# CHAPTER 15

## Intergovernmental Agreements

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## ARTICLE 1

### Arkansas Valley Exposition and Fair Association

*Lease*
*June 13, 1978*

THIS LEASE, made this 13th day of June, 1978, by and between the CITY OF ROCKY FORD, a Colorado municipal corporation of Otero County, Colorado, hereinafter referred to as "Lessor," and the ARKANSAS VALLEY EXPOSITION AND FAIR ASSOCIATION, a corporation of Otero County, Colorado, hereinafter referred to as "Lessee."

WITNESSETH:

WHEREAS, Lessor is the owner of the hereinafter described premises and is desirous of leasing the same to Lessee, and Lessee is desirous of leasing said premises;

NOW, THEREFORE, Lessor does hereby demise and lease unto Lessee those premises situated, lying or being in Otero County, State of Colorado, described as follows:

A tract of land lying in the Northeast ¼ of the Southwest ¼ of Section 7, Township 23 South, Range 56 West of the 6th P.M., and more particularly described as follows:

Beginning at the Northeast corner of PARK ADDITION to the Town of Rocky Ford as shown on the recorded plat thereof, thence South 0°05' East along the East line of Eighth Street, a distance of 954.43 feet; thence South 88°54' West, a distance of 4.15 feet to the True Point of Beginning; thence South 2°58' East, a distance of 304.75 feet; thence North 88°26' East, a distance of 145.17 feet; thence North 0°05' West and parallel with the East line of PARK ADDITION, a distance of 81.53 feet; thence North 88°30' East, a distance of 96.12 feet; thence North 0°05' West and parallel with the East line of PARK ADDITION, a distance of 221.31 feet; thence South 88°54' West, a distance of 256.45 feet to the True Point of Beginning. The tract contains 1.55 acres.

**1. Term and Rental.**

The term of the Lease shall be for fifty (50) years, commencing on the 13th day of June, 1978, and shall terminate at midnight on the 13th day of June, 2028. In consideration of the leasing and demising of the premises aforesaid, the Lessee or its assigns agrees to pay the Lessor as rental for said demised premises, one dollar ($1.00) per year for the fifty (50) years of said term, for a total rental of fifty dollars ($50.00). Each said yearly payment shall be payable on or before the 1st of December of each year during the term of the Lease.

**2. Option.**

The Lessor hereby grants the Lessee or its assigns the option to renew and extend this Lease under the same terms and provisions for a period of twenty (20) years after the expiration of this fifty-year term.

In order for the Lessee or its assigns to exercise the option, it must give a prior written notice of its election to do so within thirty (30) days of the expiration of the fifty-year term. Such notice is to be sent through the registry of the U.S. mail, certified, return receipt requested. In the event that the Lessee or its assigns shall not make such an election, the Lessee or its assigns shall vacate the premises at midnight on the 13th day of June, 2028.

**3. Construction of Building.**

It is agreed that the Lessee or its assigns may, at its own expense, construct and maintain a building on said demised premises. Said building shall be constructed in conformance with the laws of the United States of America, the State of Colorado, and the City of Rocky Ford, then in full force and effect governing the construction of said building. It is further agreed that the Lessee or its assigns at the termination of the Lease for whatever reason, shall have the right to remove, at its own expense, any building it constructed on the demised premises.

**4. Building and Grounds Maintenance.**

It is agreed that the Lessee, or its assigns, at its own expense, shall be responsible for the maintenance of any building constructed by it on the demised premises. The maintenance and cleaning up of the outside grounds of the demised premises shall also be the sole obligation of the Lessee or its assigns.

**5. Utilities.**

The Lessee or its assigns shall pay, as the same shall become due and payable, all utilities utilized by the Lessee or its assigns on the above-described premises, including but not limited to electricity, gas, water, sewer and trash pickup.

**6. Insurance.**

All insurance carried on the premises shall be carried by and paid for by the Lessee or its assigns, which shall include insurance on any building constructed on said demised premises, liability insurance for the general public and insurance on any equipment placed on the demised premises by the Lessee or its assigns against fire, theft and similar items.

Nothing herein stated shall prevent the Lessor from carrying any insurance against liability which it may care to obtain for its sole protection against liability.

