contain a severability of interests provision.

c. Comprehensive Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than One Million Dollars (\$1,000,000) each occurrence, and Two Million Dollars (\$2,000,000) aggregate with respect to each of the Contractor's owned, hired and nonowned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

The policy required by Paragraph b. above shall be endorsed to include the County, whether private or governmental, its officers and employees, and the Engineer and its agents and employees, and any other person(s), company(ies) or entity(ies) deemed necessary by the County as additional insureds. The Contractor shall be solely responsible for any deductible losses under any policy required herein.

Every policy required above shall be primary insurance, with the exception of Workers' Compensation, and any insurance carried by the County, its officers, its employees or its consultants shall be excess and not contributory insurance to that provided by the Contractor. No additional insured endorsement to the policy required by Paragraph b. above shall contain any exclusion for bodily injury or property damage arising from completed operations.

The certificate of insurance provided by the Contractor shall be completed by the Contractor's insurance agent as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect and shall be reviewed and approved by the County prior to commencement of the Contract. No other form of certificate shall be used. The certificate shall identify this Contract and the coverages afforded under the policies. The completed certificate of insurance shall be on file with the County two (2) weeks prior to the date of the Contract and shall be sent to:

Gunnison County Attorney's Office  
200 E. Virginia Ave  
Gunnison, CO 81230

It is the affirmative obligation of the Contractor to notify the County, as provided in this Contract, a copy of the notice, within two (2) business days of the cancellation or substantive change to any insurance policy required under this Contract, and failure to do so shall constitute a breach of this Contract.

Failure on the part of the Contractor to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a material breach of contract upon which the County may immediately terminate this Contract or, at its discretion, the County may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the County shall be repaid by the Contractor to the County upon demand, or the County may offset the cost of the premiums against any monies due to the Contractor from the County.

The County reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

The parties hereto understand and agree that the County, its officers and employees, are relying on and do not waive or intend to waive by any provision of this Agreement the monetary limitations (presently Four Hundred Twenty-Four Thousand Dollars (\$424,000) for any injury to one person in any single occurrence, and One Million One Hundred Ninety-Five Thousand Dollars (\$1,195,000) for any injury to two or more persons in any single occurrence; except that, in such instance, no person may recover in excess of Four Hundred Twenty-Four Thousand Dollars (\$424,000)), which amounts shall be adjusted by an amount reflecting the percentage change over a four-year period in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Denver-Boulder-Greeley, All Items, All Urban Consumers, or its successor index, 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, its officers or employees.

294,317  
(CK)

**Section 15. Performance and Payment Bond.** Contractor shall provide to the County, prior to commencement of performance, a Performance and Payment Bond acceptable to the County in the full amount of Two Hundred Ninety Seven One Hundred Ninety Two Dollars (~~\$2,197,192~~), including provisions for any adjustment thereof in accordance with the terms of this Agreement. Contractor shall obtain such bond on the County's behalf, separate and apart from any similar bonds or surety or warranty agreements entered into independently between the County and any manufacturer or supplier.

Should an Extension(s) or Amendment(s) be completed on this Agreement that increases the amount of the compensation, the Contractor shall request additional bonding capabilities from their Bonding Agent to reflect the amended contract amount as required by C.R.S. § 38-26-106 and the Contractor shall be responsible for paying any fees associated with the increase in the bonding amount. The County shall not be responsible for nor pay for any bonding fee increases.

**Section 16. Government Immunity.** Liability for claims for injuries to persons or property arising from the negligence of the County, its departments, boards, commissions, committees, bureaus, offices, employees, and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§ 24-30-1501, *et seq.*, C.R.S. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

**Section 17. Prohibited Terms.** Any term included in this Agreement that requires the County to indemnify or hold Contractor harmless; requires the County to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of § 24-106-109, C.R.S.

**Section 18. Warranties and Guarantees.** Contractor hereby represents, warrants and guarantees to the County all workmanship, equipment and materials on or made a part of the Project and its structures for a period of one (1) year from and after the date of final acceptance of the work by the County, as provided by this Agreement.

**Section 19. Subcontractors.** All contracts between Contractor and subcontractors shall conform explicitly to all applicable provisions of this Agreement. In all events, Contractor shall be responsible and held liable for any bonding, insurance, warranties, indemnities, progress payments and completion of performance of or to such subcontractors. Upon receipt of progress and final payments from the County, Contractor shall disburse the same immediately to subcontractors without any requirement of the County to supervise the same. The County may, but shall not be obligated to, require Contractor to furnish lien waivers for the work performed or materials furnished by subcontractors or materialmen prior to payment of progress payments or final payment. No contractual relationship shall exist between the County and any subcontractor because of the subletting of any part of the Project work.

**Section 20. Change Order.** There shall be no increase in price or change in the scope of work described herein without a written change order issued by the County along with the County's written assurance that lawful appropriations have been made by the County to cover the cost of

any additional work or materials described in the change order and an Amendment has been completed.

**Section 21. Amendment.** This Agreement may be amended from time to time by agreement between the parties hereto. No amendment, modification or alteration of this Agreement shall be binding upon the parties hereto unless the same is in writing and approved by the duly authorized representatives of each party hereto.

**Section 22. Work Rules.**

a. Contractor shall perform all work hereunder in keeping with the rules and regulations that the County may promulgate at any time for the safe, orderly and efficient conduct of all operations.

b. The County shall have the right to require of Contractor the immediate removal from the Project of any employee of Contractor or of his subcontractors who, in the discretion of the County, is not qualified to perform the work assigned to him, is guilty of improper conduct, or is not working in harmony with the other trades.

c. Nothing contained in this Agreement shall constitute Contractor as being an employee of the County, nor shall any employment relationship between the County and Contractor be created by the terms hereof.

d. Contractor is responsible for the safety of any of its materials, tools, possessions and rented items stored on the job site, and for protection of the Project, and shall hold the County and its authorized representatives harmless from any damage or loss incurred thereto.

e. Contractor shall promptly pay in full for any and all damage caused to the Project site by Contractor or by any subcontractor or other person or entity of any nature furnishing materials, equipment, machinery, supplies, labor, skilled services or instruments for whose actions Contractor is responsible hereunder.

f. No material, equipment, tools, supplies or instruments, other than those belonging to or leased by Contractor, will be removed from the Project site by Contractor without the prior written approval of the County.

g. Contractor agrees to report immediately to the County, in writing, any and all property damage and/or personal injury that occurs on the Project site during the course of Contractor's performance.

**Section 23. Assignment.** Contractor shall not, at any time, assign any interest in this Agreement or the other Contract Documents to any person or entity without the prior written consent of the County. The terms of this Agreement shall inure to and be binding upon the successors and assigns of the parties hereto.

**Section 24. Nondiscrimination.** The Contractor will take affirmative action to not refuse to hire, to discharge, to promote or demote, to harass during the course of employment, or to discriminate in matters of compensation, terms, conditions, or privileges of employment against

any employee, subcontractor, or applicant for employment because of race, color, sex, sexual orientation, gender identity, gender expression, age, religion, disability, national origin or ancestry, as provided by Colo. Rev. Stat. § 24-34-402 (1)(a). Contractor agrees to comply with all applicable Federal and State statutes and regulations concerning non-discrimination.

**Section 25. Severability.** If any term, section or other provision of this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, section or other provision shall not affect any of the remaining provisions of this Agreement.

**Section 26. Waiver.** No waiver by either party of any right, term or condition of this Agreement shall be deemed or construed as a waiver of any other right, term or condition, nor shall a waiver of any breach hereof be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

**Section 27. Personally Identifiable Information (PII).** If the Contractor or any of its Subcontractors will or may receive PII under this Agreement, Contractor shall provide for the security of such PII, in a manner and form acceptable to the County, including, without limitation, non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections and audits. Contractor shall be a "Third-Party Service Provider" as defined in C.R.S. § 24-73-103(1)(i) and shall maintain security procedures and practices consistent with C.R.S. § 24-73-102 and C.R.S. § 24-73-103. In the event Contractor incurs a data breach whereby it is reasonably believed that any of County's PII either could have been, or was compromised, then Contractor shall immediately notify the County in writing and shall abide by C.R.S. § 24-73-101 *et seq.*

**Section 28. Remedies.** None of the remedies provided to either party under this Agreement shall be required to be exhausted or exercised as a prerequisite to resort to any further relief to which such party may then be entitled. Every obligation assumed by, or imposed upon, either party hereto shall be enforceable by any appropriate action, petition or proceeding at law or in equity. In addition to any other remedies provided by law, this Agreement shall be specifically enforceable by either party. This Agreement shall be construed in accordance with the laws of the State of Colorado, and particularly those relating to governmental contracts. Jurisdiction and venue for any legal proceedings related to this Agreement shall exclusively lie in the State of Colorado District Court located in Gunnison County, Colorado. The duties and obligations imposed by this Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law, including, but not limited to, tort remedies. The Contractor agrees that the economic loss rule shall not serve as a limitation on the County's right to pursue tort remedies in addition to other remedies it may have against the Contractor. Such rights and remedies shall survive the acceptance of the Work or any termination of this Agreement. Contractor further specifically waives all the provisions of Chapter 8 of Article 20 of Title 13, Colorado Revised Statutes, regarding defects in the Work under this Agreement.

**Section 29. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one and the same document.



SEAL

**ATTEST: Clerk to the Board**

\_\_\_\_\_

Date: \_\_\_\_\_

**GUNNISON COUNTY**

By: \_\_\_\_\_  
Chair, Board of County Commissioners  
(Or representative authorized by resolution)

**EXHIBIT A to Agreement between the County and Christopher Klein Construction.**  
Project Number; Name Fairgrounds Horse Stalls.

**1. Scope of Services.** The Contractor hereby agrees to and accepts responsibility to perform the following services:

In the event of any conflicts between this Agreement and any attached solicitation documents, this Agreement shall control.

**2. Time of Performance.** The services of the Contractor shall commence (choose one):

- As of the date of this Agreement.
- As specified in a Notice to Proceed to be provided by the County.
- As of the following date: \_\_\_\_\_, 20\_\_\_\_, (this is a workable working day contract; and shall be completed within \_\_\_\_\_ workable working days).

The services of the Contractor shall be completed, or shall end, by June 30th, 2023, at which time the County shall have the option to renew the Agreement for four additional one-year terms under the same terms and conditions of the original Agreement by issuance of an Extension Letter. Continuation of the Agreement beyond the initial period is a County prerogative and not a right of the Contractor and will be exercised only when such continuation is clearly in the best interest of the County.

**3. Compensation.** The County agrees to compensate the Contractor for the performance of services detailed in Section 1 above, Scope of Services, as follows (choose one):

- Phased payments for completed work billed monthly as work is completed and accepted by the County on a percentage basis of the total work.
- Hourly rate: \$ \_\_\_\_\_/hour or as outlined in the attached document.
- Lump sum payment upon completion: \$ \_\_\_\_\_.

It is expressly understood and agreed that the total compensation to be paid to the Contractor under this Agreement shall not exceed ~~\$297,192~~ 294,317

**4. Notices of Termination.** Notices of termination shall be given at least ten (10) days before the effective date of termination. Unless this agreement is amended in writing by a Change Order signed by the County.

## 5. Additional Insurance Requirements.

Protective Liability and Property Damage Insurance covering the liability of the County, including any employee, officer, or agent of the County, with respect to all operations under the Agreement by the Contractor or his subcontractors, shall be procured and maintained during the life of the Agreement. The limits of the County's Protective Liability Policy, to be provided by the Contractor, as described in Section 14, shall be increased to the same limits for the Contractor's Commercial General Liability Insurance. **Check box if required only.**

Professional Liability Insurance is required. If Contractor's scope of work includes the performance of professional services, Contractor shall provide and maintain, for the statute of repose, Professional liability insurance covering any damages caused by an error, omission in performance of the professional services with the required minimum limits of One Million Dollars (\$1,000,000) each claim and Two Million Dollars (\$2,000,000) annual aggregate, and Contractor shall maintain such coverage for at least two (2) years from the termination of this Agreement. **Check box if required only.**

Umbrella Liability Insurance is required: Commercial Umbrella/Excess Liability Insurance for bodily injury and property damage liability must sit over Contractor's primary Employer's Liability, Commercial General Liability and Commercial Automobile Liability with limits of: One Million (\$1,000,000) each occurrence and aggregate. Higher or Lower limits may be required or determined acceptable at the sole discretion of County. **Check box if required only.**

Protected Information: If Contractor's scope of work will include access to Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, Contractor shall maintain Cyber/ Network Security and Privacy Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000) each occurrence; and Two Million Dollars (\$2,000,000) general aggregate to cover civil, regulatory and statutory damages, contractual damage, as well as data breach management exposure, and any loss of income or extra expense as a result of actual or alleged breach, violation or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as confidential information of County. **Check box if required only.**

Pollution Liability: If Contractor's scope of work includes any pollution liability exposure, Contractor must provide and maintain a separate Pollution Liability Insurance policy. Such insurance shall include coverage for the Hold-Harmless or Indemnification Clause contained in this Agreement. Coverage shall include Additional Insured status in favor of County, its agents and employees and a Waiver of Subrogation in favor of additional insured parties the policy shall be written with a limit of liability no less than One Million Dollars (\$1,000,000) each occurrence and aggregate. **Check box if required only.**

Crime Insurance: If Contractor's scope of work includes Contractor or Contractor's employees' involvement with money or securities of County, Contractor shall provide and maintain Commercial Crime coverage for a loss arising out of or in connection with any fraudulent or dishonest act committed by employees of the Contractor, in an amount of not less than One

Million Dollars (\$1,000,000) single limit. Commercial Crime Coverage shall include third party liability coverage and list County as a loss payee. **Check box if required only.**

**Builders Risk:** The Contractor shall purchase and maintain All Risk Builder's Risk insurance upon the entire Project to One Hundred Percent (100%) of the insurable value thereof for the benefit of the Owner and the Contractor. Such insurance shall include any and all direct damage to all structures under construction (including temporary structures) and all materials, supplies, machinery, and equipment at the work site which are or will be incorporated in the work, which is caused by hazards such as but not limited to, the hazards of fire, lightning, wind, earthquake, flood, vandalism, malicious mischief, and other hazards included in a standard Extended Coverage Endorsement. **Check box if required only.**

**Subrogation Waiver:** All insurance policies secured or maintained by Contractor in relation to this contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against the county, its agencies, institutions, organizations, officers, agents, employees, and volunteers. **REQUIRED.**

**Waiver of Workers' Compensation Insurance Requirements. Check box for Sole Proprietors only.**

A Waiver of Workers' Compensation Insurance is required only when a Contractor is a sole proprietor and has no employees. This form must be requested from the Contracts & Procurement Division.

**6. Addresses for Notices.** The addresses for Notices are as follows:

To the County:           Gunnison County Attorney's Office  
                                  200 E. Virginia Ave  
                                  Gunnison, CO 81230

AND

To the Contractor:

**7. Special Conditions.**

No special conditions

Special Conditions are as follows:

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

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**Agenda Item:** Acknowledgement of County Manager's signature; Mem

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**Action Requested:**

**Parties to the Agreement:**

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

Signed on 11/4/22 by CM Birnie, we ask for your acknowledgement of signature on this Memorandum of Agreement between the BOCC, Gunnison Valley Hospital Board of Trustees and the Regional Transportation Authority, which clarifies the way that senior transportation services in the county

**Fiscal Impact:** County is fiscal agent for RTA

**Submitted by:** Melanie Bollig

**Submitter's Email Address:** mbollig@gunnisoncounty.org

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**Finance Review:**

Required

Not Required

Comments:

Invoice must be submitted to RTA who will vouch into Gunnison County Finance system.

Reviewed by: GUNCOUNTY1\PSolheim

Discharge Date: 11/7/2022

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**County Attorney Review:**

Required

Not Required

Comments:

Legally sufficient. MRH

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 11/8/2022

Certificate of Insurance Required

Yes  No

---

**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirnie

Discharge Date: 11/10/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted:

Agenda Date: 11/15/2022

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MEMORANDUM OF AGREEMENT BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO, THE BOARD OF TRUSTEES OF GUNNISON VALLEY HOSPITAL, AND THE REGIONAL TRANSPORTATION AUTHORITY REGARDING SENIOR TRANSPORTATION

THIS MEMORANDUM OF AGREEMENT ("Agreement") made effective the 4<sup>th</sup> day of November 2022, by and between the Board of County Commissioners of the County of Gunnison, Colorado, whose address is 200 East Virginia, Gunnison, CO 81230 (herein "Gunnison County") and the Board of Trustees of Gunnison Valley Hospital, on behalf of the Gunnison Valley Health Senior Care Center ("Senior Care Center") and the Gunnison Valley Transportation Authority, a political subdivision of the State of Colorado (herein "RTA").

RECITALS

Senior Care Center provides professional services regarding transportation of seniors ("Services").

RTA desires to engage the Services provided by Senior Care Center. Gunnison County provides fiscal agent services for the RTA.

Consistent with Gunnison County's strategic goals and because it remains in the public interest, Gunnison County agrees to serve as fiscal agent in relation to the Services under the terms of this Agreement.

AGREEMENT

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

1. SERVICES.

Senior Care Center shall furnish all vehicles, materials, labor, supervision, supplies and equipment to commence, diligently pursue, and complete the Services. All Services shall be performed in a timely manner and in accordance with generally accepted standards for Senior Care Center's profession and all applicable federal, state and local laws and regulations affecting the Services or their subject matter. Senior Care Center acknowledges that this is a non-exclusive Agreement, and Gunnison County may contract with additional or other providers able to furnish the same or similar services as it deems appropriate to do so.

2. TERM.

The term of this Agreement shall commence on January 1, 2023 and shall terminate on December 31, 2023 unless sooner terminated or replaced as provided herein.

### 3. COMPENSATION, BONUS AND EXPENSES.

In consideration and exchange for Senior Care Center performance of the Services, during the Term, the RTA hereby appoints Gunnison County as its fiscal agent, and the RTA, through Gunnison County, shall pay Senior Care Center Senior Care Center fees as more specifically not to exceed Three Hundred Thousand Dollars and No/100 U. S. Dollars (\$300,000.00). Payment shall be made by Gunnison County to Senior Care Center within 45 days of receipt of an invoice. Any expenditures in excess of this amount must be pre-approved in writing by the RTA through its Executive Director.

The Compensation shall compensate Senior Care Center for all charges, expenses, overhead, payroll costs, employee benefits, insurance subsistence, and profits, except as specifically set forth in this Agreement. For the avoidance of doubt, Gunnison County is not obliged to pay the Compensation, only to serve as fiscal agent under the terms of this Agreement. To the extent necessary and appropriate, the RTA shall reimburse Gunnison County for all payments made under this Agreement within a reasonable time after Gunnison County pays the Senior Care Center for Services.

### 4. INSURANCE.

Senior Care Center agrees that at all times during the Term of this Agreement, and for three (3) years after the date the Term of this Agreement expires or the date this Agreement is terminated, or any applicable warranty period, Senior Care Center shall maintain, in full force and effect and at its sole cost and expense, the following insurance policies. Within thirty (30) days of the execution of this Agreement, Senior Care Center will provide insurance certificates to Gunnison County, listing Gunnison County and RTA as an additional insured, for the coverages required by this paragraph, which shall state that such policies shall not be materially changed or cancelled without thirty (30) days prior notice to Gunnison County and RTA. Written notice shall be sent to the parties identified in the Notices section of this Agreement and sent thirty (30) days prior to any cancellation or non-renewal unless due to non-payment of premiums, in which case, notice shall be sent ten (10) days prior. If written notice is unavailable from the insurer, Senior Care Center shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s).

- a. Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Senior Care Center during the term of this Agreement.
- b. Comprehensive General Liability Insurance or the equivalent in an amount no less than Four Hundred Twenty-Four Thousand and No/100 U.S. Dollars (\$424,000.00) for injury to one person in any single occurrence; and no less than One Million One Hundred

Ninety-Five Thousand and No/100 U.S. Dollars (\$1,195,000.00) for injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate).

- c. Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than Four Hundred Twenty-Four Thousand and No/100 U.S. Dollars (\$424,000.00) for injury to one person in any single occurrence; and no less than One Million One Hundred Ninety-Five Thousand and No/100 U.S. Dollars (\$1,195,000.00) for injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate).
- d. Professional Liability Insurance or the equivalent, such as Errors and Omissions coverage, in an amount no less than Four Hundred Twenty-Four Thousand and No/100 U.S. Dollars (\$424,000.00) for injury to one person in any single occurrence; and no less than One Million One Hundred Ninety-Five Thousand and No/100 U.S. Dollars (\$1,195,000.00) for any injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate).