**7. Taxes.**

The Lessee or its assigns shall pay ad valorem taxes levied or assessed against the real estate and the furniture, furnishings, applicants, etc., utilized in the operation of said premises.

**8. Use of Premises.**

The Lessee or its assigns agrees to comply with all requirements of the State of Colorado, United States of America and the City of Rocky Ford, and not to use said premises for any unlawful purpose.

**9. Easement.**

It is further agreed that the Lessor, during the term of this agreement, shall have an ingress, egress and utilities easement upon, through and over the described property, said easement being more particularly described as follows:

Beginning at the Northeast corner of the demised tract of land, thence West on the North boundary line of the said demised tract of land, a distance of 40 feet to a point; thence South parallel with the East boundary line of the demised tract of land, a distance of 155 feet to a point; thence East parallel with the North boundary line of the demised tract of land, a distance of 40 feet to a point on the East boundary of the demised

tract of land; thence North on the East boundary line of the demised tract of land, a distance of 155 feet to the point of beginning.

**10. Subletting and Assigning.**

The Lessee shall not assign this Lease or sublet the whole or any part thereof without obtaining the prior written consent of the Lessor thereto.

**11. Termination.**

The Lessee or its assigns agrees that, in the event the rental hereinabove provided, or any part thereof, shall be behind and unpaid on the date of payment by the terms hereof, or if the Lessee or its assigns shall otherwise default on the promises, agreements and covenants of the Lessee or its assigns made herein, then and in such case, it may be lawful for the Lessor, at its option, to declare this Lease terminated and enter into said demised premises or any part thereof, with or without process of law, and expel the said Lessee or its assigns or any person or persons occupying such premises, using such force as may be necessary to do so, and so to repossess and enjoy said premises as in the Lessor's former estate. Should the said terms at any time be ended by the election of the Lessor, under the terms and conditions hereof or any other way, the Lessee or its assigns hereby covenants and agrees to surrender and deliver up said premises and property peaceably to the Lessor and to remain liable to and pay the Lessor any monies owing under the terms hereof and for other losses or damages resulting or incurred by the Lessor by reason of said default, including any legal expenses and attorney's fees incurred by the Lessor by reason of such default.

**12. Assignment.**

This lease shall be binding upon and include the successors and assigns of by the Lessor and Lessee, and the Lessor and Lessee certify that the parties are duly authorized to execute this agreement.

## ARTICLE 2

### 4-H Building Construction

*Resolution No. 4/10/79*
*April 10, 1979*

WHEREAS, the Board of County Commissioners of the County of Otero and State of Colorado have heretofore determined that it is in the best interest of the residents of the County of Otero for the County to participate in the construction, financing and payment of a 4-H Building to be located on the fairgrounds at Rocky Ford, Colorado, for the use of the 4-H Council and the youngsters involved in that program, as well as a general use facility for the residents of the County of Otero; and

WHEREAS, the Board of County Commissioners have heretofore agreed to budget sufficient funds to service a loan from the FARMERS HOME ADMINISTRATION to the ARKANSAS VALLEY EXPOSITION AND FAIR ASSOCIATION for the 4-H Building; and

WHEREAS, the County of Otero will at all times act as a guarantor of the annual repayment on such loan to the extent that income from the use of said building is not sufficient to make such annual repayments; and

WHEREAS, this obligation shall be binding upon the County and inure to the benefit of the FARMERS HOME ADMINISTRATION, and

WHEREAS, the total costs of the construction of said building, including interim financing and construction contingencies, amounts to two hundred two thousand, seven hundred dollars ($202,700.00), which sum will be the total loan proceeds from the FARMERS HOME ADMINISTRATION on its loan granted to the ARKANSAS VALLEY EXPOSITION AND FAIR ASSOCIATION; and

WHEREAS, the ARKANSAS VALLEY EXPOSITION AND FAIR ASSOCIATION will make available five thousand five hundred dollars ($5,500.00) for the use during construction for purposes of interim financing and all contingencies and any balances thereof to be applied directly to the indebtedness; and

WHEREAS, the 4-H Council will inject fifteen thousand dollars ($15,000.00) into this project for items to be furnished on the premises, but not included in any construction contract; and

WHEREAS, the FARMERS HOME ADMINISTRATION will require an assignment of the lease between the City of Rocky ford, Colorado, a municipal corporation, and the ARKANSAS VALLEY EXPOSITION AND FAIR ASSOCIATION as security for the loan; and

WHEREAS, the Board of County Commissioners will by virtue of this lease require an assignment of that lease from the ARKANSAS VALLEY EXPOSITION AND FAIR ASSOCIATION to the County of Otero and State of Colorado subject to the prior assignment aforesaid to the FARMERS HOME ADMINISTRATION.