The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado. Combinations of primary and excess coverage may be used to achieve minimum coverage limits. Excess/umbrella policy(ies) must follow form of the primary policy(ies) with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance. The County's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Senior Care Center's breach of this Agreement or of any of the County's or the RTA's rights or remedies under this Agreement.

If excluded from any policy coverage, this Agreement shall be specifically named an insured contract. If any policy is in excess of a deductible or self-insured retention, the County and the RTA must be notified by the Senior Care Center. Senior Care Center shall be responsible for the payment of any deductible or self-insured retention. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance. A severability of interests or separation of insureds provision (no insured versus insured exclusion) must be included. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the County or the RTA, excluding Professional Liability and Workers Compensation policies, if required.

For all coverages required under this Agreement, Senior Care Center's insurer(s) shall waive subrogation rights against the County and the RTA by policy endorsement. All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Senior Care Center. Senior Care Center shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Senior Care Center agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the County or the RTA.

The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Senior Care Center to the County or the RTA under this Agreement. The Senior Care Center shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

The insurance provisions of this Agreement shall survive expiration or termination of this Agreement.

5. INDEPENDENT CONTRACTOR.

In carrying out its obligations and activities under this Agreement, Senior Care Center is acting as an independent Senior Care Center and not as an agent, partner, joint venture or employee of Gunnison County or the RTA. Senior Care Center does not have any authority to bind Gunnison County or the RTA in any manner whatsoever.

**Senior Care Center acknowledges and agrees that Senior Care Center is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County or the RTA.** Further, Senior Care Center is obligated to pay all applicable federal, state and local taxes owed in relation to the services.

6. INDEMNIFICATION.

Senior Care Center irrevocably and unconditionally agrees to indemnify, defend and hold harmless Gunnison County and the RTA, their Commissioners, agents and employees of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) arising out of or related to any loss, cost, damage or injury, including death, of any person or damage to property of any kind caused by the misconduct or negligent acts, errors or omissions of Senior Care Center or its employees, subcontractors or agents in connection with this Agreement. Further, the County and the RTA shall not be liable to Senior Care Center or its affiliates for any loss of anticipated business opportunities, contracts, revenues, profits or savings; damage to goodwill or reputation; or indirect, special or consequential loss or damage, arising out of or in connection with this Agreement, whether for breach of contract, in tort (including negligence), under statute or any other law, and Senior Care Center expressly disclaims any such claims or damages as against the County or the RTA.

In case of any claim that is subject to indemnification under this Agreement, Senior Care Center will provide the County and the RTA reasonably prompt notice of the relevant claim. Senior Care Center will defend or settle, at its own expense, any demand, action, or suit on any claim subject to indemnification under this Agreement, through legal counsel selected by Senior Care Center but approved by the County and the RTA. Each party will cooperate in good faith with the other to facilitate the defense of any such claim and the County and the RTA will tender

the defense and settlement of any action or proceeding covered by this Section to Senior Care Center or upon request. Claims may be settled without the consent of the County or the RTA, unless the settlement includes an admission of wrongdoing, fault or liability by the County or the RTA, whether express or implied.

This defense and indemnification obligation shall survive any termination or expiration of this Agreement.

7. DISCRIMINATION.

The Senior Care Center agrees to not discriminate against any person or class of persons by reason of age, race, color, sex, creed, religion, disability, national origin, sexual orientation or political affiliation in providing any services or in the use of any facilities provided for the public in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. Senior Care Center shall further comply with the letter and spirit of the Colorado Anti-Discrimination Act of 1957, as amended, and any other laws and regulations respecting discrimination in unfair employment practices. Additionally, Senior Care Center shall comply with such enforcement procedures as any governmental authority might demand that Gunnison County take for the purpose of complying with any such laws and regulations.

8. AMERICANS WITH DISABILITIES ACT COMPLIANCE.

The Senior Care Center represents and warrants to Gunnison County and the RTA that at all times during the performance of this Agreement no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by the Senior Care Center, or be subjected to any discrimination by the Senior Care Center upon which assurance Gunnison County and the RTA rely.

9. MISCELLANEOUS.

- a. SEVERABILITY. If any clause or provision of this 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 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. The parties hereto understand and agree that the County is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, et seq., C.R.S. Nothing in this Agreement is, or shall be construed to be, a waiver, in whole or part, by Gunnison County or the RTA of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

- d. **LEGAL AUTHORITY.** Senior Care Center represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Senior Care Center represents and warrants that he has been fully authorized by Senior Care Center to execute the Agreement on behalf of Senior Care Center and to validly and legally bind Senior Care Center to all the terms, performances and provisions of the Agreement. The County and the RTA shall have the right, in their sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Senior Care Center or the person signing the Agreement to enter into the Agreement.
- e. **NO CONSTRUCTION AGAINST DRAFTING PARTY.** The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.
- f. **ORDER OF PRECEDENCE.** In the event of any conflicts between the language of the Agreement and any exhibits to it, the language of the Agreement controls.
- g. **SURVIVAL OF CERTAIN PROVISIONS.** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Senior Care Center's obligations to provide insurance and to indemnify the County and the RTA will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.
- h. **INUREMENT.** The rights and obligations of the parties herein set forth shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns permitted under this Agreement.
- i. **TIME IS OF THE ESSENCE.** The parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.
- j. **PARAGRAPH HEADINGS.** The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

**10. DELEGATION AND ASSIGNMENT.**

Senior Care Center shall not delegate or assign its duties under this Agreement without the prior written consent of Gunnison County and RTA which consent Gunnison County and RTA

may withhold in its discretion. Subject to the foregoing, the terms, covenants and conditions of this Agreement shall be binding on the successors and assigns of either party.

#### 11. TERMINATION.

Either party shall have the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other. Upon termination, Senior Care Center shall be entitled to compensation for Services performed prior to the date of termination, per the compensation terms provided in this Agreement. Termination shall not affect or prejudice any rights or other remedy that a party may have with respect to the event giving rise to termination or any other rights or other remedy a party may have with respect to breach of this Agreement which existed at or before the date of termination.

#### 12. OWNERSHIP OF PROPERTY.

Any work product, information, materials, goods, or intellectual property generated as a result of the Services shall become the sole and exclusive property of the County, and Senior Care Center agrees to relinquish any rights, implied or otherwise, to such property, including but not limited to any resulting intellectual property rights.

#### 13. WARRANTIES.

Senior Care Center represents and warrants to the County and the RTA as follows:

- a. The Services shall conform to applicable specifications and will be free from deficiencies and defects in materials, workmanship, design or performance, as applicable.
- b. All Services shall be performed by qualified personnel in a professional and workmanlike manner, consistent with industry standards.
- c. Senior Care Center has the requisite ownership, rights and licenses to perform its obligations under this Agreement and to perform the Services free and clear from all liens, adverse claims, encumbrances and interests of any third party.
- d. There are no pending or threatened lawsuits, claims, disputes or actions adversely affecting the Services or Senior Care Center's ability to perform its obligations under this Agreement.
- e. Performance of the Services shall not violate, infringe, or misappropriate any patent, copyright, trademark, trade secret, or other intellectual property or proprietary right of any third party.
- f. Senior Care Center has the right to and shall assign to County and the RTA all third-party warranties and indemnities that Senior Care Center receives in connection with any of

the Services provided to County and the RTA. To the extent that Senior Care Center is not permitted to assign any warranties or indemnities to the County and the RTA, Senior Care Center agrees to specifically identify and enforce those warranties and indemnities on behalf of County and the RTA to the extent Senior Care Center is permitted to do so under the terms of the applicable third-party agreements.

14. WHEN RIGHTS AND REMEDIES NOT WAIVED.

In no event shall any action by either party constitute or be construed to be a waiver by the other party of any breach of covenant or default which may then exist on the part of the party alleged to be in breach, and the non-breaching party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

15. NO THIRD-PARTY BENEFICIARY.

Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the County, the RTA or the Senior Care Center receiving benefits pursuant to the Agreement is an incidental beneficiary only.

16. CONFLICT OF INTEREST.

The signatories to this Agreement aver to their knowledge, no employee of the County or the RTA has any personal or beneficial interest whatsoever in the Services. Senior Care Center has no beneficial interest, direct or indirect, that would conflict in any manner or degree with the performance of the Services, and Senior Care Center shall not employ any person having such known interests. The Senior Care Center shall also not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Senior Care Center represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Senior Care Center by placing the Senior Care Center's own interests, or the interests of any party with whom the Senior Care Center has a contractual arrangement, in conflict with those of the County or the RTA. The County, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Senior Care Center written notice describing the conflict.

17. FORCE MAJEURE.

Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of an unforeseeable event outside the

control of such party, and not caused by such party's negligence, including war or armed conflict, fire, flood, strike, riot or insurrection, terrorist attack, nuclear, chemical or biological attack, natural disaster, martial law, unreasonable delay of carriers, governmental order or regulation; PROVIDED, HOWEVER, the any delay caused by the COVID-19 Pandemic (or Endemic), or any other communicable disease pandemic or endemic, shall NOT be considered a force majeure event. If a force major event occurs, the time for performance shall be extended by mutual agreement of the parties for a period of time as may be reasonably necessary to compensate for such delay, provided that if such performance still cannot be completed within such extended period of time, either party may terminate this Agreement and both parties will be released from any further obligation to the other.

#### 18. NOTICES.

Any notice, demand or communication which either party may desire or be required to give to the other party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally or sent by certified first class US mail, postage prepaid, addressed as follows:

Gunnison County: County Manager  
Gunnison County  
200 E. Virginia  
Gunnison, Colorado 81230  
Phone: 970-641-0248

With a copy to: Board of County Commissioners  
of the County of Gunnison, Colorado  
200 E. Virginia  
Gunnison, Colorado 81230

Scott Truex, Executive Director  
Gunnison Valley Rural Transportation Authority  
PO Box 1911  
Crested Butte, CO 81224

Senior Care Center: Mary Blattner, Administrator  
Gunnison Valley Health Senior Care Center  
1500 W. Tomichi  
Gunnison, CO 81230

Either party has the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

#### 19. GOVERNING LAW.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Jurisdiction and venue for any legal proceedings related to this Agreement shall exclusively lie in the State of Colorado District Court located in Gunnison County, Colorado.

20. COUNTERPARTS: FACSIMILE AND ELECTRONIC TRANSMISSION.

This Agreement may be executed by facsimile and/or in any number of counterparts, any or all of which may contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the parties as though originally executed on one originally executed document. All facsimile counterparts shall be promptly followed with delivery of original executed counterparts.

This Agreement may also be executed by electronic means or signatures. Accordingly, the Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the County in the manner specified by the County. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

The parties agree that: (i) any notice or communication transmitted by electronic transmission, as defined below, shall be treated in all manner and respects as an original written document; (ii) any such notice or communication shall be considered to have the same binding and legal effect as an original document; and (iii) at the request of either party, any such notice or communication shall be re-delivered or re-executed, as appropriate, by the party in its original form. For purposes of this Agreement, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, but specifically excluding text or instant messages.

21. ENTIRE AGREEMENT.

This Agreement comprises the entire agreement between County, the RTA and Senior Care Center and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. No amendment to or modification of this Agreement will be binding unless in writing and signed by an authorized representative of each party.

Notwithstanding anything to the contrary herein, the County shall not be subject to any provision included in any terms, conditions, or agreements appearing on Senior Care Center's or a subcontractor's website or any provision incorporated into any click-through or online agreements related to the work unless that provision is specifically referenced in this Agreement.

22. RECORDS.

Senior Care Center shall maintain for a minimum of three (3) years, adequate financial and other records for reporting to County. Senior Care Center shall be subject to financial audit by federal, state or county auditors or their designees. Senior Care Center authorizes such audits and inspections of records during normal business hours, upon forty-eight (48) hours' notice to Senior Care Center. Senior Care Center shall fully cooperate during such audit or inspections.

23. PUBLIC RECORD.

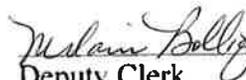
To the extent not prohibited by state or federal law, this Agreement is potentially subject to public release through the Colorado Open Records Act. The parties further acknowledge and understand that all work product or materials provided or produced under this Agreement, including items marked Proprietary or Confidential, may be subject to the Colorado Open Records Act., § 24-72-201, et seq., C.R.S.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date above written.

BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF GUNNISON, COLORADO

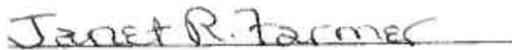
By:   
Matthew Birnie, County Manager

ATTEST:

  
Deputy Clerk



Gunnison Valley Rural Transportation Authority

By:   
Janet Farmer, Board Chair

Board of Trustees of Gunnison Valley Hospital  
on behalf of the Gunnison Valley Health Senior Care Center

By:   
Mary Blattner, Administrator

11-4-22

APPENDIX "A"

SCOPE OF SERVICES

Senior Care Center shall perform and provide the following services:

- Provide transportation services to senior citizens of Gunnison County, who reside within the identified service area, on a regularly scheduled basis.
- Work with necessary County and RTA staff to ensure all required compliance related to transportation program is met, including:
  - Provide required compliance for driving personnel (background checks, annual evaluations, etc.).
  - Maintain required transportation logs.
  - Assist in collection of donated transportation monies.

Regional Transportation Authority shall perform and provide the following services:

- Funding to the Senior Care Center in the amount not to exceed \$300,000.00 for transportation services to Seniors of Gunnison County, within the identified service area.

Gunnison County shall perform and provide the following services:

- Provide fiscal agent service to the RTA for this contract, including the payment of vouchers for services to the Senior Care Center.
- Provide personnel to process referrals to the bus service so long as such personnel are available at the County's sole discretion.
- Provide regular and unscheduled maintenance on senior transportation vehicles (in addition to regular reimbursement) so long as parts, equipment, supplies and personnel are available to provide such maintenance at the County's sole discretion.

**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

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**Agenda Item:** Approval for Employer Application for Group Insura

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**Action Requested:** County Manager Signature

**Parties to the Agreement:**

**Term Begins:** January 1, 2023

**Term Ends:**

**Grant Contract #:**

**Summary:**

New Provider for 2023 Life/AD&D Insurance and Short-Term Disability. Signature request on application and electronic consent forms.

**Fiscal Impact:**

**Submitted by:** Lauren Trautz

**Submitter's Email Address:** ltrautz@gunnisoncounty.org

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**Finance Review:**

Required

Not Required

Comments:

Reviewed by:

Discharge Date:

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**County Attorney Review:**

Required

Not Required

Comments:

appears legally sufficient. MRH

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 11/8/2022

Certificate of Insurance Required

Yes  No

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**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 11/10/2022

Consent Agenda     Regular Agenda     Worksession

Time Allotted:

Agenda Date: 11/15/2022

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Mailing Address: Des Moines, IA 50392-0002 | Principal Life Insurance Company | Employer Application for Group Insurance - CO

PLEASE USE BLACK INK

To avoid processing delays, please make sure you answer all questions completely and accurately. For an amendment to an existing account, if no changes are noted in the sections below, current elections will remain in effect.

This form is for: [X] new case [ ] amendment Account number \_\_\_\_\_

Requested effective date: 01/01/2023

Employer Information (if this is an amendment, only complete information that is changing)

Table with 2 columns: Legal name of company (Gunnison County), Federal tax ID number (846000770), DBA name (if applicable)

Table with 4 columns: Physical street address (200 East Virginia), City (Gunnison), State (CO), ZIP code (81230)

Affiliate/Subsidiary Information (if this is an amendment, only complete information that is changing)

Are employees of any associated business organizations (e.g. parent-subsidiary, brother-sister relationships, affiliated groups, etc.) to be covered? [ ] yes [X] no If yes, please list the affiliate or subsidiary below.

Participating unit is an entity that is an affiliate or subsidiary related to the employer through common control or ownership.

Table with 4 columns: Unit name/address/federal tax ID, Nature of business, Relationship to company, Number of employees. Rows 1 and 2 are empty.

Request for Benefits (if adding new coverage(s) to an existing account, provide new proposal number)

By signing this Application form, you are confirming that you agree with all the benefit plan provisions that you are applying for as outlined in your proposal # 09122210737-14. Do you agree? [X] yes [ ] no

THIS IS A LIMITED BENEFIT HEALTH COVERAGE POLICY AND IS NOT A SUBSTITUTE FOR MAJOR MEDICAL COVERAGE. LACK OF MAJOR MEDICAL COVERAGE (OR OTHER MINIMUM ESSENTIAL COVERAGE) MAY RESULT IN AN ADDITIONAL PAYMENT WITH YOUR TAXES.

Employee Eligibility (if this is an amendment, only complete information that is changing)

- [X] standard - An employee must work at least 30 hours per week to be eligible for insurance.
[ ] other (select between 20 and 40 hours): \_\_\_\_\_

Do you have employees or their dependents residing or working outside the United States and requesting coverage?

[ ] yes [X] no If yes, please include a separate sheet including their name(s), dates of birth, salary and class of employee, where they are located and how long they will be located there for work.

It is understood that Principal Life shall not be responsible for any tax or legal aspects of the plan. The employer assumes responsibility for these matters. The employer acknowledges that they have counseled to the extent necessary with selected legal and tax advisors. The obligations of Principal Life shall be governed solely by the provisions of its contracts and policies. Principal Life shall not be required to look into any action taken by the named fiduciary or the employer and shall be fully protected in taking, permitting, or omitting any action on the basis of the employer's actions. Principal Life shall incur no liability or responsibility for carrying out actions as directed by the named fiduciary or the employer.

It is further understood that by signing this application, the employer is purchasing insurance and not making an investment. No reserves, undeclared or unpaid experience premium refunds, or interest with respect to claim payments, nor claim proceeds themselves shall be considered plan assets under ERISA.

The Employee Retirement Income Security Act of 1974 (ERISA) requires that each employee benefit plan subject to the Act designate a "Named Fiduciary who shall have authority to control and manage the operation and administration of the plan."

**If this plan is subject to ERISA, you must indicate a Named Fiduciary for this plan. Principal Life may not be designated as Named Fiduciary.**

- The employer has been informed of the eligibility requirements. The employer agrees that insurance applied for shall not become effective or remain effective unless the employer: a) is actively engaged in business for profit within the meaning of the Internal Revenue Code, or is established as a legitimate nonprofit organization within the meaning of the Internal Revenue Code; or is a government agency; and b) meets the participation and contribution requirements.
- The employer agrees that insurance applied for shall not become effective unless the application and any attached page(s) are received, accepted and approved by Principal Life. The employer acknowledges and understands that if this application is approved, the group policy will determine all rights and benefits.
- The preexisting condition restrictions for critical illness and long term disability insurance have been explained to and understood by the employer. Actively at work and period of limited activity for life, disability and critical illness coverage have been explained to and understood by the employer.
- The employer understands receipt and deposit of advanced payment is not a guarantee of coverage. If a policy is issued from this application and is accepted by the proposed policyholder, we will apply the premium deposit to the first premium due for such policy. If no policy is put into force, the premium deposit will be refunded. Premium payment will be monthly unless otherwise indicated.
- Acceptance by the employer of any policy or policies issued with this application shall constitute approval of any corrections, additions, or changes specified in the space "For Principal Life Use Only" or as otherwise indicated on this application.
- The employer understands that the insurance policy and certificates of coverage may, at the discretion of Principal Life, be provided to the employer in paper or electronic format. The employer agrees to promptly distribute the certificates of coverage to insured employees at the beginning of their coverage under the group policy and to redistribute them from time to time thereafter as reasonably required by Principal Life.
- Your agent or broker cannot change or waive any provision of this application or the policy or policies without the written approval of an officer of Principal Life in the home office.
- As a result of this sale and any subsequent renewal, your broker and marketing organization, if any, may receive commissions, administrative service fees, other compensation including non-cash compensation, and bonuses based on factors such as, volume of new sales, member and case counts, total premium volume, maintaining a certain percentage of business with Principal Life, selling a certain mix of products, and/or the profitability of the business. The cost of this compensation may be directly or indirectly reflected in the premium or fee for the product(s) you have applied for on this application form. This compensation is in addition to any compensation the broker may receive from you. Contact us at 1-800-388-4793 for further details on your case. We have placed a more detailed description of our compensation programs on [www.principal.com/group/compensation](http://www.principal.com/group/compensation).
- The person signing this form for the employer has legal authority to bind the employer for whom application is being made.
- The employer agrees to make timely notification of any employee termination, status change, or other material changes that may affect the eligibility of employees or their dependents. Timely notification is no more than 31 days past the actual date of such change.