NOW, THEREFORE, BE IT RESOLVED, that the County of Otero and State of Colorado, pursuant to its authority under the statutes of the State of Colorado, does hereby agree to guarantee a loan from the FARMERS HOME ADMINISTRATION to the ARKANSAS VALLEY EXPOSITION AND FAIR ASSOCIATION for the construction of a 4-H Building pursuant to the plans, specifications and contract documents that have been approved by the FARMERS HOME ADMINISTRATION for a sum not to exceed two hundred two thousand seven hundred dollars ($202,700.00), with an annual repayment cost of eleven thousand eight hundred fourteen dollars ($11,814.00), which will commence proportionately on January 1, 1980, and annually thereafter for a term of forty (40) years inclusive.

BE IT FURTHER RESOLVED, that the Board of County Commissioners require an assignment of the lease of the premises and improvements upon which said building is located from the ARKANSAS VALLEY EXPOSITION AND FAIR ASSOCIATION, which assignment shall be subordinate to any assignment of lease required by the FARMERS HOME ADMINISTRATION.

BE IT FURTHER RESOLVED, that this building shall be available at certain policies and rental rates for the use by the general public of the County of Otero and State of Colorado when such use does not interfere with use by the 4-H Council or the ARKANSAS VALLEY EXPOSITION AND FAIR ASSOCIATION, and income derived therefrom in excess of operating and maintenance expenses shall be applied to the principal and accrued interest of the loan for the purpose of reducing any amounts that maybe required of the County of Otero and State of Colorado.

BE IT FURTHER RESOLVED, that the Board of County Commissioners of the County of Otero and State of Colorado find that the construction of such building and these actions by the Board of County Commissioners are in the best interests of the residents of Otero County, Colorado, and the uses to be served thereby.

BE IT FURTHER RESOLVED that this resolution shall supersede any and all resolutions relating to the construction, financing and guarantee of payment on the above-described 4-H Building and shall be a binding obligation upon the County of Otero and State of Colorado.

## ARTICLE 3

### Arkansas Valley Exposition and Fair Association

*Addendum to Lease*
*August 28, 1979*

*Exhibit B*

THIS ADDENDUM made and entered into this 28th day of August, 1979, by and between the CITY OF ROCKY FORD, a Colorado municipal corporation of Otero County, Colorado, hereinafter referred to as "Lessor," and the ARANSAS VALLEY EXPOSITION AND FAIR ASSOCIATION, a corporation of Otero County, Colorado, hereinafter referred to as "Lessee,"

WITNESSETH:

WHEREAS, the Lessor and Lessee have previously entered into a Lease dated June 13, 1978, whereby the Lessor agreed to demise and lease unto the Lessee those premises situated, lying or being in the County of Otero, State of Colorado, described as follows:

A tract of land lying in the Northeast ¼ of the Southwest ¼ of Section 7, Township 23 South, Range 56 West of the 6th P.M., and more particularly described as follows:

Beginning at the Northeast corner of Park Addition to the Town of Rocky Ford as shown on the recorded plat thereof, thence South 0°05' East along the East line of Eighth Street, a distance of 954.43 feet; thence South 88°54' West, a distance of 4.15 feet to the true point of beginning; thence South 2°58' East, a distance of 304.75 feet; thence North 88°26' East, a distance of 145.17 feet; thence North 0°05' West and parallel with the East line of Park Addition, a distance of 81.53 feet; thence North 88°30' East, a distance of 96.12 feet; thence North 0°05' West and parallel with the East line of Park Addition, a distance of 221.31 feet; thence South 88°54' West, a distance of 256.45 feet to the True Point of Beginning. The tract contains 1.55 acres.

and

WHEREAS, the above-described premises is erroneous and it was not the intent of the parties hereto to enter into a lease for said described premises; and

WHEREAS, the parties hereto are desirous of entering into a lease for certain premises located in the County of Otero, State of Colorado.

NOW, THEREFORE, the parties hereto agree to amend the terms of that Lease previously entered into by both said parties and dated June 13, 1978, as follows:

1. The Lessor and Lessee hereby mutually agree to revoke and make null and void that provision of the Lease entered into by said parties on June 13, 1978, describing the premises to be leased in the County of Otero, State of Colorado.

2. The Lessor does demise and lease unto the Lessee those premises situated, lying and being in the County of Otero, State of Colorado, described as follows:

A tract of land lying in the West ½ of the Southeast ¼ of Section 7, Township 23 South, Range 56 West of the 6th P.M., and more particularly described as follows:

Beginning at the Northeast corner of Park Addition to the Town of Rocky Ford as shown on the recorded plat thereof, thence South 0°05' East along the East line of Eighth Street, a distance of 954.43 feet; thence South 88°54' West, a distance of 4.15 feet to the True Point of Beginning; thence South 2°58' East, a distance of 304.75 feet; thence North 88°26' East, a distance of 145.17 feet; thence North 0°05' West and parallel with the East line of Park Addition, a distance of 81.53 feet; thence North 88°30' East, a distance of 96.12 feet; thence North 0°05' West and parallel with the East line of Park Addition, a distance of 221.31 feet; thence South 88°54' West, a distance of 256.45 feet to the True Point of Beginning.

3. Except for the above revocation and substitution, all other terms and conditions of the Lease dated June 13, 1978, between the above-named parties are incorporated by reference into this Addendum and made a part hereof as if fully set forth herein.

THIS ADDENDUM shall be binding upon and including the heirs, assigns and successors of both Lessor and Lessee, and the Lessor and Lessee certify that the undersigned are duly authorized to execute this Addendum.

**EXHIBIT C**

**CONSENT**

The City of Rocky Ford, a Colorado municipal corporation, hereby gives its consent to the Assignment by the Arkansas Valley Exposition and Fair Association of its leasehold interest to the Board of County Commissioners of the County of Otero, State of Colorado. Such Assignment relates to a Lease dated June 13, 1978, and an Addendum to Lease dated August 28, 1979, wherein the City of Rocky Ford is the Lessor and the Arkansas Valley Exposition and Fair Association is the Lessee.

Paragraph 10 of said Lease requires that the Lessee may not assign the Lease or sublet the Lease without first obtaining the written consent of the City of Rocky Ford. The purpose of this document is to set forth that prior written consent.

## ARTICLE 4

### City of La Junta Municipal Airport and Industrial Park

*Agreement*
*June 1, 1981*

THIS AGREEMENT, made and entered into this 1st day of June, 1981, by and between the COUNTY OF OTERO, STATE OF COLORADO, by and through its BOARD OF COUNTY COMMISSIONERS, hereinafter referred to as the "County," and the CITY OF LA JUNTA, State of Colorado, hereinafter referred to as the "City."

WITNESSETH:

WHEREAS, the City is desirous of maintaining what is commonly known as the City of La Junta Municipal Airport and Industrial Park, and

WHEREAS, the City of La Junta Municipal Airport and Industrial Park are located in the County of Otero, State of Colorado, outside the corporate boundaries of the City, and

WHEREAS, the County is desirous of allowing the City to take over all permit and inspection procedures of such City-owned land,

NOW, THEREFORE, BE IT AGREED THAT:

1. The City, from and after the date of the Agreement, shall have the sole and full responsibility for the general upkeep and maintenance of the City of La Junta Municipal Airport and Industrial Park.

2. The City, by this Agreement, agrees to hold harmless the County for any and all liability arising out of the use or maintenance of the City of La Junta Municipal Airport and Industrial Park.