- The employer understands that failure to pay premium when due will be considered a default in premium payment and coverage will terminate at the end of the grace period. If coverage is terminated for nonpayment of premium, premium through the grace period is due and will be collected. The employer understands that coverage may also be terminated for other reasons as provided in the group policy.
- The employer understands their rights and responsibilities if electing self accounting status.

It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.

Employer (company name)

Signed by (must be an officer)	Officer's title	Date signed
<b>X</b>		

Printed officer name

Signature of licensed resident agent(s) (individual/firm)	Agent's license number	Date signed
<b>X</b>		

Licensed resident agent(s) printed name(s)

Signature of soliciting agent(s) (If more than one, all must sign.)	Date signed
<b>X</b>	

Soliciting agent(s) printed name(s)

**For Principal Life Use Only**



Mailing Address:  
Des Moines, IA 50392-0002

Principal Life  
Insurance Company

**Addendum to Employer  
Application  
for Group Insurance**

**PLEASE USE BLACK INK**

To avoid processing delays, please make sure you answer all questions completely and accurately.

This form is for:  new case  amendment to add Life/Disability/Critical Illness Account number \_\_\_\_\_

**Life/Disability/Critical Illness**

If requesting life, disability or critical illness insurance, are there any employees not Actively at Work?  yes  no

If yes, please list employees not Actively at Work, reason not Actively at Work, their last day worked and expected return to work date.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Signatures**

Employer (company name)

Signed by (must be an officer)

Officer's title

Date signed

**X**

Printed officer name



## Policyholder Responsibilities and Electronic Consent

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Doing business electronically makes sense in today's world. Not only does it create a more efficient process for you, it allows quicker updates and eliminates stacks of paperwork. Please enter a few pieces of information below and sign at the bottom. If you would like paper copies of booklets or billing statements, please contact your local sales office. Thanks for your willingness to utilize our online services.

**Company's legal name (include Doing Business As), known as "Policyholder":**

Gunnison County

---

**Account number/s:** \_\_\_\_\_

### I. Establishment/Definitions

- A. Principal Life Insurance Company (Principal Life) has issued one or more group insurance policies ("policies") to the Policyholder.
- B. Policyholder requests that certain administrative functions, as specified below, be performed electronically. Policyholder desires that records and information relating to the policies be sent and received using Electronic Records, consistent with applicable law. Both Policyholder and Principal Life are prepared to administer various policy terms and provisions via Electronic Records, including the use of Electronic Signatures.
- C. "Audit Trail" means documentation and Electronic Records evidencing the delivery, display, consent to, and/or signing, and ongoing integrity and accuracy, of Electronic Records that are consented to, delivered to, or signed by, applicant(s) electronically.
- D. "Electronic Record" means information that is stored in an electronic medium and is retrievable in perceivable form.
- E. "Electronic Signature" means an electronic sound, symbol, or process, attached to or logically associated with a contract or other Electronic Record and executed or adopted by a person with the intent to sign the Electronic Record.
- F. "Participant" means employees and their eligible dependents who are covered under a group insurance policy issued by Principal Life.

### II. Administrative Functions

#### A. Paperless Booklets, Certificates, and Policies

The Policyholder :

- a. Provide electronic media access (desktop internet, kiosk, public PC) to allow participants access to the Principal Life web site for viewing their booklet/certificate.
- b. Furnish paper copies of the booklet/certificate, and any other plan documents, to all participants who do not have access to electronic media.
- c. Upon termination of the insurance agreement with Principal Life, inform all participants and beneficiaries of the termination and that the booklet/certificate will remain on-line for a limited period of time (3 months) following the termination date.
- d. Hold Principal Life Insurance Company harmless from any damages resulting from the employer's failure to take the necessary steps to make the documents available electronically.

#### B. Electronic Records

The Policyholder shall:

- a. Obtain completed group enrollment data (with a valid signature) from each eligible participant applying for or waiving coverage, or for coverage increases or decreases, and provide Principal Life with such enrollment data via electronic means whenever possible.
- b. Maintain the enrollment records and other necessary records to enable Principal Life to determine the current job class, benefits, home addresses of participants, and termination date for each participant.
- c. Maintain current beneficiary designations and changes in beneficiary designations.
- d. Preserve signed Electronic Records and accompanying Audit Trails evidencing the electronic presentation and signing process.

#### C. Paperless Bills

The Policyholder agrees:

- a. To provide the Policyholder's email address for Principal to use to notify them the bill is available for viewing on the Principal Life web site.
- b. The date and time Principal Life sends the email notifying them the bill is available is also the date and time the Policyholder receives the notice.
- c. Principal Life has no liability for billing email notification transmission errors.
- d. To view the bill on the Principal Life web site promptly after receiving email notification.
- e. To save and/or print the bill as needed for their records.
- f. Paper bills won't be sent by United States postal mail or any other courier service.
- g. Contractual provisions related to non-payment of the bill as described in the policies apply.

### III. General Provisions

- A. The Policyholder shall:
  - a. Execute this agreement consistent with all Federal Laws, your State laws, including, but not limited to ERISA and
  - b. Meet any necessary disclosure and timing obligations under such law(s); and
  - c. Ensure that the system used by the Policyholder to furnish documents to participants results in actual receipt of the electronic documents.
  - d. Agree to request a PIN to access the Principal Life's eService application.
  - e. Ensure that the processes employed for (i) delivering and presenting a document to a representative of the Policyholder or a Participant as an Electronic Record, and (ii) creating any Electronic Signatures on such Electronic Records submitted to Principal Life by Policyholder or its Participants, comply with all applicable laws and regulations, including without limitation the federal Electronic Signatures in Global and National Commerce Act ("ESIGN" or "ESIGN Act") and all applicable state laws governing the use of electronic records and signatures, including without limitation the applicable state's version of the Uniform Electronic Transactions Act ("UETA") or similar state electronic signature laws. Employ commercially reasonable standards for utilizing Electronic Records and Electronic Signatures in connection with documents signed electronically and submitted to Principal Life, including (i) establishing authentication procedures for signers that will facilitate attributing an Electronic Signature to the signer, (ii) effectively presenting Electronic Records for review and signature, (iii) establishing the signer's intent to create an Electronic Signature, (iv) preserving the integrity of the Electronic Records during and after the signing process, and (v) providing the signer with an opportunity to retain a copy of the signed Electronic Record.
- B. The Policyholder will cooperate with reasonable requests by Principal Life for written or electronic documentation, testimonial, affidavit or other support to evidence (i) compliance with the terms of this Agreement and (ii) transactions authorized by this Agreement. Policyholder will cooperate with any reasonable requests by Principal Life to use system records, written documentation or other materials which are owned or in the possession of Policyholder and may be required by Principal Life for potential use in litigation support, for the purpose of internal and external audits and controls, and for compliance with regulatory requirements.
- C. There is no employer-employee or agency relationship between the Policyholder and Principal Life. The duties and obligations of this agreement are neither assignable nor transferable by either party without the consent, in writing, of the other party.
- D. If a Policyholder with a self-funded Plan requests Principal Life post the self-funded Plan benefit booklet summaries on Principal Life's website, Principal Life will be doing so as a convenience to Policyholder and Principal Life is not taking on any Plan Administrator duties related to the distribution of Summary Plan Descriptions (SPDs) or other ERISA-required reports or disclosures. Principal Life does not warrant that the posting of the documents on its website will satisfy any of the requirements of ERISA, even if it is informed that Policyholder wishes to use the website for that purpose. Principal Life, at its discretion, may use disclaimers and other notices in connection with the display of the documents to make it clear that Principal Life is not the plan insurer or Plan Administrator and that the Policyholder is solely responsible for the content and currency of the documents.
- E. Principal Life will provide HIPAA Privacy Notices to the Policyholder who will then distribute to their employees.
- F. The Policyholder and Principal Life acknowledge and agree that whenever electronic transactions are not possible, transactions will be conducted in a manner that is consistent with insurance industry standards.
- G. This agreement may be amended by mutual consent, in writing, by the Policyholder and Principal Life.
- H. This agreement will continue until it is terminated. This Agreement will terminate automatically without notice upon termination of all Policies the Policyholder has with Principal Life. This agreement may be terminated upon notice by either the Policyholder or Principal Life. The Policyholder may terminate this agreement by notifying Principal Life in writing at the address listed at the bottom of this form. Termination of this agreement does not relieve the Policyholder of its obligations under applicable state or federal law. The duties described in Paragraph II.A.c of this Agreement shall remain in effect until such time as they are fully satisfied.
- I. Policyholder and Principal Life acknowledge and agree that Electronic Records and Electronic Signatures, as well as facsimile signatures, may be used in connection with the execution of certain documents in connection with the Plan, including but not limited to policy application, enrollment forms, and statements of health ("Documents") and shall be legal and binding and shall have the same full force and effect as if a paper original of the Documents had been signed using a handwritten signature. Policyholder and Principal Life (i) intend to be bound by the signatures (whether original, faxed or electronic) on any Document sent or delivered by facsimile, electronic mail, or other electronic means, (ii) are aware that the other party will rely on such signatures, and (iii) hereby waive any defenses to the enforcement of the terms of a Document based on the foregoing forms of signature.
- J. The Policyholder may request paper copies of electronically signed or delivered documents by contacting Principal Life at the address listed at the bottom of this form.

\_\_\_\_\_  
Signature of Policyholder's authorized representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed name of signer

\_\_\_\_\_  
Title

Principal Life Insurance Company  
Des Moines, IA 50392-0002  
[www.principal.com](http://www.principal.com)

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**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

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**Agenda Item:** Approval for amended County Aid Agreement; Gunniso

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**Action Requested:** County Manager Signature

**Parties to the Agreement:**

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

Amendment to Original MOA executed in January 2022 for GVAWL. The amount Budgeted for this MOA was supposed to be \$11,000, instead of \$6,000 that was stated on the first executed contract.

**Fiscal Impact:**

**Submitted by:** Donita Bishop

**Submitter's Email Address:** dbishop@gunnisoncounty.org

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**Finance Review:**

Required

Not Required

Comments:

Reviewed by: GUNCOUNTY1\PSolheim

Discharge Date: 11/9/2022

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**County Attorney Review:**

Required

Not Required

Comments:

Legally sufficient. MRH

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 11/8/2022

Certificate of Insurance Required

Yes  No

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**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 11/10/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted:

Agenda Date: 11/15/2022

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**COUNTY AID AGREEMENT**

**Project Title:** GUNNISON VALLEY ANIMAL WELFARE LEAGUE

**Award Period:** JANUARY 1, 2022 TO DECEMBER 31, 2022

**Award:** \$11,000

PARTIES TO AGREEMENT

**GUNNISON COUNTY:** The Board of County Commissioners of the County of Gunnison, State of Colorado (the “Board”, the “County” or “Gunnison County”)

**Address:** 200 E Virginia Ave  
Gunnison CO 81230

**Telephone:** (970) 641-0248

**Facsimile:** (970) 641-3061

**RECIPIENT:**

**Address:** Gunnison Valley Animal Welfare League  
PO Box 1834  
Gunnison, Colorado 81230

**Contact Name:** Erica Bendixen

**Telephone:** ( ) -

**Email:** \_\_\_\_\_

Recipient

RECITALS

WHEREAS the County appropriates funds to be used by various nonprofit agencies and other governmental entities for the purpose of benefitting Gunnison County residents;

WHEREAS the Recipient has requested funding for a program that benefits County residents and/or visitors; and

WHEREAS the Recipient agrees that all funds received from the County will be expended for the purposes described in this Agreement;

AGREEMENT

NOW, THEREFORE, in consideration of the parties’ mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- Incorporation of Recitals.** The recitals set forth above and all exhibits are hereby incorporated herein.

2. **Award.** Subject to the terms and conditions set forth in this Agreement, the Board hereby awards to Recipient a sum not to exceed Eleven Thousand and No/100 U.S. **dollars (\$11,000)** (the “Award”). The Award shall be used by Recipient to assist the County consistent with Recipient’s current mission and operations and to help promote the County’s Healthy Communities strategy, as outlined in the Gunnison County Strategic Plan.
3. **Project Scope.** Recipient shall not materially modify the Project without the prior written approval of the Board. Any material modification to the Project undertaken without the Board’s prior written consent may be deemed a breach of this Agreement, entitling the Board to all remedies available under this Agreement.
4. **Authorized Representative.** Katherine Haase, (the “Authorized Representative”), or her successor, is designated as Authorized Representative of the County for the purpose of administering, coordinating and approving the work performed by the Consultant under this Agreement.
5. **Payment of Award.** Subject to the Board’s determination in its sole discretion that Recipient is in compliance with this Agreement, the Board shall disburse the funds for the Award in a manner determined by the County in its sole discretion. Any other provision of this Agreement notwithstanding and pursuant to § 29-1-110, C.R.S., the amount of funds appropriated for this Agreement is the Award amount. In no event shall the County be liable for payment under this Agreement for any amount in excess thereof. The County is not under obligation to make any future apportionment or allocation to this Agreement nor is anything set forth herein a limitation of liability for the Recipient. Any potential expenditure for this Agreement outside the current fiscal year is subject to future annual appropriation of funds for any such proposed expenditure.
6. **Reporting Requirement.** Recipient agrees to submit reports regarding expenditure of the funds as directed by the County.
7. **Compliance with Regulatory Requirements and Federal and State Mandates.** Recipient hereby assumes responsibility for compliance with all regulatory requirements in all applicable areas, including, but not limited to, nondiscrimination, worker safety, local labor preferences, preferred vendor programs, equal employment opportunity, use of competitive bidding, and other similar requirements. In addition, Recipient agrees to comply with all necessary licensing and permitting requirements imposed by an agency of a local, state or federal government.
8. **Confidentiality.** The parties agree to keep any specialized details of security arrangements or physical or cyber assets, confidential to the extent possible under the law. Any Party will notify the other of any request to disclose such information prior to its release in order to elicit consent or concerns regarding such disclosure.
9. **Publicity.** The Recipient will acknowledge the funding support from Gunnison County in all informational materials and promotions about the Project.
10. **Security Breaches and Personal Information**
  - a. If Recipient obtains personal identifying information, as that term is defined in C.R.S. § 24-73-101, from the County during the course of this Agreement, Recipient shall destroy or properly dispose of the information in a manner that is compliant with C.R.S. § 24-73-101 when that information is no longer needed for the performance of this Agreement. Recipient shall also implement and maintain reasonable security procedures and practices that are appropriate to the nature of the personal identifying

information obtained; and reasonably designed to help protect the personal identifying information from unauthorized access, use, modification, disclosure, or destruction.

b. In the event of a security breach, as defined in C.R.S. § 24-73-103, that compromises computerized data that includes personal information subject to this Agreement, Recipient shall notify the County of the security breach in the most expedient time and without unreasonable delay following discovery of the security breach, if misuse of personal information about a Colorado resident occurred or is likely to occur; and cooperate with the County, including sharing with the County any information relevant to the security breach, except that such cooperation does not require the disclosure of confidential business information or trade secrets.

**11. Indemnification.** The County cannot and by this Agreement does not agree to indemnify, hold harmless, exonerate or assume the defense of the Recipient or any other person or entity whatsoever, for any purpose whatsoever. To the fullest extent permitted by law, the Recipient shall defend, indemnify and hold harmless the County, its commissioners, officials, officers, directors, agents, and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature whatsoever in any way resulting from or arising from this Agreement. The parties to this Agreement warrant and agree that the County shall have no liability whatsoever in relation to Recipient's use or expenditure of the funds or for Recipient's actions or failure to act in relation to the Project.

**12. Independent Contractor.** The Recipient is an independent contractor. Notwithstanding any provision of this Agreement, all personnel and volunteers of the Recipient shall be and remain at all times, employees or volunteers of the Recipient for all purposes. It is not intended nor shall it be construed that the Recipient, its employees or volunteers are agents, employees or officers of the County for any purpose whatsoever. The Recipient, at its expense, shall procure and maintain worker's compensation insurance as required law. **The Recipient acknowledges and agrees that it is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County.**

**13. No Waiver of Governmental Immunity Act.** The parties hereto understand and agree that the County, its commissioners, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the County.

**14. Audits and Accounting.** Recipient shall maintain standard financial accounts, documents, and records relating to the use, management, and the operation of the Project. Recipient shall maintain standard financial accounts, documents, and records relating to the use, management, and operation of the Project. The County shall have the right, upon reasonable notice to Recipient, to audit the books and records of Recipient which pertain to the Project and to the use and disposition of County funds. The County shall retain the authority to audit for two years after Project completion.

**15. Inspection.** The County shall have the right to inspect the Project area to ascertain compliance with this Agreement during business hours at any time during the Project and up to six months after termination or completion of the Project.

**16. Termination by County.** The County may terminate this Agreement at any time and for any reason by providing Recipient written notice of such termination at least thirty (30) calendar days prior to the effective date of such termination. Upon such termination, Recipient shall be entitled to compensation for activities performed in accordance with this Agreement which were incurred prior to

the effective date of the termination, but not exceeding the available budget balance at the time of the effective date of the termination.

**17. Effect of Project Completion or Termination.** Recipient agrees that Project completion or termination of this Agreement does not invalidate continuing obligations imposed on Recipient by this Agreement. Project completion or termination of this Agreement does not alter the County's authority to disallow costs and recover funds on the basis of a later audit or other review, and does not alter Recipient's obligation to return any funds due to the County as a result of later refunds, corrections, or other transactions.

**18. Notices.** Notices concerning termination of this Agreement, notices of alleged or actual violations of the terms or provisions of this Agreement, and all other notices shall be made as follows:

by the Recipient to:                      Gunnison County Community  
Administration Department  
Katherine Haase  
200 E Virginia Ave  
Gunnison, CO 81230  
(970) 641-0248  
Email khaase@gunnisoncounty.org

with a copy to:                                      Gunnison County Attorney's Office  
200 E Virginia Ave  
Gunnison CO 81230  
(970) 641-5300  
E-mail dbishop@gunnisoncounty.org

and by the County to:                      Gunnison Valley Animal Welfare  
League  
Erica Bendixen  
PO Box 1834  
Gunnison, Colorado 81230  
(\_\_\_\_) \_\_\_\_ - \_\_\_\_\_  
Email: \_\_\_\_\_

Said notices shall be delivered personally during normal business hours to the appropriate office above, by prepaid first-class U.S. mail, via facsimile, via electronic mail, or other method authorized in writing by the Authorized Representative. Mailed notices shall be deemed effective upon receipt or three (3) days after the date of mailing, whichever is earlier. The parties may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but such substitutions shall not be effective until actual receipt of written notification.

**19. Assignment.** Recipient may not assign its rights under this Agreement without the prior express written approval of the County, which the County may withhold in its sole discretion.

**20. Applicable Law and Venue.** This Agreement shall be governed by the laws of the State of Colorado and venue for any dispute hereunder shall lie exclusively in the County of Gunnison, State of Colorado.

21. **Severability.** If any provision of this Agreement, or the application thereof, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision other than those as to which it is found to be invalid, shall remain in full force and effect.

22. **Fax and Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one Agreement. In addition, the parties agree to recognize signatures of this Agreement transmitted by fax, email or PDF, as if they were original signatures.

23. **Third Party Beneficiary.** The Board and Recipient hereby acknowledge and agree that this Agreement is intended only to cover the relative rights and obligations between the Board and Recipient, and that no third-party beneficiaries are intended. Nothing in this Agreement shall give or allow any claim or rights of action whatsoever to any third party, including, but not limited to, any agents or contractors of Recipient.

24. **Waiver.** The failure of either party to enforce a term hereof shall not be deemed a waiver of such term or right of enforcement as to that breach or any subsequent breach of the same, similar, or different nature. No waiver shall be enforceable hereunder unless signed by the party against whom the waiver is sought to be enforced.

25. **Entire Agreement.** Except as expressly provided herein, this Agreement constitutes the entire agreement of the parties. No oral understanding or agreement not incorporated in this Agreement shall be binding upon the parties. No changes in this Agreement shall be valid, unless made as an amendment to this Agreement, approved by the Board, and signed by the parties in this Agreement.

IN WITNESS WHEREOF, the parties by signature below of their authorized representatives execute this Agreement effective as of the \_\_\_\_ day of \_\_\_\_\_ 2022.

**RECIPIENT: GUNNISON VALLEY ANIMAL WELFARE LEAGUE**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF GUNNISON**

**APPROVED:**

\_\_\_\_\_  
**Matthew Birnie**  
**County Manager**

Date: \_\_\_\_\_

**MEMORANDUM OF AGREEMENT TO PROVIDE COUNTY FINANCIAL ASSISTANCE TO THE GUNNISON VALLEY ANIMAL WELFARE LEAGUE**

THIS MEMORANDUM OF AGREEMENT (“Agreement”) made effective the 1<sup>st</sup> day of January 2022, by and between the Board of County Commissioners of the County of Gunnison, Colorado, whose address is 200 East Virginia, Gunnison, CO 81230 (“Gunnison County” or “County”) and Gunnison Valley Animal Welfare League, whose address is PO Box 1834 Gunnison, CO 81230 (herein “Recipient”).

**RECITALS**

WHEREAS, Recipient has requested assistance from Gunnison County in financing a portion of operational costs as set forth in Appendix A; and

WHEREAS, Gunnison County is supportive of the objectives of Recipient in terms of assisting those in need of services in Gunnison County; and

WHEREAS, Gunnison County has historically provided funding to the Recipient pursuant to terms and conditions negotiated between the parties; and

WHEREAS, Gunnison County has determined it presently is and remains in the public’s interest to provide financial assistance to Recipient;

**AGREEMENT**

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

1. **TERM.**

The term of this Agreement shall commence on the date first set forth above and shall terminate on December 31, 2022, unless sooner terminated or replaced as provided herein.

2. **STRATEGIC RESULT.**

Recipient agrees to submit a final project report on or before January 1, 2023 using the form identified as Appendix B that will identify how Recipient has helped fulfill the following strategic result: Execution of this Agreement will assist the County with its Promote Healthy Communities strategy, as outlined in the Gunnison County Strategic Plan. Timely submission of this report shall serve as a condition for future funding eligibility.

3. **PAYMENT; SUBJECT TO APPROPRIATION AND DOCUMENTATION.**

In consideration and exchange for the foregoing and other valuable consideration as outlined in this Agreement, during the Term Gunnison County shall pay Recipient fees not to exceed Six Thousand and No/100 U. S. Dollars (\$6,000.00). Quarterly payments will be distributed by the County upon submittal of appropriate documentation as determined by the County in its sole discretion.

This Agreement is subject to Gunnison County making an annual budget appropriation in an amount sufficient to fund this Agreement. If Gunnison County fails or refuses to make such an appropriation, Gunnison County reserves the right to terminate this Agreement pursuant to its provisions.

#### 4. INSURANCE.

Recipient agrees that at all times during the Term of this Agreement, and for three (3) years after the date the Term of this Agreement expires or the date this Agreement is terminated, or any applicable warranty period, Recipient shall maintain, in full force and effect and at its sole cost and expense, the following insurance policies. Within thirty (30) days of the execution of this Agreement, Recipient will provide insurance certificates to Gunnison County, listing Gunnison County as an additional insured, for the coverages required by this paragraph, which shall state that such policies shall not be materially changed or cancelled without thirty (30) days prior notice to Gunnison County. Written notice shall be sent to the parties identified in the Notices section of this Agreement and sent thirty (30) days prior to any cancellation or non-renewal unless due to non-payment of premiums, in which case, notice shall be sent ten (10) days prior. If written notice is unavailable from the insurer, Recipient shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s).

- a. Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Recipient during the term of this Agreement.
- b. Comprehensive General Liability Insurance or the equivalent in an amount no less than Four Hundred Twenty-Four Thousand and No/100 U.S. Dollars (\$424,000.00) for injury to one person in any single occurrence; and no less than One Million One Hundred Ninety-Five Thousand and No/100 U.S. Dollars (\$1,195,000.00) for injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate).
- c. Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than Four Hundred Twenty-Four Thousand and No/100 U.S. Dollars (\$424,000.00) for injury to one person in any single occurrence; and no less than One Million One Hundred Ninety-Five Thousand and No/100 U.S. Dollars (\$1,195,000.00) for injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate).
- d. Professional Liability Insurance or the equivalent, such as Errors and Omissions coverage, in an amount no less than Four Hundred Twenty-Four Thousand and No/100

U.S. Dollars (\$424,000.00) for injury to one person in any single occurrence; and no less than One Million One Hundred Ninety-Five Thousand and No/100 U.S. Dollars (\$1,195,000.00) for any injur(ies) to two or more persons in any single occurrence (i.e., in the aggregate).

The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado. Combinations of primary and excess coverage may be used to achieve minimum coverage limits. Excess/umbrella policy(ies) must follow form of the primary policy(ies) with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance. The County's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Recipient's breach of this Agreement or of any of the County's rights or remedies under this Agreement.

If excluded from any policy coverage, this Agreement shall be specifically named an insured contract. If any policy is in excess of a deductible or self-insured retention, the County must be notified by the Recipient. Recipient shall be responsible for the payment of any deductible or self-insured retention. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) must be included. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the County, excluding Professional Liability and Workers Compensation policies, if required.

For all coverages required under this Agreement, Recipient's insurer(s) shall waive subrogation rights against the County by policy endorsement. All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Recipient. Recipient shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Recipient agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the County.

The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Recipient to the County under this Agreement. The Recipient shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

The insurance provisions of this Agreement shall survive expiration or termination of this Agreement.

##### 5. INDEPENDENT CONTRACTOR.

In carrying out its obligations and activities under this Agreement, Recipient is acting as an independent contractor and not as an agent, partner, joint venture or employee of Gunnison County. Recipient does not have any authority to bind Gunnison County in any manner whatsoever.

**Recipient acknowledges and agrees that Recipient is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County.** Further, Recipient is obligated to pay all applicable federal, state and local taxes owed in relation to the services.

#### 6. INDEMNIFICATION.

Recipient irrevocably and unconditionally agrees to indemnify, defend and hold harmless Gunnison County, its Commissioners, agents and employees of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) arising out of or related to any loss, cost, damage or injury, including death, of any person or damage to property of any kind caused by the misconduct or negligent acts, errors or omissions of Recipient or its employees, subcontractors or agents in connection with this Agreement. Further, the County shall not be liable to Recipient or its affiliates for any loss of anticipated business opportunities, contracts, revenues, profits or savings; damage to goodwill or reputation; or indirect, special or consequential loss or damage, arising out of or in connection with this Agreement, whether for breach of contract, in tort (including negligence), under statute or any other law, and Recipient expressly disclaims any such claims or damages as against the County.

In case of any claim that is subject to indemnification under this Agreement, Recipient will provide the County reasonably prompt notice of the relevant claim. Recipient will defend or settle, at its own expense, any demand, action, or suit on any claim subject to indemnification under this Agreement, through legal counsel selected by Recipient but approved by the County. Each party will cooperate in good faith with the other to facilitate the defense of any such claim and the County will tender the defense and settlement of any action or proceeding covered by this Section to Recipient or upon request. Claims may be settled without the consent of the County, unless the settlement includes an admission of wrongdoing, fault or liability by the County, whether express or implied.

This defense and indemnification obligation shall survive any termination or expiration of this Agreement.

#### 7. DISCRIMINATION.

The Recipient agrees to not discriminate against any person or class of persons by reason of age, race, color, sex, creed, religion, disability, national origin, sexual orientation or political affiliation in providing any services or in the use of any facilities provided for the public in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. Recipient shall further comply with the letter and spirit of the Colorado Anti-Discrimination Act

of 1957, as amended, and any other laws and regulations respecting discrimination in unfair employment practices. Additionally, Recipient shall comply with such enforcement procedures as any governmental authority might demand that Gunnison County take for the purpose of complying with any such laws and regulations.

8. IMMIGRATION COMPLIANCE CERTIFICATION.

- a. Recipient certifies that Recipient does not and will not knowingly contract with or employ illegal aliens to work under this Agreement.
- b. Recipient certifies that Recipient has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work under this Agreement.
- c. Recipient certifies that it has attempted to verify the eligibility of its employees and subcontractors to work through the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security.
- d. Recipient agrees to comply with all reasonable requests made in the course of an investigation under C.R.S. § 8-17.5-102 by the Colorado Department of Labor and Employment.
- e. Recipient agrees to comply with the provisions of C.R.S. § 8-17.5-101 et seq.

9. AMERICANS WITH DISABILITIES ACT COMPLIANCE.

The Recipient represents and warrants to Gunnison County that at all times during the performance of this Agreement no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by the Recipient, or be subjected to any discrimination by the Recipient upon which assurance Gunnison County relies.

10. MISCELLANEOUS.

- a. SEVERABILITY. If any clause or provision of this 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 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. The parties hereto understand and agree that the County is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental

Act, § 24-10-101, et seq., C.R.S. Nothing in this 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.

d. **LEGAL AUTHORITY.** Recipient represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of Recipient represents and warrants that he has been fully authorized by Recipient to execute the Agreement on behalf of Recipient and to validly and legally bind Recipient to all the terms, performances and provisions of the Agreement. The County shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either Recipient or the person signing the Agreement to enter into the Agreement.

e. **NO CONSTRUCTION AGAINST DRAFTING PARTY.** The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

f. **ORDER OF PRECEDENCE.** In the event of any conflicts between the language of the Agreement and any exhibits to it, the language of the Agreement controls.

g. **SURVIVAL OF CERTAIN PROVISIONS.** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the Recipient's obligations to provide insurance and to indemnify the County will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

h. **INUREMENT.** The rights and obligations of the parties herein set forth shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns permitted under this Agreement.

i. **TIME IS OF THE ESSENCE.** The parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.

j. **PARAGRAPH HEADINGS.** The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

## 11. DELEGATION AND ASSIGNMENT.

Recipient shall not delegate or assign its duties under this Agreement without the prior written consent of Gunnison County which consent Gunnison County may withhold in its discretion. Subject to the foregoing, the terms, covenants and conditions of this Agreement shall be binding on the successors and assigns of either party.

#### 12. TERMINATION; REMEDIES FOR BREACH AND LIMITATION OF REMEDIES

Either party shall have the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other. Upon termination, Recipient shall not be entitled to any further quarterly payments pursuant to this agreement, regardless of whether the County has paid the full amount set forth in Paragraph 3. Termination shall not affect or prejudice any rights or other remedy that a party may have with respect to the event giving rise to termination or any other rights or other remedy a party may have with respect to breach of this Agreement which existed at or before the date of termination, including but not limited to the County's ability to recoup all payments made under this agreement and its attorneys' fees, costs and expenses associated with enforcing the terms of this Agreement, except that the Recipient waives any and all consequential, expectancy, or exemplary claims for damages associated with this Agreement, including attorneys' fees and costs, and further agrees that any damages owed by the County for breach of this agreement shall not exceed the sum of six thousand dollars (\$6,000).

#### 13. OWNERSHIP OF PROPERTY.

Any work product, information, materials, goods, or intellectual property generated as a result of this Agreement shall become the sole and exclusive property of the County, and the Recipient agrees to relinquish any rights, implied or otherwise, to such property, including but not limited to any resulting intellectual property rights.

#### 14. WHEN RIGHTS AND REMEDIES NOT WAIVED.

In no event shall any action by either party constitute or be construed to be a waiver by the other party of any breach of covenant or default which may then exist on the part of the party alleged to be in breach, and the non-breaching party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to that party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

#### 15. NO THIRD-PARTY BENEFICIARY.

Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the County or the Recipient receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.

16. CONFLICT OF INTEREST.

The signatories to this Agreement aver to their knowledge, no employee of the County has any personal or beneficial interest whatsoever in the Services. Recipient has no beneficial interest, direct or indirect, that would conflict in any manner or degree with the performance of the Services, and Recipient shall not employ any person having such known interests. The Recipient shall also not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The Recipient represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Recipient by placing the Recipient's own interests, or the interests of any party with whom the Recipient has a contractual arrangement, in conflict with those of the County. The County, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement in the event it determines a conflict exists, after it has given the Recipient written notice describing the conflict.

17. FORCE MAJEURE.

Neither party shall be responsible for failure to fulfill its obligations hereunder or liable for damages resulting from delay in performance as a result of an unforeseeable event outside the control of such party, and not caused by such party's negligence, including war or armed conflict, fire, flood, strike, riot or insurrection, terrorist attack, nuclear, chemical or biological attack, natural disaster, martial law, unreasonable delay of carriers, governmental order or regulation; PROVIDED, HOWEVER, the any delay caused by the Covid-19 Pandemic (or Endemic), or any other communicable disease pandemic or endemic, shall NOT be considered a force majeure event. If a force major event occurs, the time for performance shall be extended by mutual agreement of the parties for a period of time as may be reasonably necessary to compensate for such delay, provided that if such performance still cannot be completed within such extended period of time, either party may terminate this Agreement and both parties will be released from any further obligation to the other.

18. NOTICES.

Any notice, demand or communication which either party may desire or be required to give to the other party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally or sent by certified first class US mail, postage prepaid, addressed as follows:

Gunnison County: County Manager  
Gunnison County  
200 E. Virginia  
Gunnison, Colorado 81230  
Phone: 970-641-0248

With a copy to: Board of County Commissioners

of the County of Gunnison, Colorado  
200 E. Virginia  
Gunnison, Colorado 81230

Recipient: Erica Bendixen  
Gunnison Valley Animal Welfare League  
PO Box 1834  
Gunnison, Colorado 81230

Either party has the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

19. GOVERNING LAW.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Jurisdiction and venue for any legal proceedings related to this Agreement shall exclusively lie in the State of Colorado District Court located in Gunnison County, Colorado.

20. COUNTERPARTS: FACSIMILE AND ELECTRONIC TRANSMISSION.

This Agreement may be executed by facsimile and/or in any number of counterparts, any or all of which may contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the parties as though originally executed on one originally executed document. All facsimile counterparts shall be promptly followed with delivery of original executed counterparts.

This Agreement may also be executed by electronic means or signatures. Accordingly, the Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the County in the manner specified by the County. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

The parties agree that: (i) any notice or communication transmitted by electronic transmission, as defined below, shall be treated in all manner and respects as an original written document; (ii) any such notice or communication shall be considered to have the same binding and legal effect as an original document; and (iii) at the request of either party, any such notice or communication shall be re-delivered or re-executed, as appropriate, by the party in its original form. For purposes of this Agreement, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form

by such a recipient through an automated process, but specifically excluding text or instant messages.

21. ENTIRE AGREEMENT.

This Agreement comprises the entire agreement between County and Recipient and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. No amendment to or modification of this Agreement will be binding unless in writing and signed by an authorized representative of each party.

Notwithstanding anything to the contrary herein, the County shall not be subject to any provision included in any terms, conditions, or agreements appearing on Recipient's or a subcontractor's website or any provision incorporated into any click-through or online agreements related to the work unless that provision is specifically referenced in this Agreement.

22. RECORDS.

Recipient shall maintain for a minimum of three (3) years, adequate financial and other records for reporting to County. Recipient shall be subject to financial audit by federal, state or county auditors or their designees. Recipient authorizes such audits and inspections of records during normal business hours, upon forty-eight (48) hours' notice to Recipient. Recipient shall fully cooperate during such audit or inspections.

23. PUBLIC RECORD.

To the extent not prohibited by state or federal law, this Agreement is potentially subject to public release through the Colorado Open Records Act. The parties further acknowledge and understand that all work product or materials provided or produced under this Agreement, including items marked Proprietary or Confidential, may be subject to the Colorado Open Records Act., § 24-72-201, et seq., C.R.S.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date above written.

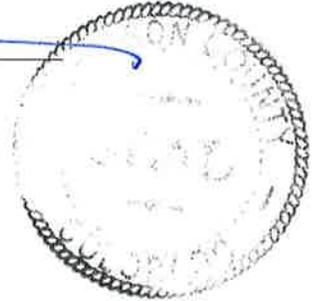
BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF GUNNISON, COLORADO

By:   
Jonathan Houck, Chairperson

ATTEST:



Deputy Clerk



RECIPIENT

By:



Gunnison Valley Animal Welfare League

Board President





**COMMUNITY BASED ORGANIZATION  
2022 CHARGES FOR SERVICE APPLICATION**

<b>Organization Name:</b>	Gunnison Valley Animal Welfare League			
<b>Address 1:</b>	PO Box 1834			
<b>Address 2:</b>	98 Basin Park Drive			
<b>City:</b>	Gunnison	<b>State:</b>	CO	<b>Zip Code:</b> 81230
<b>Telephone Number:</b>	970-641-1173			
<b>Email Address:</b>	info@gvawl.com			
<b>Contact Person(s):</b>	Erica Bendixen			

1. What is the amount of County funds requested? Please keep your request below \$12,000.

\_\_\_\_\_ 11,000 \_\_\_\_\_

2. Provide specific information regarding what the County funds will be used for.

The Gunnison Valley Animal Welfare League (GVAWL) requests operational funds to care for stray, abandoned, relinquished, and impounded companion animals who are brought to the shelter and placed in our care. Beyond food and shelter, these animals often require vaccinations and spay/neuter procedures as well as veterinary care and medicine, which may be either emergent or routine, such as dental work. We make sure our animals are in the best possible conditions while in our shelter and throughout the adoption process, or when reunited with their owners. Services that GVAWL provides Gunnison County are outlined below.

All animals brought to GVAWL are initially assessed at intake, and those assessments continue throughout the shelter stay. This ensures animals are handled in a secure setting by trained individuals, and that if an animal is sick or injured, we coordinate immediate treatment by a veterinarian to relieve pain and suffering. We maintain communication with families post-adoption to ensure the pet is a good fit for the household. We primarily work with dogs and cats, but accept other small animals if resources are available. GVAWL was nationally recognized again by [saving90.org](http://saving90.org) as a shelter with placement rates of 98% and 97% for cats and dogs, respectively.

Collaborating with area vet clinics, GVAWL manages an extensive, low-cost spay/neuter assistance initiative. In an effort to streamline this program, GVAWL moved to a certificate system in 2021, standardizing the amount (based on species & procedure) given to pet owners. This new system has simplified the process for pet owners, veterinarians, and GVAWL. To reach more pet owners in need, we made the application available in Spanish this year. Applications for assistance in both languages are available online & at the shelter. Requests for spay/neuter assistance continue to grow from years prior; so far in 2021, 64 discounted spay/neuter certificates have been issued to community members. This program is paramount to managing the pet population in Gunnison County.

We continue to maintain close, effective relationships with the Gunnison Sheriff's Office and City Neighborhood Services as animal-care needs arise, and dedicated kennels for each entity can be accessed 24/7. Our facility serves as the only physical shelter in the county for impounded animals. We also work with the Gunnison Food Pantry, Project Hope, and the Gunnison Senior Care Facility to provide free food, supplies, and low-cost sterilization, often to families struggling with loss of income who may otherwise be faced with relinquishing a family pet they can no longer afford.

COVID-19 continued to impact GVAWL in 2021. For our community's safety, we made the decision not to hold larger in-person events, including our Pet Expo or Howl-O-Ween Ball. We continue to offer shelter and foster care for pets of COVID-19 victims during their hospitalization and recovery, at no cost to the owners. To supplement GVAWL's in-person presence and respond to the community's changing needs, the shelter continues to offer in-person adoption hours by walk-in and appointment, and we have increased our focus on digital fundraising efforts and communication. GVAWL sees this challenge as an opportunity to remain dynamic in our approach to our ultimate goals of offering care for animals and resources to their owners. We hope to resume larger community events as soon as we can, safely.

Our organization continues to reap the rewards of our full-time salaried animal shelter manager, hired in 2020. Her background in law enforcement has proven an important asset, in addition to her many years of small and large animal care experience. In a recent face-to-face meeting between her, Sheriff Gallowich, and others, all parties reinforced their mutual relationship in the care and handling of county impounded animals. Both sides expressed positive feelings with the arrangement, and a mutual understanding of respective responsibilities. GVAWL'S manager holds training and regular communication with sheriff's officers to promote education and meaningful cooperation. With our manager and a solid and diverse base of community volunteers, we have increased our shelter exposure and availability to the public and our law-enforcement partners.

The Gunnison Valley Animal Welfare League knows that animal companions are an enriching part of our community, and bring immeasurable comfort to Gunnison County residents. GVAWL provides a vital service to the county and city governments through our partnership to provide essential shelter and care for animals, and resources for their owners. We do so with the safety of all parties in mind. GVAWL prioritizes proper management of resources we are allocated, and transparent cooperation with the city and county entities with whom we work. We believe strongly that companion animals add comfort and stability to the lives of their owners, and that their companionship is particularly important to our most vulnerable members in these ongoing trying times.