## ARTICLE 5

### E911 Emergency Telephone Service

*Intergovernmental Agreement*
*November 15, 1991*

THIS INTERGOVERNMENTAL AGREEMENT, made, executed and entered into this 15th day of November, 1991, by and between the following parties:

1. Board of County Commissioners of Otero County, Colorado, a body politic and corporate, hereinafter referred to as "Otero County";

2. The City of La Junta, a municipal corporation, hereinafter referred to as "La Junta";

3. The Town of Cheraw, a municipal corporation, hereinafter referred to as "Cheraw";

4. The Town of Swink, a municipal corporation, hereinafter referred to as "Swink";

5. The Town of Manzanola, a municipal corporation, hereinafter referred to as "Manzanola";

6. The Town of Fowler, a municipal corporation, hereinafter referred to as "Fowler";

7. The City of Rocky Ford, a municipal corporation, hereinafter referred to as "Rocky Ford";

8. The La Junta Rural Fire Protection District;

9. The Rocky Ford Rural Fire Protection District;

10. The Manzanola Rural Fire Protection District: and

11. The Fowler Rural Fire Protection District.

WITNESSETH:

WHEREAS, pursuant to Article 11 of Title 29, et seq., C.R.S., as amended, the above-named parties are authorized to enter into intergovernmental agreements for the purpose of providing emergency telephone service; and

WHEREAS, Part 2 of Article 1 of Title 29, et seq., C.R.S., as amended, authorizes and encourages intergovernmental agreements for the purpose of governmental entities to cooperate and contract to provide functions, service or lawful facilities; and

WHEREAS, it would serve the public welfare and be in the best interests of the citizens of Otero County and the various entities referred to a described above to participate and cooperate in the organization, administration and common use of a central county-wide 911E emergency telephone service authority; and

WHEREAS, the parties desire to enter into this Intergovernmental Agreement for the following purposes: (1) to establish a separate legal entity to be known as "The Otero County Emergency Telephone Service Authority Board" (hereinafter referred to as the "Authority"), which shall be the governing body responsible for administering the operation of the E911 emergency telephone service system in Otero County; and (2) to define the manner in which each of the parties will participate in the Authority and the operation of the E911 emergency telephone service system.

NOW, THEREFORE, for and in consideration of the mutual covenants, stipulations, conditions and agreements hereinafter contained, the parties hereto agree and stipulate as follows:

**I. Definitions.**

The definitions for the terms "emergency telephone charge," "emergency telephone service," "exchange access facilities," governing body," "public agency," "service supplier," service user" and "tariff rates," as used in this Intergovernmental Agreement, shall be the same as the definitions provided for those terms in Section 29-11-101, C.R.S.

**II. General Provisions.**

The parties hereby support, authorize and direct the organization and establishment of a separate legal entity to be known as The Otero County Emergency Telephone Service Authority Board, which Authority Board shall be responsible for the organization, administration and operation of the E911 emergency telephone service system in Otero County, as more particularly described below.

The parties stipulate and agree that, contemporaneously herewith, or as soon as practicable, they will by resolution or ordinance constitute, authorize and empower the Authority Board as a separate entity on behalf of each party hereto, with full power to enter into contracts, to sue and be sued and otherwise do all things necessary to carry out the duties and obligations delegated hereunder and to further establish and operate a E911 emergency telephone service in Otero County.

The area to which E911 emergency services shall be supplied and the area within which service users shall be surcharged, all as set forth and provided hereunder, shall be Otero County as that jurisdiction is defined by Colorado law.

**III. The Authority Board.**

The Authority Board shall be governed by its members, and there shall initially be five (5) members of the Authority Board, to be selected in the following manner:

1. The initial members of the Authority Board shall be selected by the Otero County Board of County Commissioners and shall serve for a term of two (2) years. Members shall be twenty-one (21) years of age or older and must be residents of Otero County, Colorado.

2. Following the initial term of the initial members, subsequent members of the Authority Board shall be selected at the annual meeting of the Authority Board by existing members and then recommended to the Board of County Commissioners for approval and appointment. Two (2) members shall be at-large members appointed from Otero County, and each incorporated area within Otero County which serves as a

public service answering point for the E911 emergency telephone system shall have at least one (1) member on the Authority Board; and each Commissioner's district in Otero County shall have at least one (1) member on the Authority Board.

3. Following the initial term of the initial members of the Authority Board, the terms of the members shall be staggered in that two (2) members shall be appointed for three-year terms, and three (3) members shall be appointed for two-year terms.

4. Members may be appointed to serve consecutive terms on the Authority Board; however, no member shall serve for more than two (2) consecutive terms.