The continued successful operation and management of the animal shelter is the most effective gauge of our success. We can meet or exceed current requests for our services and plan to continue doing so in the future. If an animal cannot be accepted at GVAWL, due to behavior or health issues that would endanger staff or other animals, we provide the owner with counseling and possible care alternatives. We have not turned away an animal due to financial restrictions or lack of kennel space, and we have fulfilled every request to date for low-cost spay/neuter certificates, even with an increase in requests over last year.

We continue to see an increase in the number of animals that are brought in from the county. We attribute this to increased public awareness of our facility and services; expanded hours of operation; and our strong relationship with the Gunnison County Sheriff's Office, who are charged with enforcement of County control and licensing rules and regulations. GVAWL is always available, 24/7, to respond to after hours requests for assistance from county personnel, if needed. We work regularly with deputies to make certain they are aware of how to access the shelter and provide initial care until GVAWL personnel can take over, including training deputies to use the microchip reader so animals brought in afterhours can be identified and returned to their owners sooner.

Every spring we provide our entire Colorado PACFA (Pet Animal Care Facilities Act) report to the County which includes details on every animal cared for by GVAWL, as follows:  
Date In and Date Out Species (dog, cat, small mammal) Source (relinquishment, stray, impound, City or County) Disposition (adoption, etc) and Age.

Per our County lease agreement, GVAWL also annually provides the County BOCC a report specifically tracking County animals in our care, which includes the above information as well as all associated costs and any shelter or adoption fees collected.

- a) Names and addresses of all Board members including designation of officers
- b) Budget detail for 2021 and 2022 with reasonable detail for income and expenses for the agency as a whole (if you are requesting funding for a specific event or project, please provide the event or project budget as well)
- c) 2021 Funding Report

**Completed Application should be submitted to:**

**Electronic Submittal:**

Adobe PDF Format  
Kelly Weak, Senior Accountant  
[KWeak@gunnisoncounty.org](mailto:KWeak@gunnisoncounty.org)

**Mailed Submittal:**

Gunnison County Finance  
Attn: Kelly Weak  
200 E Virginia Ave  
Gunnison, CO 81230

**Submittal Deadline:**

September 24, 2021

2022 Charges for Services Application/Gunnison Valley Animal Welfare League/Exhibit A

Board Members' Names & Addresses:

- Kathy MacAllister, Board President 400 Tomichi Trail, Gunnison, CO
- Cheryl Dandel, Board Vice President 12 Willow Lane, Gunnison, CO
- Darrah Miller, Board Secretary 601 N. Pine St, Gunnison, CO 81230
- Paula Mann, Board Treasurer PO Box 1269, Gunnison, CO 81230
- Sue Uerling - Director 656 Fairway Lane, Gunnison, CO 81230
- Erica Bendixen 460 Lost River Lane Gunnison, CO 81230
- Erik Iverson 1201 W. Ohio St. Gunnison, CO 81230

**Gunnison Valley Animal Welfare League**

	<b>2021 Budget</b>
<b>Revenues</b>	
Contributions (donation boxes, Individual donations)	30,000
Corporate Donations	3,000
Fundraising Events	15,000
Grants (Municipal and Private)	27,000
Shelter Earned Income (Adoption and Impound Fees)	15,000
<b>Total Revenues</b>	<b>90,000</b>
<b>Expenses</b>	
Professional Fees (Bookkeeping and Website)	5,000
Advertising	1,000
Office Supplies	2,900
Volunteer Appreciation	800
Shelter Supplies	3,000
Dues and Subscriptions	750
Continuing Education	600
Insurance	5,800
Licenses and Fees	600
Property Expense, repairs and maintenance	5,000
Utilities	7,300
Fundraising Expenses	4,200
<b>Operating Expenses</b>	<b>36,950</b>
<b>Payroll Expenses</b>	<b>43,000</b>
<b>Payroll Reserve</b>	<b>-</b>
<b>Program Expenses</b>	
<b>Rescue Center</b>	
Silver Whiskers	500
Fostering Expenses	750
Veterinary Care	13,000
Food/Supplies	1,500
Sterilization	7,000
Euthanasia	650
Vaccinations/Prescriptions	1,400
<b>Total Rescue Center</b>	<b>24,800</b>
<b>Spay/Neuter Assistance</b>	<b>7,000</b>
<b>Feral / TNR</b>	<b>2,000</b>
<b>Total Expenses</b>	<b>113,750</b>
<b>Total Income/(Deficit)</b>	<b>(23,750)</b>

**Gunnison Valley Animal Welfare League**

	<b>2022 Budget</b>
<b>Revenues</b>	
Contributions (donation boxes, Individual donations)	30,000
Corporate Donations	3,000
Fundraising Events	15,000
Grants (Municipal and Private)	27,000
Shelter Earned Income (Adoption and Impound Fees)	15,000
<b>Total Revenues</b>	<b>90,000</b>
<b>Expenses</b>	
Professional Fees (Bookkeeping and Website)	5,000
Advertising	1,000
Office Supplies	1,900
Volunteer Appreciation	800
Shelter Supplies	2,500
Dues and Subscriptions	750
Continuing Education	900
Insurance	5,800
Licenses and Fees	600
Property Expense, repairs and maintenance	5,000
Utilities	7,300
Fundraising Expenses	4,000
<b>Operating Expenses</b>	<b>35,550</b>
<b>Payroll Expenses</b>	<b>43,000</b>
<b>Payroll Reserve</b>	<b>-</b>
<b>Program Expenses</b>	
<b>Rescue Center</b>	
Silver Whiskers	500
Fostering Expenses	750
Veterinary Care	8,000
Food/Supplies	1,500
Sterilization	7,000
Euthanasia	650
Vaccinations/Prescriptions	1,400
<b>Total Rescue Center</b>	<b>19,800</b>
<b>Spay/Neuter Assistance</b>	<b>7,000</b>
<b>Feral / TNR</b>	<b>2,000</b>
<b>Total Expenses</b>	<b>107,350</b>
<b>Total Income/(Deficit)</b>	<b>(17,350)</b>



## Funding Recipient Project Report Calendar Year 2021

Name of Funding Recipient: Gunnison Valley Animal Welfare League

Dollar Value of County Funds Awarded: \$11,000.00

Funding Recipient's Total 2021 Annual Budget: \$113,750

Other Funding Sources (please list source names and amounts received): Through Aug, 2021 -

Wags and Menace - \$2,000

Colorado Pet Overpopulation Fund (tax check-off) - \$4,000

City of Gunnison - \$3,000

Community Foundation of the Gunnison Valley - \$4,950

Animal Assistance Foundation - \$6,500

El Pomar - \$5,000

Percentage of Annual Budget Funded by the Other Funding Sources Listed Above: 24%

How the County Funds Were Spent: We continue to provide shelter, food, vaccinations, sterilizations, and veterinary care for stray, abandoned and relinquished companion animals. The shelter is available to all law enforcement agencies 24/7 and we work closely with those agencies to provide all necessary care for stray, abandoned and/or impounded animals. Applications for GVAWL's Spay/Neuter Assistance program, which provides financial assistance for those struggling to afford this procedure, continue to increase in number. We work with Project Hope, the Gunnison Food Pantry and the Senior Care Facility to provide free pet supplies and veterinary care when possible. Our Silver Whiskers program specifically aids low or fixed income residents, matching them with pets more suited to their quiet lifestyles.

Number of Clients Assisted during the Funding Year: Approximately 350-400

Customer Results Achieved via the County Funds: The results of our endeavors encompass a variety of aspects. Our primary concern is caring for companion animals who do not have anyone else to care for them. We have a very high rate of successful adoptions as we work hard to determine each animal's health and care requirements. When a stray animal is brought to GVAWL, we take extraordinary measures to locate the owner before putting it up for adoption. Several times this summer unclaimed animals came to GVAWL injured or ill, requiring immediate veterinary intervention which we were able to provide. We also provide necessary vaccinations and spay/neuter procedures if needed.

How Your Customer Results Were Measured: All specific animal data is logged immediately upon intake, with those numbers reported annually to the County, the State of Colorado, and various shelter information sites. GVAWL is listed at [saving90.org](http://saving90.org) as having a successful placement for both cats and

**dogs at 90%+. When defining our success as an animal shelter and a thriving county nonprofit we measure in terms of Quality over Quantity. While we can't necessarily control the number of animals coming to us, we work hard to provide every animal the best care and homing options available.**

Submit this report to one of the following by October 1, 2021. If applicable, please attach additional pages, your annual report or other documentation.

Mail: Gunnison County Board of County Commissioners  
Attn: Katherine Haase  
200 E. Virginia Avenue  
Gunnison, CO 81230

Email: [khaase@gunnisoncounty.org](mailto:khaase@gunnisoncounty.org)

Fax: (970) 641-3061



**Funding Recipient Project Report  
Calendar Year 2022**

**Name of Funding Recipient:** \_\_\_\_\_

**Dollar Value of County Funds Awarded:** \_\_\_\_\_

**Funding Recipient's Total 2022 Annual Budget:** \_\_\_\_\_

**Other Funding Sources (please list source names and amounts received):** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Percentage of Annual Budget Funded by the Other Funding Sources Listed Above:** \_\_\_\_\_

**How the County Funds Were Spent:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Number of Clients Assisted during the Funding Year:** \_\_\_\_\_

**Customer Results Achieved via the County Funds:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**How Your Customer Results Were Measured:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Submit this report to one of the following by January 31, 2023. If applicable, please attach additional pages, your annual report or other documentation.

Mail: Gunnison County Board of County Commissioners  
Attn: Katherine Haase  
200 E. Virginia Avenue  
Gunnison, CO 81230

Email: [khaase@gunnisoncounty.org](mailto:khaase@gunnisoncounty.org)

Fax: (970) 641-3061



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
02/17/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**PRODUCER**  
Pinnacol Assurance  
7501 E. Lowry Blvd.  
Denver, CO 80230-7006

**CONTACT NAME:**  
**PHONE (A/C, No, Ext):**  
**E-MAIL ADDRESS:**  
**FAX (A/C, No):**

**INSURED**  
Gunnison Valley Animal Welfare League  
98 Basin Park Dr  
Gunnison, CO 81230

**INSURER(S) AFFORDING COVERAGE**  
**INSURER A:** Pinnacol Assurance **NAIC #** 41190  
**INSURER B:**  
**INSURER C:**  
**INSURER D:**  
**INSURER E:**  
**INSURER F:**

**COVERAGES** **CERTIFICATE NUMBER:** **REVISION NUMBER:**  
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> CLAIMS-MADE <input type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:					EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	<b>AUTOMOBILE LIABILITY</b> ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>UMBRELLA LIAB</b> EXCESS LIAB <input type="checkbox"/> OCCUR DED RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
<b>A</b>	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N <input type="checkbox"/> N/A If yes, describe under DESCRIPTION OF OPERATIONS below		4193513	06/01/2021	06/01/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E L EACH ACCIDENT \$ 2,000,000 E L DISEASE - EA EMPLOYEE \$ 2,000,000 E L DISEASE - POLICY LIMIT \$ 2,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
Unless otherwise stated in the policy provisions, coverage in Colorado only. animal shelter

**CERTIFICATE HOLDER**  
2234109  
Gunnison Valley Animal Welfare League  
P O Box 1834  
98 Basin Park Drive  
Gunnison, CO 81230  
kathymacallister@msn.com

**CANCELLATION**  
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  
**AUTHORIZED REPRESENTATIVE**  
Pinnacol Assurance





GUNVAL-03

RMURRAY

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
2/18/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> License # 0757776 <b>HUB International Insurance Services (COL)</b> 2000 S. Colorado Blvd Tower 2, Suite 150 Denver, CO 80222	<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext):</b> (303) 893-0300		<b>FAX (A/C, No):</b> (866) 243-0727
	<b>E-MAIL ADDRESS:</b>		
<b>INSURER(S) AFFORDING COVERAGE</b>			<b>NAIC #</b>
<b>INSURER A:</b> Alliance of Nonprofits for Insurance, Risk Retention Group (ANI)			<b>10023</b>
<b>INSURED</b>  <b>Gunnison Valley Animal Welfare League</b> <b>Po Box 1834</b> <b>Gunnison, CO 81230</b>			
<b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>			

### COVERAGES      CERTIFICATE NUMBER:      REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	2022-16194	1/1/2022	1/1/2023	EACH OCCURRENCE \$ <b>1,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>500,000</b> MED EXP (Any one person) \$ <b>20,000</b> PERSONAL & ADV INJURY \$ <b>1,000,000</b> GENERAL AGGREGATE \$ <b>2,000,000</b> PRODUCTS - COMP/OP AGG \$ <b>2,000,000</b> <b>LIQUOR LIAB.</b> \$ <b>1,000,000</b>
A	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			2022-16194	1/1/2022	1/1/2023	COMBINED SINGLE LIMIT (Ea accident) \$ <b>1,000,000</b> BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / <input checked="" type="checkbox"/> N / A If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE    OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
This section is intentionally left blank.

<b>CERTIFICATE HOLDER</b>  County of Gunnison 204 E Virginia Ave Gunnison, CO 81230	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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Final Report of the Commission of Enquiry into the

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

**Board of County Commissioners for Gunnison County  
City of Gunnison**

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
1. In the performance of your ongoing operations; or
  2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

- B.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



**AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM**

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**Agenda Item:** Subdivision Application; LUC-20-00037; Resolution

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**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:**

**Term Begins:**

**Term Ends:**

**Grant Contract #:**

**Summary:**

Planning Commission recommendation to BOCC for approval of Jaynes subdivision request (LUC-20-00037)

**Fiscal Impact:**

**Submitted by:** Cathie Pagano

**Submitter's Email Address:** cpagano@gunnisoncounty.org

---

**Finance Review:**

Required

Not Required

Comments:

Reviewed by:

Discharge Date:

---

**County Attorney Review:**

Required

Not Required

Comments:

Appears legally sufficient for BOCC consideration. MRH

Reviewed by: GUNCOUNTY1\mhoyt

Discharge Date: 10/27/2022

Certificate of Insurance Required

Yes  No

---

**County Manager Review:**

Comments:

Reviewed by: GUNCOUNTY1\mbirmie

Discharge Date: 10/28/2022

Consent Agenda

Regular Agenda

Worksession

Time Allotted: 30

Agenda Date: 11/1/2022

---

**DAVID LEINSDORF**

ATTORNEY AT LAW

October 19, 2022

P.O. BOX 187, 215 ELK AVENUE  
CRESTED BUTTE, CO 81224-0187  
EMAIL: [david81224@gmail.com](mailto:david81224@gmail.com)  
TELEPHONE: (970) 349-6111

Ms. Cathie Pagano, AICP  
Assistant County Manager for Community  
and Economic Development Department  
221 North Wisconsin Street, Suite D  
Gunnison, CO 81230

**HAND DELIVERED**

**Re: Jaynes Subdivision  
LUC-20-00037**

Dear Cathie:

After hearing the concerns expressed on October 6, we have revised Section 3.1 of the Declaration to reduce the footprint and visual profile of buildings on Tract 2 of the Jaynes Ranch. To that end, we have eliminated the guest house, limited the maximum square footage of the single family residence and garage to 5,000 square feet and, most significantly, reduced the maximum height to 1½ stories or 25 feet. Please replace pages 3 and 8 of the Declaration with the attachments.

As an example of a home that meets the criteria set out in revised Section 3.1, I have attached photos of 36 County Road 317 from the websites of the Gunnison County Assessor and Daniel J. Murphy, the architect who designed that home. The residence, according to Dan Murphy, has a living area of 3,996 square feet and a garage of 780 square feet. It is 24' 7.5" high.

Please let me know if you have any questions about these changes.

Thank you.

Best regards,



David Leinsdorf

DL/mh

Enclosures: Declaration pages 3 and 8  
36 CR 317 Photos

Ec w/out enc: Pam Jaynes  
Maggie Dethloff  
Norman Whitehead

**2.9 - "Plat"** shall mean the Plat of Jaynes Ranch affecting the Property dedicated by Declarant as filed in the records of Gunnison County, Colorado, and as such Plat may be amended, enlarged or revised from time to time.

**2.10 - "Property"** shall mean and include the Property described in Section 1.1 which is subject to this Declaration.

**2.11 - "Single Family Residence"** shall mean a Building designed for or used as a dwelling exclusively by one family as an independent housekeeping unit.

**2.12 - "Tract"** shall mean Tracts 1 and 2 as shown on the Plat of Jaynes Ranch as originally filed and/or as amended.

### **ARTICLE 3.**

#### **USE OF TRACTS**

**3.1 - Use of Tract 2.** Tract 2 shall be used only for:

A. One Single Family Residence of 1 1/2 stories with a maximum height of 25 feet containing Living Area of at least 1,500 square feet and no more than 4,000 square feet.

B. One attached or detached Garage containing at least 500 square feet and no more than 1,000 square feet.

C. If the Garage contains less than 1,000 square feet, the Living Area of the Single Family Residence may be increased above 4,000 square feet by the difference between 1,000 square feet and the square footage of the Garage.

D. The aggregate size of the Single Family Residence and the Garage shall not exceed 5,000 square feet.

E. One Barn containing no more than 1,500 square feet, which may have a 600 square foot living area.

**3.2 - Use of Tract 1.** If the Single Family Residence on Tract 1 is enlarged, it shall contain a Living Area of no more than 5,000 square feet.

**3.3 - Partition of Tracts.** Neither Tract may be partitioned, separated or subdivided from any other part thereof.

B. Building height shall not exceed 25 feet. As provided in Section 2-102 of the Gunnison County Land Use Resolution, building height “means the vertical distance from grade plane to the average height of the highest roof surface.”

**4.3 - Drainage.** Neither Owner shall alter the natural drainage of either Tract in a manner which damages any Building, Improvement, other Tract or historic drainage or irrigation within the Property or more than the minimum necessary.

**4.4 - Foundations.** No Building shall be approved or constructed within the Property unless the foundation for such Building has been designed, based on site specific geotechnical data, by a Colorado licensed engineer or architect who has affixed his seal to the foundation plans.

**4.5 - Utilities.** All propane tanks and utilities on Tract 2 shall be installed underground.

**4.6 - Building Permit.** Each Owner is responsible for obtaining all approvals, licenses and permits required by Gunnison County prior to starting construction, alteration or demolition of any Building or Improvement.

**4.7 - Reclamation Permit.** A Gunnison County Reclamation Permit is required for each Tract prior to construction.

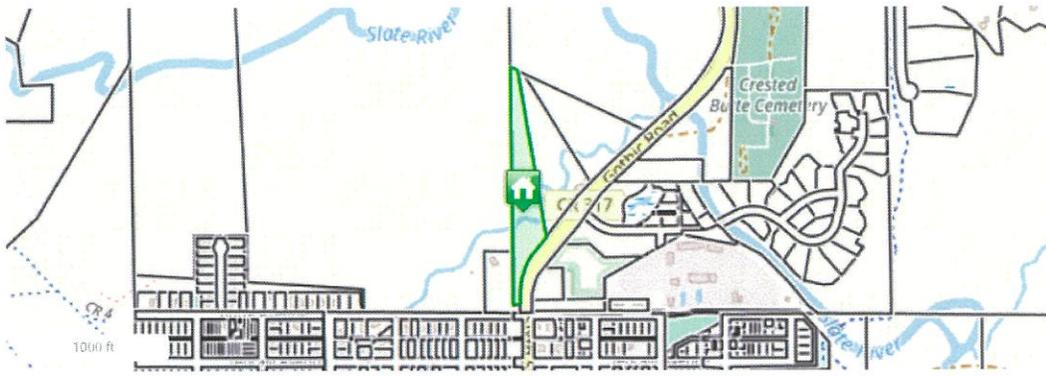
**4.8 - Continuity of Construction.** All construction, alteration and demolition shall be completed within twenty-four months of commencement.

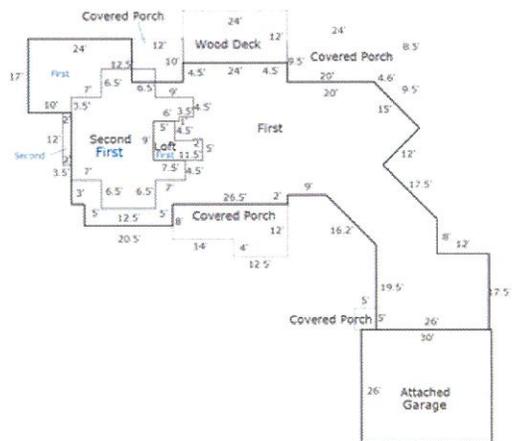
**4.9 - Driveway Maintenance and Dust Control.** The driveway to Tract 2 shall be constructed and maintained in accordance with permits issued by Gunnison County, Colorado. All driveway maintenance, repairs and snow plowing shall be shared by the Owners with 50% paid by the Tract 1 Owner and 50% paid by the Tract 2 Owner. The Driveway shall be kept in good repair and maintained in suitable condition for use by fire trucks and other emergency vehicles at all times. Snow shall be plowed and removed from the entire driveway to provide access by fire trucks and emergency vehicles, even when the Tracts are not occupied.

**4.10 - Water Rights.** All water and water rights shall be put to beneficial use. Each owner has the right to direct the flow of water on his or her Tract, subject to compliance with Section 4.3, above.

## ARTICLE 5.

### ENFORCEMENT OF COVENANTS

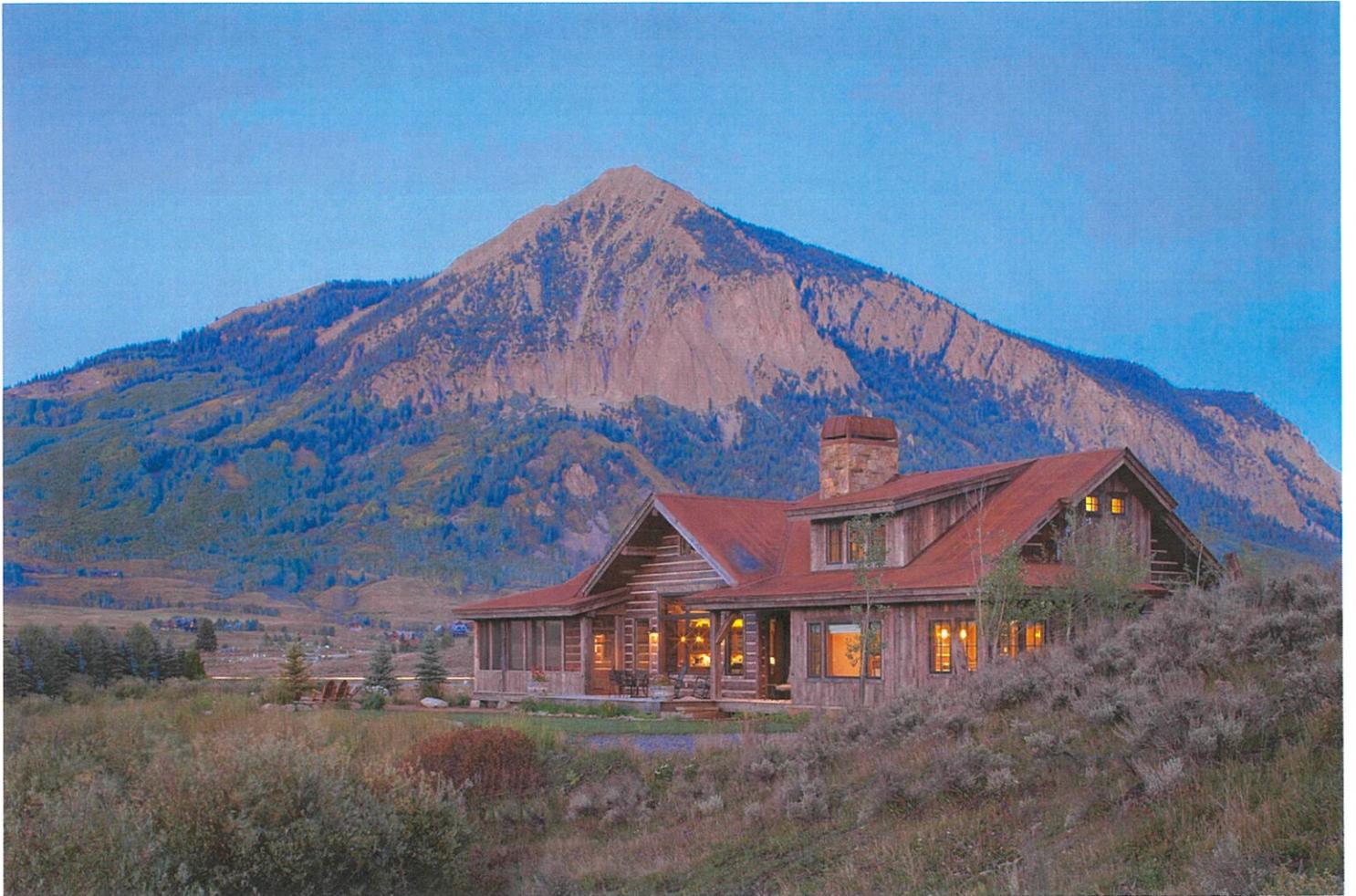




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Data last updated: 10/18/2022







**Gunnison County, CO**  
**Community Development Department**  
221 N. Wisconsin St. Ste. D, Gunnison, CO 81230  
Phone: (970) 641-0360  
Website: [www.gunnisoncounty.org](http://www.gunnisoncounty.org)  
Email: [planning@gunnisoncounty.org](mailto:planning@gunnisoncounty.org)

**To:** BOCC  
**From:** Cathie Pagano, Assistant County Manager for Community and Economic Development  
**Date:** October 7, 2022  
**Re:** Jaynes Subdivision

---

The Planning Commission has recommended approval of LUC-20-00037 for the Pamela and Jay Jaynes for the subdivision of one parcel into two lots. The recommendation is attached for your review.

Section 7-106: L. *Board Decision on Optional Board Public Hearing on Subdivision* states:

*"...the Board shall have the option of conducting another public hearing to consider the application and the Planning Commission's recommendation. Within 20 days of receipt of the Planning Commission's recommendation, the Board shall determine whether to conduct a public hearing. A decision to conduct or not to conduct such a hearing shall be based on the Board's determination of whether it is in the public interest to do so, considering among other factors the following:*

- 1. **LEVEL OF PUBLIC INTEREST.** There has or has not been substantial public interest in the proposal, as reasonably shown by attendance at, and testimony submitted for, the joint public hearing; or*
- 2. **IDENTIFICATION OF NEW ISSUES.** Whether it is reasonably probable that new issues related to the Sketch Plan application of the proposed land use change will be identified; or*
- 3. **IDENTIFICATION OF NEW INFORMATION.** Whether it is reasonably probable that new information related to the Sketch Plan application of the proposed land use change will be provided.*

**M. BOARD PUBLIC HEARING.** *If the Board chooses to conduct a public hearing, the following shall apply:*

- 1. **HEARING NOTICE.** Public notice that the Board will conduct a public hearing to consider the Sketch Plan application shall be accomplished pursuant to Section 3-112: Notice of Public Hearing.*
- 2. **CONDUCT OF HEARING.** The Board hearing shall be conducted pursuant to Section 3-113: Conduct of a Public Hearing.*
- 3. **COST FOR PUBLIC HEARING NOTICE(S).** The applicant shall be billed and shall be responsible for paying for the actual cost of publication of all applicable public hearing notices as required pursuant to Section 3-112: Notice of Public Hearing.*

**N. BOARD ACTION.** *Within 35 days after receipt of the Planning Commission recommendation, if the Board did not conduct another public hearing, or within 35 days after closure of the hearing if the Board conducted another public hearing, the Board shall approve, approve with conditions, refer back to the Planning Commission, or deny the application. The Board's decision shall be entered into the official minutes of the meeting and shall contain the necessary findings of fact and reasons to support the decision. If the Board does not make separate findings of fact, it shall be presumed to have adopted the findings and recommendations of the Planning Commission.*

- 1. **ADDITIONAL PLANNING COMMISSION REVIEW MAY BE REQUIRED.** Before it takes action on the application, the Board may refer the application back to the Planning Commission for further consideration and recommendations if at least one of the following circumstances is present:*
  - a. **NEW INFORMATION SUBMITTED.** There has been information submitted that was not available for consideration by the Commission before its recommendation; or*
  - b. **INSUFFICIENT EVALUATION.** There are substantive issues or requirements of this Resolution that were not sufficiently evaluated in the Commission's recommendations; or*

- c. ***SUBSTANTIVE ALTERATION.*** *There has been a substantive alteration to the plan subsequent to the Commission's recommendation; or*
- d. ***NEED FOR CLARIFICATION.*** *There is an element of the Planning Commission's recommendation that requires clarification."*

The Board has the option to hold an additional public hearing on this matter. The Planning Commission and the Board have conducted two joint public hearings on this application.

The applicant has submitted a modest revision to the application stating that the overall square footage allowed and maximum height of the new structures have been reduced in the covenants; that revision is attached for your reference. Staff does not recommend that a new public hearing be held based on that revision. No new issues have been identified and no other new information has been submitted as part of this application to the Community Development Department.

If the Board decides to hold an additional public hearing proper public notice shall be required (30 days). If the Board decides not to hold an additional public hearing, action may be taken at a regular meeting. The Board is required to approve, approve with conditions, refer back to the Planning Commission, or deny the application.

A draft resolution is attached for your review.

Please feel free to contact me with any questions or concerns. Thank you.



**GUNNISON COUNTY, COLORADO  
COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT  
STAFF REPORT for MINOR IMPACT**

Land Use Change Permit Application: Jaynes Subdivision  
 Application No: LUC-20-00037  
 Date application scheduled with Planning Commission:  
 Prepared by: Cathie Pagano

<b>Applicant Name:</b>	David Leinsdorf, PA									
<b>Property Owner Name:</b>	Pamela and Jay Jaynes									
<b>Project Description:</b>	<p>The Applicant proposes to subdivide an existing 37.621 acre into two lots, 19.21-acre Tract 1 and 18-acre tract two. The subject property is presently developed with an approximately 3,000 sq. ft. single-family residence constructed in the late 1950s and accessory structures.</p> <table border="1"> <thead> <tr> <th><i>Lot Name</i></th> <th><i>Area</i></th> <th><i>Structures</i></th> </tr> </thead> <tbody> <tr> <td>Tract 1</td> <td>19.21 Acres</td> <td>Single-Family Residence, barn, garage, sheds</td> </tr> <tr> <td>Tract 2</td> <td>18 Acres</td> <td>Vacant</td> </tr> </tbody> </table> <p>The project proposes a new driveway to provide access to the proposed building envelope on Tract 2. 750 cubic yards of material will be imported to construct the access.</p> <p>The project proposes limiting the number of structures to four; including a single-family residence, an accessory dwelling unit, a barn, and a garage.</p>	<i>Lot Name</i>	<i>Area</i>	<i>Structures</i>	Tract 1	19.21 Acres	Single-Family Residence, barn, garage, sheds	Tract 2	18 Acres	Vacant
<i>Lot Name</i>	<i>Area</i>	<i>Structures</i>								
Tract 1	19.21 Acres	Single-Family Residence, barn, garage, sheds								
Tract 2	18 Acres	Vacant								
<b>Property Location:</b>	2399 SH 135, Crested Butte   Parcel No. 3257-000-00-072									
<b>Surrounding Land Uses:</b>	The surrounding uses include agricultural and low-density residential. Adjacent parcels include a 471-acre agricultural parcel; 189-acre agricultural parcel; and 2.8-acre residential parcel. Other surrounding land uses are described in Section 10-103 by the applicant.									
<b>Agency and Department Review:</b>	<p>A copy of the application was sent to the following referral agencies by email on May 6, 2022. Comments are included in the applicable section</p> <ul style="list-style-type: none"> <li>▪ Colorado Parks and Wildlife (comments received)</li> <li>▪ Colorado State Forest Service (no comments received)</li> <li>▪ Colorado Department of Transportation (comments received)</li> <li>▪ Colorado Division of Water Resources (comments received)</li> <li>▪ Crested Butte Fire Protection District (comments received)</li> </ul>									

		<ul style="list-style-type: none"> <li>▪ Gunnison County Environmental Health Official (comments received)</li> <li>▪ Gunnison County Department of Public Works (comments received)</li> <li>▪ Town of Crested Butte (no comments received)</li> </ul>
<b>Pre-Application Conference:</b>		NA
<b>Status of Application:</b>		Complete
<b>Attached Exhibits:</b>		NA
<b>Planning Commission Tasks at Initial Work Session:</b>		<ul style="list-style-type: none"> <li>— Acknowledge receipt of application by applicant name, name of development (if applicable) and date of application</li> <li>— Hear applicant presentation</li> <li>— Identify and consider issues</li> <li>— Determine impact classification, considering both by definition and criteria of Section 3-111:B.1.</li> <li>— Create list at end of meeting of items to be addressed at next meeting, and the date by which related information is to be submitted</li> <li>— Set site visit date</li> <li>— Determine if application is ready to be set for public hearing, or if other work session is required</li> </ul>
<b>Initial Impact Classification:</b>		Minor Impact Project, based upon classification found in <i>Section 6-102: Projects Classified as Minor Impact Projects</i>
<b>Other Criteria of Impact Classification: (Sec. 3-111. B. 1.)</b>		<p><b>Demand for public services.</b> The proposed land use change is expected to generate a minor or a major demand for public services, including roads, transit, schools, water supply, sewage disposal, fire and police protection, and emergency services.</p> <p><b>Impacts on impact area and the environment.</b> The proposed land use change is expected to generate a minor or a major impact on the impact area.</p> <p><b>Impacts related to all existing and proposed development and proposed development in impact area.</b> The impacts of the proposed land use change, when considered in conjunction with existing and proposed land use changes in the impact area, are expected to be minor.</p>
EA or EIS is required for this project	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Project located in Special Geographic Area	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Phasing proposed	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Is a Partially Exempted land use change (Section 1-106)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

APPLICABILITY OF <i>LAND USE RESOLUTION</i> STANDARDS:		
STANDARD, BY LUR SECTION, DIVISION AND/OR ARTICLE	Plan complies, or compliance will be determined during review	Staff Comments/ References to specific documentation
9-101: E. and F.: Secondary residences are allowed, and standards are addressed in covenants	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<i>Applicable</i> , requested as part of this application. While no development is proposed at this time, the applicant has provided covenants that allow for one secondary residence. This secondary residence may be integrated or detached. The standards of this secondary residence are addressed in Section 3.1 of the <i>Declaration of Protective Covenants</i> . The secondary residence may be no less than 500 sq. ft. but no more than 1,200 sq. ft. of floor area in size.
9-102: Home occupations	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not requested as part of this application.
9-103: Bed and breakfast	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not requested as part of this application.
9-203: Mobile home communities	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not requested as part of this application.
9-302: Farm or ranch stand	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not requested as part of this application.
9-303: Dude ranches and resorts	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not requested as part of this application.
9-304: Adult-oriented uses	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not requested as part of this application.
9-305: Seasonal recreational vehicle parks and campgrounds	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not requested as part of this application.
9-400: Minerals and construction materials	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not requested as part of this application.
9-501: Special events	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not requested as part of this application.
9-502: Temporary structures	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not requested as part of this application.
9-503: Satellite dishes	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not requested as part of this application.
9-504: Attached wireless communications devices	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> ; not requested as part of this application.

9-505: Freestanding wireless communications structures	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not requested as part of this application.
9-506: Child care center	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not requested as part of this application.
9-507: Group home	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not requested as part of this application.
9-508: Keeping of livestock not on an agricultural operation	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not requested as part of this application.
9-509: Camping on individual parcel	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not requested as part of this application.
9-600: Essential housing	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not requested as part of this application.
10-102: Locational standards for residential development	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<p><i>Applicable.</i> 10-102.B.2. <i>Within a Municipal Three Mile Plan Area.</i></p> <p>This standard applies, the Town of Crested Butte has a three mile plan. The Application was referred to the Town on May 6, 2022 and no comments were received.</p> <p>The proposal is for a two-lot subdivision that would obtain its own well and septic system. The access would be conveyed on a shared access on Hwy 135. The applicant describes compliance with this Section on page 1 of the narrative:</p> <p>“The Jaynes property, 23990 State Highway 135, is within a municipal three-mile plan area...the Jaynes ranch proposal satisfies Section 10-102: 3 because splitting the Jaynes’ 37.621 acre property roughly in half will result in no significant net adverse impact to the neighborhood.</p>
10-103: Residential density	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<p><i>Applicable.</i> The purpose of Residential Density Standards is to “prevent sprawl and leapfrog development and to allow for flexibility in residential subdivision design.”</p> <p>The Application for subdivision must meet Section 10-103.C <i>Primary Residential Lot Size and Density Standards.</i></p>

		<ol style="list-style-type: none"> <li>1. <i>Compliance with Municipal Three Mile Plan Area:</i> This standard applies, the Town of Crested Butte has an adopted three mile plan. The Application was referred to the Town on May 6, 2022; no comments were received.</li>   <li>2. <i>Determination of Density Considers Sewage Disposal Requirements:</i> This requires that the density, location, and configuration shall be determined based on the feasibility of use of an Onsite Wastewater Treatment System (OWTS). The proposed Tract 2 meets the minimum lot size required for a septic system. The Application was referred to the Environmental Health Official on May 6, 2022 and Crystal Lambert, Environmental Health Official noted that she did not have any comments on the application.</li>   <li>3. <i>Lot Size and Lot Density Considerations.</i> Lot size and lot density must be substantially similar to neighborhood parcels, unless the proposal can meet either standard (a) or (b).       <ol style="list-style-type: none"> <li>a. <i>Conditions are appropriate for smaller lots or greater density.</i></li>   <li>Or</li>   <li>b. <i>Conditions are appropriate for larger lots or reduced density.</i></li> </ol> </li> </ol> <p>The applicant proposes subdividing a 37.62 acre lot into two lots approximately 19 and 18 acres in size. The Applicant has provided a map ("Assessor Map" in the project file, dated 8/3/2020) indicating the location of the residential lots located on the opposite side of</p>
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Hwy 135. The adjacent lots range in size from 2.8 acres to 471 acres.

There are two adjacent lots to the subject property that were not included in the Applicant's analysis. This includes a 189-acre lot to the west owned by Bill Lacy, and a 471-acre lot to the east owned by Lacy & Dow, LLC.

Further north and west of the residential lots provided by the applicant are one-acre lots that are part of the Whetstone Industrial Park.

Because the neighboring lots vary widely, staff has prepared a comparison chart with the neighboring lot size, the difference in size of the proposed lot size, and the percentage difference from the neighboring to proposed lot size. To simplify this exercise, and because the lots are very close in size, staff used the average acreage of the two proposed lots, or 18.5 acres. All resultant percentage figures were rounded to the nearest whole number.