5. All members serve at the pleasure of the Board of County Commissioners.

6. The Authority Board is hereby authorized and directed to establish articles of association and bylaws for the operation of the Authority Board, and the Authority Board is further authorized to pass supplementary rules and regulations as necessary which are in compliance with Part 2 of Article 1 and Article 11 of Title 29, et seq., C.R.S., and this Intergovernmental Agreement.

**IV Powers of the Authority Board.**

The parties hereto agree that the Authority shall be empowered with the authority to contract for the installation and operation of an emergency telephone system for such service in the service area which is within its jurisdiction and authorized by this Intergovernmental Agreement. The Otero County Emergency Telephone Service Authority Board is hereby authorized to assess, collect and remit an emergency telephone charge as provided by Sections 29-11-102(2) and 29-11-103(1), C.R.S., in an amount not to exceed seventy cents ($0.70) per month for those portions of the service area for which emergency telephone service is to be provided. Emergency telephone charges shall not be collected by any city, town or county until an ordinance, in the case of towns or cities, or a resolution, in the case of counties be enacted by the governing body authorizing the collection of such charges. The funds so collected shall be spent solely to pay for the equipment costs, installation costs, costs directly related to the continued operation of an emergency telephone service and for the monthly recurring charges billed by the service supplier for the emergency telephone service. The funds so collected shall be credited to a cash fund of the Authority separate and apart from the general fund of any of the public agency parties or the Authority under this Intergovernmental Agreement. Any funds remaining in the account at year end shall be carried over to the next succeeding year for the same purposes in supplying emergency telephone service. If this Agreement is ever discontinued by all parties hereto, all cash assets remaining in the Authority's account shall be distributed to Otero County, and all other property or equipment shall be distributed to the municipality where the property or equipment is located.

In addition, the Authority may do any other act as may be necessary for the provision of initial services and for the continued operation of the emergency telephone service, including but not limited to the ability to negotiate with equipment vendors and service suppliers for the purpose of obtaining the benefit of technological developments which the Authority deems necessary to improve or enhance the quality and efficiency of service to be provided to the users. The Authority shall, in addition, have all powers conferred by the provisions of Article 11 of Title 29, C.R.S. Any contract that is entered into by the Authority which contradicts the provisions of the Agreement is void and unenforceable.

**V. Basis for Contribution and Charges to be Imposed by the Authority.**

The parties hereto agree that the basis for contribution and charges to be imposed on "service users" shall be in accordance with the provisions governing the same in Article 11 of Title 29, C.R.S., provided that

charges imposed on a service user shall be in an amount not to exceed seventy cents ($0.70) per month for those portions of the service area for which emergency telephone services are provided. The parties agree that the Authority may request from the service supplier those figures required to impose a contribution or charge and to make a determination of the contribution or charge based on those figures. The parties further agree that, whenever those figures are required for any contribution or charge, the figures shall be the most recent available at the time such figures are needed, unless otherwise specified herein.

## VI. Systems Design.

The system design is based on the following criteria: The City of La Junta and the City of Rocky Ford will be designated as public safety answering points. The final systems engineering and selection of equipment will be completed by the Authority Board with the assistance of the technical task force as appointed by the Board of County Commissioners of Otero County. The cities designated as public safety answering points will provide twenty-four-hour dispatching and shall provide backup dispatching for each public safety answering point. Printers shall be placed at each public safety answering point.

## VII. Budget and Administrative Costs.

Each year in which the Authority believes funds for administrative costs are necessary, it shall prepare a budget and submit a budget request to the Board of County Commissioners on or before September 1 of each year that this Agreement is in effect. The Board of County Commissioners shall fund up to five hundred dollars ($500.00) of administrative costs each year.

If administrative costs are in excess of five hundred dollars ($500.00), the Authority Board shall divide the administrative costs among the municipal entities to this Intergovernmental Agreement and Otero County as provided below. Each entity's percentage of that total administrative cost shall be based upon the number of exchange access facilities within the jurisdiction of that entity when compared with the total number of exchange access facilities within the jurisdiction of the Authority, that being Otero County. Each entity shall be required to pay to the Authority within ninety (90) days of notification its equitable percentage of the total administrative costs. The failure of an entity hereunder to pay its contribution pursuant to this Section shall constitute default in its performance under the terms of this Agreement.