Neighboring Lot Area	Difference in Acres from Proposed Lot Area	Percent Difference from Proposed Lot Area
2.8 acres	15.7 acres	-85%
8.4 acres	10.1 acres	-55%
7.4 acres	11.1 acres	-60%
21 acres	13.6 acres	14%
189 acres	170.5 acres	922%
450 acres	421.5 acres	2332%

The neighboring lots detailed in the table above vary widely in size from each other and from the proposed subdivision lots. The smaller lots are located on the opposite side of Hwy 135 and the large agricultural lots are located adjacent to the subject property. With regards to neighborhood

		<p>context, staff believes that the properties that share contiguous boundaries make up the neighborhood. Historically, major highways serve to divide and segregate neighborhoods. This is supported by the EPA's position on the enforcement of Environmental Justice Laws to prevent the bifurcation of existing neighborhoods with transportation infrastructure. Staff believes that the presence of Hwy 135, at this point a two-lane highway with a posted speed of 55 MPH, creates a geographic division of the parcels provided in the applicant response. Therefore, staff has determined that it is most appropriate to compare the adjacent and contiguous lots to the proposed subdivision. The following analysis considers if Section 10-109.3.a <i>Lot Size and Lot Density Considerations, Conditions are Appropriate for Smaller Lots or Greater Density</i>. These Residential Density standards are satisfied when the following four conditions are met:</p> <ol style="list-style-type: none"><li>1. <i>Development served by Public Wastewater Treatment System</i>  The Applicant proposes an individual septic system, a Public Wastewater Treatment System is not available at this location.</li><li>2. <i>Development Serviced by Other Services and Facilities</i>  There is not a public water supply available to the proposed subdivision. The Applicant has represented that they will obtain a well permit for the resultant lot.</li><li>3. <i>Compatible with the Neighborhood:</i></li></ol>
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		<p>The Applicant has provided permanent covenants to ensure compatibility with the surrounding development, which is essentially limited to the existing home on the subject property.</p> <p>The covenants include the following:</p> <ul style="list-style-type: none"><li>-One single family residence at least 1,500 sq ft and no more than 4,500 sq. ft.</li><li>-One attached or detached garage at least 500 sq ft and no more than 1,000 sq ft</li><li>-One detached secondary residence at least 500 sq ft and no more than 1,200 sq ft</li><li>-One barn no more than 1,500 sq ft</li><li>-The aggregate of all buildings shall not exceed 7,000 sq ft.</li></ul> <p>Article 4, Building Design, of the proposed covenants provide material and design standards for any proposed structure on either lot.</p> <p>While there are no specific provisions on landscaping design or requirements, Section 3.11 of the covenants state that “Tracts shall be maintained in a neat and tidy condition at all times. No refuse, including grass clippings, shrub clippings or tree clippings, plant waste, compost, ashes, metals, bulk materials, or scrap materials shall be allowed to accumulate on either tract.” This covenant will help to preserve the viewshed of Mount Crested Butte and the Brush Creek valley along CO-135. The covenants also require that weeds shall be controlled and all disturbed areas revegetated within “reasonable recommendations” of the County Weed Control Specialist.</p>
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		<p>The covenants also restrict the storage of vehicles outside of a garage.</p> <p>4. <i>Impact of Increased Density is Mitigated</i></p> <p>The decision-making body shall find that the impacts of increased density have been reasonable mitigated. Mitigation may include the provision of additional open space, essential residences, clustering of residences, and/or participation in public transportation system.</p> <p>The Applicant did not provide additional mitigation measures for the increase in density. There is a bus stop at Wapiti Lane/Riverland Industrial Park, which is about a mile north of the proposed subdivision.</p> <p>In an email from David Leinsdorf, dated October 20, 2020 he states:  “1. The application complies with LUR Section 10-103:C-1-3, Residential Density, for the following reasons:  1.1 The Town of Crested Butte Area Plan recommends preserving five acres of open space for each new residential unit. The Jaynes' proposal preserves many times that amount. The property is not visible from Town. All of the wet areas, according to our engineer and your inspection, are due to irrigation.  1.2. The Jaynes Subdivision comprises two lots of 18 acres each, far in excess of the one acre required for an on-site wastewater treatment system.  1.3. Lot size and lot density are substantially similar to neighborhood parcels:  -Across Highway 135 from the Jaynes property is a 2.80 acre residential parcel owned by Donna S. Rozman.</p>
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		<p>-Near the Rozman parcel is an 8.4 acre residential parcel owned by Daniel E. Oberosler and Nola J. Oberosler. Adjacent to the Oberosler parcel is a 7.40 acre vacant agricultural parcel owned by Devon R. Wilson and Grayce M. Wilson.</p> <p>-Lacy and Dow LLC owns a 21 acre agricultural parcel directly across Highway 135 from the Jaynes driveway.”</p> <p>Staff notes that the 21-acre Lacy &amp; Dow parcel does not meet the definition of a legal lot and is not considered a comparable parcel and that the adjacent large agricultural (180+ acres and 470+ acres) were not included in Leinsdorf’s analysis.</p>
10-104: Locational standards for commercial, industrial or other non-residential uses	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not requested as part of this application.
11-102: Voluntary best management practices	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<i>Applicable</i> , the practices are voluntary.
11-103: Development in flood hazard areas	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<i>Applicable</i> , while a very small portion of the subject parcel proposed for subdivision is within the floodplain, Lot B and associated building envelope are not within a regulatory floodplain.
11-104: Development in geologic hazard areas	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not Applicable</i> , the parcel is not located within a mapped geologic hazard area.
11-105: Development in wildfire hazard areas	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<i>Applicable</i> , the parcel falls within a mixed wildfire risk; and the majority of the parcel area falls within a low or moderate wildfire hazard area. About half of Lot A is within a high wildfire risk area. The County is currently considering adoption of updated wildfire mapping, a future residence may be subject to updated mapping and applicable standards. Colorado State Forest Service did not provide any comments on this application.
11-106: Protection of wildlife habitat areas	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Applicable</i> ; the parcel is not in an area defined as sensitive wildlife habitat. A copy of the application was referred to CPW for review. In a letter dated May 27, 2022, Philip Gurule, District Wildlife Manager states:

		<p><i>“Elk and deer inhabit this area, throughout the Slate and East River corridors. The area falls within an identified migration corridor, and serves as summer range for elk and deer. Although this proposed subdivision is within a mapped migration corridor, it receives proportionately lower ungulate use compared to the ‘core’ of this particular corridor which is further to the east. Reviewing the building envelope on tract 2, it appears that structures will be located on the south portion of the property that is closest to highway 135. CPW supports the location of the new building envelope, which will be in proximity to existing human infrastructure, thereby clustering development. This allows for the remainder of the property to stay open for wildlife movement and reduces habitat fragmentation. Additionally, we recommend that new fence construction be minimized to facilitate wildlife movement and reduce a potential source of wildlife mortality.”</i></p> <p>The letter goes on to recommend that if fencing is installed that it be wildlife friendly, that bear proof trash containers are used, and that dogs are kept under direct control by kenneling or leashing and that domestic cats range be limited outdoors. The applicant submitted a response to the CPW letter indicating compliance with the above recommendations and revised the applicable covenant sections.</p>
11-107: Protection of water quality	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> ; there are no wetlands or waterbodies on the subject property.
11-108: Standards for development on ridgelines	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , proposal not located on a Ridgeline.

<p>11-109: Development that affects agricultural lands</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>	<p><i>Applicable</i>, the development is adjacent to agricultural operations. The Applicant is required to identify the following in writing:</p> <ul style="list-style-type: none"> <li>a. Agricultural Land Owner: The Applicant has provided the location and name of two adjacent agricultural land owners. <ul style="list-style-type: none"> <li>• 189.397 acre agricultural parcel owned by William J. Lacy, Jr., P.O. Box 1145, Crested Butte, Colorado 81224, is contiguous to the west and north boundaries of the Jaynes property.</li> <li>• 430.31 acre agricultural parcel owned by Lacy and Dow LLC, P.O. Box 836, Crested Butte, Colorado 81224, is contiguous to the east and south boundaries of the Jaynes property</li> </ul> </li> <li>b. Agricultural Ditches: The Applicant identified one named ditch on the subject parcel. <ul style="list-style-type: none"> <li>• The Verzuh-Young-Bifano Ditch irrigates the Jaynes property. A map dated 7/30/20 prepared by Norman C. Whitehead, P.E., P.L.S., shows various tributaries of the ditch as it branches out in laterals to irrigate the Jaynes property. In addition, the Verzuh Ditch is depicted in the southeast corner of the Jaynes property, entering from the east and exiting on the south.</li> </ul> </li> <li>c. Easements: The Applicant noted there are no recorded easements for the headgates, ditches, and/or fences for maintenance or operations on the property. The Applicant further stated that the Applicant has right of access to the Verzuh Ditch head gate pursuant to Colorado Revised Statute Section (CRS) 37-86-102 and 103. In summary, Section 37-86-102 and 103</li> </ul>
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		<p>pertain to water and irrigation. Specifically, the rights-of-way are entitled on lands where a water right or conditional water right are conveyed. The extents of the rights-of-way include structures used for the conveyance, including headgates. Source: <a href="https://leg.colorado.gov/sites/default/files/images/olls/crs2016-title-37.pdf">https://leg.colorado.gov/sites/default/files/images/olls/crs2016-title-37.pdf</a>, page 532, accessed August 18, 2020.</p> <p>d. Livestock Drives and Fencelines: the Applicant has represented that there are no historic or recorded stock drive easements crossing or adjacent to the subject property.</p>
11-110: Development beyond snowplowed access	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<i>Not applicable</i> , the proposed development is not beyond snowplowed access.
11-111: Development on Inholdings in national wilderness	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , development not located on an Inholding in a federally designated wilderness area.
11-112: Development above timberline	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , development not located above timberline.
12-103: Road system	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<p><i>Applicable</i>, development is located on an existing road system, Highway 135.</p> <p>At this time, no new road system is proposed; however, an access permit from CDOT Region 3 will be required when proposed Tract 2 is developed. The property was developed more than 20 years ago and there is not an access permit for the existing egress point at SH 135, because at that time, CDOT did not require access permits. In an email dated May 10, 2022 from Kandis Aggen, CDOT Assistant Access Manager, stated: "We issued a permit in 2020 for the 2 parcels sharing the existing access - no additional accesses will be allowed per the state highway access code for this R-A category highway. We'd like to clarify that this new driveway is coming internally off the existing driveway.</p>

		<p>If this is the case, CDOT issued the permit for one shared access point with a volume of 4 DHV - one single family home and one ADU on each lot and would have no further comment.”</p> <p>An easement providing Tract 2 egress to SH 135 is proposed on Tract 1. The easement is required to be 30 in width to accommodate emergency vehicle access. In an email dated May 30, 2022, Marlene Crosby, Gunnison County Public Works Director stated, “They have a current CDOT access off of HW #135 which I assume will have to be reviewed. I do not see any problem with the application. They will have to have an access permit for each dwelling with adequate emergency access. Will the improvements be covered by a DIA?”</p> <p>A Development Improvement Agreement (DIA) is not expected to be required for the installation of the driveway to the proposed lot if the subdivision is approved.</p>
12-104: Trails	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not requested as part of this application
12-105: Water Supply	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<p><i>Applicable</i>, current use and residential structures have adequate water supply. Additional water supply is required as part of this application.</p> <p>The applicant proposes the drilling of a new individual well to serve the new lot. The applicant proposes augmentation of the well through purchase of augmentation water from the Upper Gunnison River Water Conservancy District. The applicant has completed a 24-hour well pump test and submitted a report prepared by Norman Whitehead, P.E. The report and supporting information has been referred to the Colorado Division of Water Resources for review and comment. Comments from Megan Sullivan, Water Resource Engineer, dated October 8, 2020 state,</p>

		<p><i>“The applicant did indicate that they had contacted the UGWCD regarding a contract to operate under their augmentation plan, but a copy of a contract was not included in the submittal materials.</i></p> <p><i>....Based on the above, it is our opinion, pursuant to CRS 30-28-136(1)(h)(l), that material injury will occur to decreed water rights unless the applicant 1) restricts the use of the existing well to one of the two tracts of the subdivision and operates the well in accordance with the current permit, 156761-A, and 2) obtains and maintains a valid well permit for a well to serve the other tract pursuant to a court approved plan for augmentation, such as the one approved for Upper Gunnison River Water Conservancy District in case no. 03CW108. We recommend that prior to final approval of the subdivision, the County requires the applicant to provide copies of a valid permit issued pursuant to an approved augmentation plan for the other lot. However, due to the lack of information, we are unable to comment on the physical adequacy of the water supply for the subdivision.”</i></p> <p>Staff requested additional comments from DWR since the water supply report was submitted in 2022 and in a letter dated April 18, 2022, Megan Sullivan states:</p> <p><i>“In response to our original comments regarding information on the physical adequacy of the water supply, the applicant provided a well test report prepared by Norman Whitehead of NCW &amp; Associates. The consultant indicated that on February 8, 2022, a 24 hour pump test was performed on a monitoring and observation well constructed under well permit no. 322778 and located on the 37.6 acre parcel. According to the report the well was pumped at 15 gpm and the water level was drawn down from 56.2 feet above the pump to 11.5 feet above the pump over the 24 hour test period. Once the pump was</i></p>
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		<p><i>shut off, the water level recovered to 30.2 feet above the pump within 66 minutes. An additional water level measurement taken on February 19, 2022 found the water level at 52 feet above the pump.</i></p> <p><i>...Based on the above, it is our opinion, pursuant to CRS 30-28-136(1)(h)(l), that material injury will not occur as long as the applicant 1) restricts the use of the existing well to one of the two tracts of the subdivision and operates the well in accordance with the current permit, 156761-A, and 2) obtains and maintains a valid well permit for a well to serve the other tract pursuant to a court approved plan for augmentation, such as the one approved for Upper Gunnison River Water Conservancy District in case no. 03CW108. In terms of adequacy, if the wells serving the subdivision have or continue to have similar production rates as demonstrated in the well test, along with sufficient storage the water supply should be physically adequate for in-house purposes. Please note the long term adequacy of any ground water source may be subject to fluctuation due to hydrological and climatic trends.”</i></p>
12-106: Wastewater treatment	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<p><i>Applicable</i>, a wastewater treatment system is required of the proposed development. The proposed lot meets the minimum lot size for installation of an OWTS. A copy of the application has been referred to the Environmental Health Official and, in an email, dated October 9, 2020 she stated that she has “no comments or concerns” regarding the application.</p>
12-107: Fire protection	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<p><i>Applicable</i>, the application was referred to the Crested Butte Fire Protection District. In an email dated May 31, 2022, Ric Ems, Fire Marshal, stated:</p> <p><i>“CBFPD does not have any issues with the subdivision request as submitted.</i></p>

		<i>As you are aware, access, water supply and utilities will be addressed at a building permit stage.”</i>
13-102: B.: Location within municipal three-mile plan area	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<p><i>Applicable</i>, the project is located within the Crested Butte Three Mile Area Plan.</p> <p>The Area Plan recommends preserving five acres of open space for each new residential unit. The subdivision does not establish open space with an open space lot nor conservation easement. There are proposed building envelopes for the proposed Tract 2.</p> <p>The Area Plan also prioritizes preserving wetlands. Staff has conducted a site visit and agree with the Applicant that any wetlands present on the property are the result of the agricultural ditches.</p> <p>The Area Plan seeks to protecting important wildlife habitat. The project is located on an area historically used for agriculture and is beyond the occupied habitat of the Gunnison Sage-Grouse.</p> <p>The Area Plan intends to protect hillsides seen from Crested Butte. The property is not visible from the Town limits.</p> <p>The application was referred to the Town of Crested Butte for comment on May 6, 2022 and no comments were received.</p>
13-103: General Site Plan Standards And Lot Measurements	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<i>Applicable</i> , the existing and proposed development meets these standards.
13-104: Setbacks From Property Lines And Road Rights-Of-Way	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<i>Applicable</i> , the existing development meets these standards.
13-105: Residential Building Sizes And Lot Coverages	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<i>Applicable</i> , the proposed covenants limit residential building sizes as follows:

		<p>-One single family residence at least 1,500 sq ft and no more than 4,500 sq. ft.</p> <p>-One attached or detached garage at least 500 sq ft and no more than 1,000 sq ft</p> <p>-One detached secondary residence at least 500 sq ft and no more than 1,200 sq ft</p> <p>-One barn no more than 1,500 sq ft</p> <p>-The aggregate of all buildings shall not exceed 7,000 sq ft.</p>
13-107: Installation Of Solid-Fuel-Burning Devices	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<i>Applicable</i> , per this Section no more than one solid fuel burning device shall be installed per single family residence. <i>The covenants state this standard.</i>
13-108: Open Space And Recreation Areas	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not required for a Minor impact application.
13-109: Signs	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , not requested as part of this application.
13-110: Off-Road Parking And Loading	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not Applicable</i> , the use does not generate additional parking requirements.
13-111: Landscaping And Buffering	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<i>Applicable</i> , the applicant has noted that they will maintain existing vegetation.
13-112: Snow Storage	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<i>Applicable</i> ; there appears to be adequate area for snow storage along the driveway.
13-113: Fencing	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<i>Applicable</i> , any proposed fencing shall comply with this Section.
13-114: Exterior Lighting	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<i>Applicable</i> , any proposed exterior lighting shall comply with this section.
13-115: Reclamation And Noxious Weed Control	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Applicable</i> , any proposed grading or disturbance may require a reclamation permit.
13-116: Grading And Erosion Control	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<i>Not Applicable.</i>
13-117: Drainage, Construction And Post-Construction Storm Water Runoff	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> , the application does not meet the applicability thresholds of Sec. 13-117.B.
13-118: Water Impoundments	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<i>Not applicable</i> ; not requested as part of this application.
13-119: Standards To Ensure Compatible Uses	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<i>Not applicable</i> ; change in use is not requested as part of this application.

**TO:** Board of County Commissioners

**SUBJECT:** Planning Commission Recommendation  
Jay and Pamela Jaynes  
LUC-20-00037

**DATE:** October 6, 2022

**PREPARED BY:** Cathie Pagano, Assistant County Manager, Community and Economic Development

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**Commissioner Sovick made a motion to approve the application; Commissioner Schwartz seconded the motion. The motion passed 3-2.**

**PROJECT DESCRIPTION:**

The applicant proposes to subdivide an existing 37.621 acre into two lots, 19.21-acre tract 1 and 18-acre tract two. The subject property is presently developed with an approximately 3,000 sq. ft. single-family residence constructed in the late 1950s and accessory structures.

The project proposes a new driveway to provide access to the proposed building envelope on Tract 2. The project proposes limiting the number of structures on tract 2 to four; including a single-family residence, an accessory dwelling unit, a barn, and a garage.

**IMPACT CLASSIFICATION:**

The project, by definition, is a minor impact pursuant to *Section 6-102: A. 2-4 Units*.

**MEETING DATES:**

The Planning Commission held work sessions and public hearings to discuss Jaynes application on the following dates:

- June 16, 2022 Work Session
- July 7, 2022 Site Visit
- July 7, 2022 Work Session
- September 8, 2022 Joint Public Hearing
- October 6, 2022 Joint Public Hearing

**SITE VISIT:**

The Planning Commission conducted a site visit on July 7, 2022 and observed the site and nearby parcels.

**PUBLIC HEARING:**

The Planning Commission and Board of County Commissioners conducted a joint public hearing on September 8, 2022 and October 6, 2022. Public comment included written comment from the following individuals:

- Donna Rozman
- Tim Szurgot
- Attorney Marcus Lock on behalf of Bill Lacy
- Nick and Mary Anne Chirekos

**REVIEW AGENCY REFERRAL COMMENTS:**

A copy of the complete application was sent via electronic mail to the following agencies: Colorado Parks and Wildlife; Colorado State Forest Service; Colorado Department of Transportation; Colorado Division of Water Resources; Crested Butte Fire Protection District; Gunnison County Environmental Health Official; Gunnison County Department of Public Works; Town of Crested Butte. Comments from the agencies and are noted in the applicable sections below.

**COMPLIANCE WITH APPLICABLE SECTIONS OF THE GUNNISON COUNTY LAND USE RESOLUTION:**

**Section 9-100: Uses Secondary to a Primary Residence.**

Applicable, requested as part of this application. While no development is proposed at this time, the applicant has provided covenants that allow for one secondary residence. This secondary residence may be integrated or detached. The standards of this secondary residence are addressed in Section 3.1 of the *Declaration of Protective Covenants*. The secondary residence may be no less than 500 sq. ft. but no more than 1,200 sq. ft. of floor area in size.

**Section 9-200: Special Residential Uses.**

Not applicable. No special residential uses are proposed as part of this application.

**Section 9-300: Commercial and Industrial Uses.**

Not applicable, no commercial industrial use is proposed as part of this application.

**Section 9-400: Exploration, Extraction and Processing of Minerals and Construction Materials.**

Not applicable. No exploration, extraction or processing of materials is proposed.

**Section 9-500: Miscellaneous Uses and Activities.**

Not applicable. No miscellaneous uses or activities are proposed.

**Section 9-600: Essential Housing**

Not applicable. No essential housing is proposed as part of this application.

**Section 10-102: Locational Standards for Residential Development.**

Applicable, the Town of Crested Butte has a three-mile plan. The application was referred to the Town on May 6, 2022 and no comments were received.

The proposal is for a two-lot subdivision that would obtain its own well and septic system. The access would be conveyed on a shared access on Hwy 135. The applicant describes compliance with this Section on page 1 of the narrative: "The Jaynes property, 23990 State Highway 135, is within a municipal three-mile plan area...the Jaynes ranch proposal satisfies Section 10-102: 3 because splitting the Jaynes' 37.621-acre property roughly in half will result in no significant net adverse impact to the neighborhood."

**Section 10-103: Residential Density.**

Applicable, the application for subdivision must meet Section 10-103.C *Primary Residential Lot Size and Density Standards*.

1. *Compliance with Municipal Three Mile Plan Area:* This standard applies, the Town of Crested Butte has an adopted three-mile plan. The application was referred to the Town on May 6, 2022; no comments were received.
2. *Determination of Density Considers Sewage Disposal Requirements:* This requires that the density, location, and configuration shall be determined based on the feasibility of use of an Onsite Wastewater Treatment System (OWTS). The proposed Tract 2 meets the minimum lot size required for a septic system. The application was referred to the Environmental Health Official on May 6, 2022 and Crystal Lambert, Environmental Health Official noted that she did not have any comments on the application.
3. *Lot Size and Lot Density Considerations.* Lot size and lot density must be substantially similar to neighborhood parcels, unless the proposal can meet either standard (a) or (b).