## VIII. Funds and Operation.

The various monies paid to the Authority Board by the parties hereto, for administrative costs, shall be used by the Authority solely for administrative costs. Further, the uniform charge per exchange access facility shall be collected by the service supplier and delivered to Otero County; and parties hereto shall have no obligation to collect this uniform charge or to remit such monies to Otero County. The funds of the Authority shall be maintained in one (1) or more separate accounts with Otero County, and shall not be commingled with the funds of any of the parties, agencies or persons. The monies which are placed in the separate designated cash fund shall be utilized solely for the installation costs, equipment costs, costs directly related to the continued operation of an E911 emergency telephone service and for the monthly recurring charges billed by the service supplied for the E911 emergency telephone service.

No payment or disbursement shall be made from the funds of the Authority except by check and unless a verified claim for services or commodities actually rendered or delivered has been first submitted and approved for payment by the Authority Board and said approval being evidenced by a writing signed by the President and Secretary of the Authority.

The Authority shall not borrow money nor shall it approve any claims or incur any obligations for expenditures unless there is sufficient unencumbered cash in the appropriate fund, credited to the Authority, with which to pay the same.

The Authority may invest its funds only in accordance with any applicable laws of the State of Colorado governing the investment of public funds.

No party to the Agreement shall have any liability to pay for any debt or other obligation incurred by the Authority unless there is specific undertaking to do so accompanied by an appropriation approved with the requisite formalities.

No act or course of action shall be undertaken by the Authority or in the name of the Authority unless the same is first duly authorized by a majority vote of the members of the Authority at any meeting, upon due notice first given at which a quorum is present of a majority of the members of the Authority then holding office or by written consent of all of the members. A written record of all proceedings of the members, as well as of action taken, shall be maintained, and such records shall be open to inspection at all reasonable times by all parties.

## IX. Books and Records.

The Authority shall maintain adequate and correct accounts of their funds, properties and business transactions, which accounts shall be open to inspection at all reasonable times by the parties hereto, their attorneys and/or their agents. The Authority shall cause to be conducted an annual audit, which audit shall be conducted by an independent certified public accountant licensed to practice in the State of Colorado as part of the annual Otero County audit of its accounts.

Within thirty (30) days after the end of each fiscal year, the Authority shall prepare and present to the respective city councils, board of trustees, the Board of County Commissioners of Otero County or other entity or party to this Agreement, a comprehensive annual report of the Authority's activities and finances during the preceding year.

The Authority shall also prepare and present such reports as may be required by law, regulation or contract to any authorized federal and/or state officials or to whom such report is required to be made in the course of operation of the E911 emergency telephone service system.

The Authority shall also render to the parties hereto, at reasonable intervals, such reports and accounting as the parties hereto may from time to time request.

## X. Default in Performance.

In the event any party fails to pay its share of the operating or administrative costs then due, or to perform any of the covenants, stipulations and agreements under the terms of this Agreement, the Authority shall consider said party in default and cause written notice of the Authority's intention to terminate said party from the Authority, this Agreement and the E911 emergency telephone service system. Upon failure to cure said defaults within ninety (90) days after written notice from the Authority, the defaulting party hereunder shall be terminated from the Agreement and shall thereafter be denied E911 emergency telephone service by the Authority.

Furthermore, any party whose participation is terminated under the provisions of this Agreement shall forfeit all right, title and interest in and to any property acquired by the Authority to which said party may other-

wise be entitled upon the dissolution of this Agreement. This Section is not intended to limit the right of any party under this Agreement to pursue any and all other remedies it may have for breach of this Agreement.

## XI. Termination.

A. This Agreement shall be in full force and effect upon the execution of this Agreement by all of the parties listed herein, and shall continue in full force and effect, subject to amendments, or until sooner terminated by a majority of the parties hereto.

B. Any party's participation in this Agreement may be terminated by written notice from the party or parties to the Authority at least one hundred eighty (180) days prior to January 1 of any given year. Upon termination, such party shall forfeit all right, title and interest in and to any property acquired by the Authority.

C. Upon termination by mutual agreement of a majority of the parties to this Agreement, the powers granted to the Authority under this Agreement shall continue to the extent necessary to make an effective disposition of the property, equipment and monies required or held pursuant to this Agreement.