The applicant proposes subdividing a 37.62 acre lot into two lots approximately 19 and 18 acres in size. The applicant has provided a map (“Assessor Map” in the project file, dated 8/3/2020) indicating the location of the residential lots located on the opposite side of Hwy 135. The adjacent lots range in size from 2.8 acres to 471 acres.

There are two adjacent lots to the subject property that were not included in the applicant’s analysis. This includes a 189-acre lot to the west owned by Bill Lacy, and a 471-acre lot to the east owned by Lacy & Dow, LLC.

Further north and west of the residential lots provided by the applicant are one-acre lots that are part of the Whetstone Industrial Park.

Neighboring Parcel area and difference:

Neighboring Lot Area	Difference in Acres from Proposed Lot Area	Percent Difference from Proposed Lot Area
2.8 acres	15.7 acres	-85%
8.4 acres	10.1 acres	-55%
7.4 acres	11.1 acres	-60%
21 acres	13.6 acres	14%
189 acres	170.5 acres	922%
450 acres	421.5 acres	2332%

The neighboring lots detailed in the table above vary widely in size from each other and from the proposed subdivision lots. The smaller lots are located on the opposite side of Hwy 135 and the large agricultural lots are located adjacent to the subject property. The Planning Commission has reviewed the parcel mapping and visited the site.

An email from David Leinsdorf, dated October 20, 2020 states:

- “1. The application complies with LUR Section 10-103:C-1-3, Residential Density, for the following reasons:*
- 1.1 The Town of Crested Butte Area Plan recommends preserving five acres of open space for each new residential unit. The Jaynes' proposal preserves many times that amount. The property is not visible from Town. All of the wet areas, according to our engineer and your inspection, are due to irrigation.*
  - 1.2. The Jaynes Subdivision comprises two lots of 18 acres each, far in excess of the one acre required for an on-site wastewater treatment system.*
  - 1.3. Lot size and lot density are substantially similar to neighborhood parcels:*
    - Across Highway 135 from the Jaynes property is a 2.80-acre residential parcel owned by Donna S. Rozman.*
    - Near the Rozman parcel is an 8.4-acre residential parcel owned by Daniel E. Oberosler and Nola J. Oberosler. Adjacent to the Oberosler parcel is a 7.40- acre vacant agricultural parcel owned by Devon R. Wilson and Grayce M. Wilson.*
    - Lacy and Dow LLC owns a 21- acre agricultural parcel directly across Highway 135 from the Jaynes driveway.”*

The Planning Commission has determined that the parcels are on the west side of Highway 135 should be considered as part of the “neighborhood” and thus the proposed development is substantially similar to neighborhood parcels.

**Section 11-103: Development in Areas Subject to Flood Hazards.**

Not applicable, the subject parcel and proposed development are not within the 100-year floodplain.

**Section 11-104: Development in Areas Subject to Geologic Hazards.**

Not applicable, the parcel is not located within a mapped geologic hazard area.

**Section 11-105: Development in Areas Subject to Wildfire Hazards.**

Applicable, the parcel falls within a mixed wildfire risk; and the majority of the parcel area falls within a low or moderate wildfire hazard area. About half of Lot A is within a high wildfire risk area. The County has recently adopted updated wildfire mapping and the 2021 International Wildland Urban Interface Code, future structures shall be subject to updated mapping and applicable standards. Colorado State Forest Service did not provide any comments on this application.

**Section 11-106: Protection of Wildlife Habitat Areas.**

Applicable, the parcel is not in an area defined as sensitive wildlife habitat. A copy of the application was referred to CPW for review. In a letter dated May 27, 2022, Philip Gurule, District Wildlife Manager states:

*“Elk and deer inhabit this area, throughout the Slate and East River corridors. The area falls within an identified migration corridor, and serves as summer range for elk and deer. Although this proposed subdivision is within a mapped migration corridor, it receives proportionately lower ungulate use compared to the ‘core’ of this particular corridor which is further to the east. Reviewing the building envelope on tract 2, it appears that structures will be located on the south portion of the property that is closest to highway 135. CPW supports the location of the new building envelope, which will be in proximity to existing human infrastructure, thereby clustering development. This allows for the remainder of the property to stay open for wildlife movement and reduces habitat fragmentation. Additionally, we recommend that new fence construction be minimized to facilitate wildlife movement and reduce a potential source of wildlife mortality.”*

The letter goes on to recommend that if fencing is installed that it be wildlife friendly, that bear proof trash containers are used, and that dogs are kept under direct control by kenneling or leashing and that domestic cats’ range be limited outdoors. The applicant submitted a response to the CPW letter indicating compliance with the above recommendations and revised the applicable covenant sections.

**Section 11-107: Protection of Water Quality.**

Not applicable, there are no wetlands or waterbodies on the subject property.

**Section 11-108: Standards for Development on Ridgelines.**

Not applicable, the site is not located on a ridgeline.

**Section 11-109: Development That Affects Agricultural Lands.**

Applicable, the proposed subdivision is adjacent to an agricultural operation. Language regarding the confinement of domestic animals, Colorado’s “fence-out” requirements, and irrigation ditch maintenance shall be included on the final plat in compliance with the standards of this Section.

**Section 11-110: Development of Land Beyond Snowplowed Access.**

Not applicable, the site is not located beyond snowplowed access.

**Section 11-111: Development on Inholdings in The National Wilderness.**

Not applicable, the site is not located on a National Wilderness inholding.

**Section 11-112: Development on Property Above Timberline.**

Not applicable, the site is not located above timberline.

**Section 12-103: Road System.**

Applicable, development is located on an existing road system, Highway 135.

At this time, no new road system is proposed; however, an access permit from CDOT Region 3 will be required when Tract 2 is developed. The property was developed more than 20 years ago and there is not an access permit for the existing egress point at SH 135, because at that time, CDOT did not require access permits. In an email dated May 10, 2022 from Kandis Aggen, CDOT Assistant Access Manager, stated: "We issued a permit in 2020 for the 2 parcels sharing the existing access - no additional accesses will be allowed per the state highway access code for this R-A category highway. We'd like to clarify that this new driveway is coming internally off the existing driveway."

If this is the case, CDOT issued the permit for one shared access point with a volume of 4 DHV - one single family home and one ADU on each lot and would have no further comment."

An easement providing Tract 2 egress to SH 135 is proposed on Tract 1. The easement is required to be 30 feet in width to accommodate emergency vehicle access. In an email dated May 30, 2022, Marlene Crosby, Gunnison County Public Works Director stated, "They have a current CDOT access off of HW #135 which I assume will have to be reviewed. I do not see any problem with the application."

**Section 12-104: Public Trails.**

Not applicable, there is no public trail existing or proposed on this site.

**Section 12-105: Water Supply.**

Applicable, current use and residential structures have adequate water supply. Additional water supply is required as part of this application.

The applicant has drilled an individual well to serve the new lot. The applicant proposes augmentation of the well through purchase of augmentation water from the Upper Gunnison River Water Conservancy District. The applicant has completed a 24-hour well pump test and submitted a report prepared by Norman Whitehead, P.E. The report and supporting information have been referred to the Colorado Division of Water Resources for review and comment. Comments from Megan Sullivan, Water Resource Engineer, dated October 8, 2020 state,

*"The applicant did indicate that they had contacted the UGWCD regarding a contract to operate under their augmentation plan, but a copy of a contract was not included in the submittal materials.*

*....Based on the above, it is our opinion, pursuant to CRS 30-28-136(1)(h)(I), that material injury will occur to decreed water rights unless the applicant 1) restricts the use of the existing well to one of the two tracts of the subdivision and operates the well in accordance with the current permit, 156761-A, and 2) obtains and maintains a valid well permit for a well to serve the other tract pursuant to a court approved plan for augmentation, such as the one approved for Upper Gunnison River Water Conservancy District in case no. 03CW108. We recommend that prior to final approval of the subdivision, the County requires the applicant to provide copies of a valid permit issued pursuant to an approved augmentation plan for the other lot. However, due to the lack of information, we are unable to comment on the physical adequacy of the water supply for the subdivision."*

Staff requested additional comments from DWR since the water supply report was submitted in 2022 and in a letter dated April 18, 2022, Megan Sullivan states:

*"In response to our original comments regarding information on the physical adequacy of the water supply, the applicant provided a well test report prepared by Norman Whitehead of NCW & Associates. The consultant indicated that on February 8, 2022, a 24-hour pump test was performed on a monitoring and observation well, constructed under well permit no. 322778 and located on the 37.6-acre parcel. According to the report the well was pumped at 15 gpm and the water level was drawn down from 56.2 feet above the pump to*

11.5 feet above the pump over the 24-hour test period. Once the pump was shut off, the water level recovered to 30.2 feet above the pump within 66 minutes. An additional water level measurement taken on February 19, 2022 found the water level at 52 feet above the pump.

...Based on the above, it is our opinion, pursuant to CRS 30-28-136(1)(h)(I), that material injury will not occur as long as the applicant 1) restricts the use of the existing well to one of the two tracts of the subdivision and operates the well in accordance with the current permit, 156761-A, and 2) obtains and maintains a valid well permit for a well to serve the other tract pursuant to a court approved plan for augmentation, such as the one approved for Upper Gunnison River Water Conservancy District in case no. 03CW108. In terms of adequacy, if the wells serving the subdivision have or continue to have similar production rates as demonstrated in the well test, along with sufficient storage the water supply should be physically adequate for in-house purposes. Please note the long-term adequacy of any ground water source may be subject to fluctuation due to hydrological and climatic trends.”

**Section 12-106: Sewage Disposal/Wastewater Treatment.**

Applicable, a wastewater treatment system is required of the proposed development. The proposed lot meets the minimum lot size for installation of an OWTS. A copy of the application has been referred to the Environmental Health Official and, in an email, dated October 9, 2020 she stated that she has “no comments or concerns” regarding the application.

**Section 12-107: Fire Protection.**

Applicable, the application was referred to the Crested Butte Fire Protection District. In an email dated May 31, 2022, Ric Ems, Fire Marshal, stated: “CBFPD does not have any issues with the subdivision request as submitted. As you are aware, access, water supply and utilities will be addressed at a building permit stage.”

**Section 13-102: Applicability**

Applicable, the project is located within the Crested Butte Three Mile Area Plan.

The Area Plan recommends preserving five acres of open space for each new residential unit. The subdivision does not establish open space with an open space lot nor conservation easement but does propose a restrictive covenant on a portion of the new parcel that limits development. The application was referred to the Town of Crested Butte for comment on May 6, 2022 and no response was received.

**Section 13-103: General Site Plan Standards and Lot Measurements.**

The site plan for this proposed development must meet the site plan criteria of this section, including proposed and existing roads, driveways, lot lines, building sites, and natural features of the site. The “Site Plan” dated March 31, 2022, prepared by NCW & Associates, Inc. meets these criteria.

**Section 13-104: Setbacks from Property Lines and Road Rights-of-Way.**

This section applies; the proposed improvements meet the setback requirements and shall be located within the defined building envelope.

**Section 13-105: Residential Building Sizes and Lot Coverages.**

Applicable, the proposed covenants limit residential building sizes as follows:

- One single family residence at least 1,500 sq ft and no more than 4,500 sq. ft.
- One attached or detached garage at least 500 sq ft and no more than 1,000 sq ft
- One detached secondary residence at least 500 sq ft and no more than 1,200 sq ft
- One barn no more than 1,500 sq ft
- The aggregate of all buildings shall not exceed 7,000 sq ft.

**Section 13-107: Installation of Solid Fuel-Burning Devices**

Applicable, per this Section no more than one solid fuel burning device shall be installed per single family residence. The covenants include this standard.

**Section 13-108: *Open Space and Recreation Areas***

Not applicable, no requirement of open space is required for this application.

**Section 13-109: *Signs.***

There are no signs proposed as part of the submitted application.

**Section 13-110: *Off-Road Parking and Loading.***

The number of parking spaces complies with Appendix Table 3 and this section.

**Section 13-111: *Landscaping and Buffering.***

Applicable, the applicant has noted that they will maintain existing vegetation.

**Section 13-112: *Snow storage.***

Applicable, the applicants will need to provide adequate area for snow storage. The application has been sent to Public Works for review and comment and no concerns were stated related to snow storage and there appears to be adequate snow storage area along the proposed driveway.

**Section 13-113: *Fencing***

Applicable, this section applies and any fencing proposed shall comply with this section. Fence-out requirements are noted in the proposed covenants. Any fencing installed on the subject properties shall comply with the recommendations from Colorado Parks and Wildlife and be “wildlife friendly.”

**Section 13-114: *Exterior Lighting.***

Applicable, this section applies and any exterior lighting proposed shall comply with this section.

**Section 13-115: *Reclamation And Noxious Weed Control.***

Applicable, a reclamation permit is required for road cutting and/or construction, homesite clearing and berm construction.

**Section 13-116: *Grading And Erosion Control.***

Applicable, grading activities are required to secure a Reclamation Permit from the Public Works Department, pursuant to Section 13-115: *Reclamation and Noxious Weed Control.*

**Section 13-117: *Drainage, Construction And Post-Construction Stormwater Runoff.***

Not applicable, the proposed development is not within 100 feet of water body nor does it create more than 10,000 square feet of impervious surface area.

**Section 13-118: *Water Impoundments.***

Not applicable, this project does not propose a water impoundment.

**Section 13-119: *Standards to Ensure Compatible Uses.***

The proposed development has been designed in a manner that will not adversely affect the character and tranquility of nearby residential or public use areas.

**Article 15: *Right-to-Ranch Policy.***

This section is not applicable; there are no agricultural lands that will be affected by the uses on the subject parcel.

**FINDINGS:**

The Gunnison County Planning Commission finds that:

1. This project is classified as a Minor Impact.

2. The parcels on the west side of Highway 135 are considered part of the “neighborhood” and thus the proposed development is substantially similar to neighborhood parcels.
3. The applicant has drilled an individual well on Tract 2 which requires the purchase of augmentation water from the Upper Gunnison River Water Conservancy District.
4. The subject parcel is adjacent to an existing agricultural operation.
5. This application is consistent with the standards and requirements of this *Resolution*.
6. This review and decision incorporates, but is not limited to, all the documentation submitted to the County and included within the Community Development file relative to this application; including all exhibits, references and documents as included therein.

**DECISION:**

The Gunnison County Planning Commission, having considered the submitted plan, site observations and public testimony, has reached the above Findings and recommends that LUC-20-00037 be classified as a Minor Impact, and be approved with the following conditions:

1. This permit is limited to activities described within the “Project Description” of this application, and as depicted on the Plan submitted as part of this application. Expansion or change of this use will require either an application for amendment of this permit, or submittal of an application for a new permit, in compliance with applicable requirements of the Gunnison County *Land Use Resolution*.
2. The applicant shall purchase augmentation water and provide evidence of such purchase prior to the recordation of the final plat.
3. In compliance with the recommendations from CPW:
  - a) Bear-proof trash containers shall be required on each of the lots of this development
  - b) Any fencing installed shall be minimized and shall be “wildlife friendly” and comply with CPW guidance
  - c) Dogs shall be kept under direct control by kenneling or leashing
  - d) Domestic cats shall be kept indoors
4. Language regarding the confinement of domestic animals, Colorado’s “fence-out” requirements, and irrigation ditch maintenance shall be included on the final plat.
5. This approval is founded on each individual requirement. Should the applicant successfully challenge any such finding or requirement, this approval is null and void.
6. This permit may be revoked or suspended if Gunnison County determines that any material fact set forth herein or represented by the applicant was false or misleading, or that the applicant failed to disclose facts necessary to make any such fact not misleading.
7. The removal or material alteration of any physical feature of the property (geological, topographical or vegetative) relied on herein to mitigate a possible conflict shall require a new or amended land use change permit.
8. Approval of this use is based upon the facts presented and implies no approval of similar use in the same or different location and/or with different impacts on the environment and community. Any such future application shall be reviewed and evaluated, subject to its compliance with current regulations, and its impact to the County.

**BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY  
RESOLUTION NO. 2022 - \_\_\_\_**

**A RESOLUTION APPROVING THE APPLICATION FOR SUBDIVISION FOR LUC-20-00037  
PAMELA AND JAY JAYNES**

**WHEREAS**, Pamela and Jay Jaynes, propose to subdivide an existing 37.621 acre into two lots, 19.21-acre tract 1 and 18-acre tract two. The subject property is presently developed with an approximately 3,000 sq. ft. single-family residence constructed in the late 1950s and accessory structures.

The project proposes a new driveway to provide access to the proposed building envelope on Tract 2. The project proposes limiting the number of structures on tract 2 to four; including a single-family residence, a barn, and a garage.

The applicant did submit a minor revision to the application on October 19, 2022 stating:

“After hearing the concerns expressed on October 6, we have revised Section 3.1 of the Declaration to reduce the footprint and visual profile of buildings on Tract 2 of the Jaynes Ranch. To that end, we have eliminated the guest house, limited the maximum square footage of the single-family residence and garage to 5,000 square feet and, most significantly, reduced the maximum height to 1 ½ stories or 25 feet.”

The proposed changes have been incorporated in the Declaration of Protective Covenants.

**WHEREAS**, a joint public hearing was conducted by the Planning Commission and Board of County Commissioners on September 8, 2022, and October 6, 2022; and

**WHEREAS**, after a review of the application and all information, documentation and testimony related to it, the Gunnison County Planning Commission did, at its regular meeting on October 6, 2022 forward to the Board of County Commissioners a Recommendation of approval of that application with certain Findings and Conditions;

**NOW, THEREFORE**, the Board hereby adopts the Planning Commission’s Recommendation, with these Findings:

1. This project is classified as a Minor Impact.
2. The parcels on the west side of Highway 135 are considered part of the “neighborhood” and thus the proposed development is substantially similar to neighborhood parcels.
3. The applicant has drilled an individual well on Tract 2 which requires the purchase of augmentation water from the Upper Gunnison River Water Conservancy District.
4. The subject parcel is adjacent to an existing agricultural operation.
5. This application is consistent with the standards and requirements of this *Resolution*.
6. This review and decision incorporates, but is not limited to, all the documentation submitted to the County and included within the Community Development file relative to this application; including all exhibits, references and documents as included therein.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Gunnison County, Colorado, that no additional public hearing on the Jaynes application need be conducted by the Board, and further, the Board hereby approves the Jaynes application for LUC-20-00037 as recommended by the Planning Commission, with the following conditions:

1. This permit is limited to activities described within the "Project Description" of this application, and as depicted on the Plan submitted as part of this application. Expansion or change of this use will require either an application for amendment of this permit, or submittal of an application for a new permit, in compliance with applicable requirements of the Gunnison County *Land Use Resolution*.
2. The applicant shall purchase augmentation water and provide evidence of such purchase prior to the recordation of the final plat.
3. In compliance with the recommendations from CPW:
  - a) Bear-proof trash containers shall be required on each of the lots of this development
  - b) Any fencing installed shall be minimized and shall be "wildlife friendly" and comply with CPW guidance
  - c) Dogs shall be kept under direct control by kenneling or leashing
  - d) Domestic cats shall be kept indoors
4. Language regarding the confinement of domestic animals, Colorado's "fence-out" requirements, and irrigation ditch maintenance shall be included on the final plat.
5. This approval is founded on each individual requirement. Should the applicant successfully challenge any such finding or requirement, this approval is null and void.
6. This permit may be revoked or suspended if Gunnison County determines that any material fact set forth herein or represented by the applicant was false or misleading, or that the applicant failed to disclose facts necessary to make any such fact not misleading.
7. The removal or material alteration of any physical feature of the property (geological, topographical or vegetative) relied on herein to mitigate a possible conflict shall require a new or amended land use change permit.
8. Approval of this use is based upon the facts presented and implies no approval of similar use in the same or different location and/or with different impacts on the environment and community. Any such future application shall be reviewed and evaluated, subject to its compliance with current regulations, and its impact to the County.

**THIS RESOLUTION AND THE APPROVAL GRANTED HEREBY** shall not be effective unless and until a copy is recorded in the Office of the Clerk and Recorder of Gunnison County.

**INTRODUCED** by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and adopted on this \_\_\_\_ day of \_\_\_\_\_, 2022.

**BOARD OF COUNTY COMMISSIONERS  
OF GUNNISON COUNTY, COLORADO**

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**Jonathan Houck, Chairperson**

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**Roland Mason, Commissioner**

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**Elizabeth Smith, Commissioner**

**ATTEST:**

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**Gunnison County Deputy Clerk and Recorder**