D. In the event that any party hereto elects to terminate its participation in this Agreement prior to the end of any period of this Agreement not in accordance with Subsection B of this Section, such party shall be considered in default of this Agreement pursuant to Section 10 and accordingly shall forfeit its entire interest in the emergency telephone service.

E. In the event of dissolution or termination of this Agreement, all of the cash assets remaining in the Authority's account shall be distributed to Otero County, and other property or equipment shall be distributed to the municipality where the property and equipment is located.

## XII. Amendment.

This Agreement may be amended by the parties hereto from time to time, but any amendments shall be in writing and executed and approved by at least three-fourths (¾) majority of the parties hereto.

## XIII. Liability of Members, Officers and Employees.

The members of the Authority Board, its officers and employees shall not be personally liable for any acts performed or omitted in good faith. The parties hereto shall indemnify and hold harmless the Authority Board, its members, officers and employees from claims or judgments of third parties resulting from acts and omissions attributable to the good faith performance and the work for or of the Authority Board. The Authority Board may purchase insurance to provide coverage for the governing board members, officers and employees and the Authority Board against suit or suits which may be brought against said members of the Board, officers and employees or the Authority Board involving or pertaining to any of their acts or duties performed or omitted by the Authority Board in good faith.

The Authority Board may obtain a bond or other security to guarantee the faithful performance of the duties of the Authority Board.

The parties, by executing this Agreement, do not waive any of the duties, privileges, immunities, rights and limitations of liabilities that such parties have as a corporate body, governmental entity, political subdivision of the State or as a quasi-municipal corporation, as the case may be, and, to the extent permitted by law, these duties, privileges, immunities, rights and limitations of liabilities shall extend to and be binding upon the Authority Board.

**XIV. Severability Clause.**

If any provision of this Agreement or the application hereof to any party or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of the Agreement are declared to be severable.

## ARTICLE 6

## City of Aurora Utility Enterprise

*Intergovernmental Agreement*
*February 22, 1994*

This Intergovernmental Agreement ("IGA") is made and entered into this 22nd day of February, 1994, by and between the City of Aurora, Colorado, a municipal corporation in the Counties of Adams, Arapahoe and Douglas, by and through its Utility Enterprise ("Aurora"), whose address is 1470 South Havana Street, Suite 400, Aurora, Colorado 80012-4090, and Otero County, Colorado, a Colorado County ("Otero"), whose address is Third and Colorado, La Junta, Colorado 81050.

WITNESSETH:

WHEREAS, Aurora is a home rule municipality established pursuant to the Constitution and Statutes of Colorado, which among other things, through its Utilities Department, operates a municipal water supply system and

WHEREAS, Otero is a Category III Colorado County established pursuant to the Constitution and Statutes of Colorado; and

WHEREAS, Aurora has recently approved and will soon close that certain Agreement for the Sale and Purchase of Real Property ("Agreement"), which Agreement covers land in Otero County, more thoroughly described in Exhibit I attached hereto and incorporated herein ("Land"); and

WHEREAS, pursuant to the Agreement, title to the Land will be conveyed to Aurora; and

WHEREAS, pursuant to Colorado law, after transfer of title of the Land to Aurora, said Land will no longer by subject to the property tax levies and assessments of Otero; and

WHEREAS, notwithstanding the above, Aurora wishes to make certain payments to Otero after it assumes title to the Land to, among other things, ensure fire protection services for the Land.

NOW, THEREFORE, in consideration of the foregoing and the following promises, terms and conditions, the adequacy and sufficiency of which are confessed by each of the parties, be it agreed as follows:

**1. Annual Payment.**

Beginning in calendar year 1994 and continuing for a period of twenty (20) years, subject to the terms and conditions hereinafter set forth, Aurora will make an annual payment to Otero of ten thousand dollars ($10,000.00). This payment will be made on or before April 1 of each year, beginning April 1, 1994, solely from the net revenues of the water utility system of Aurora's Utility Enterprise. Nothing herein shall authorize this payment to be made from proceeds of general ad valorem taxes or other general revenues of Aurora.

**2. Payment Adjustment.**

Beginning in the calendar year 1995 and continuing through the term of this IGA, the annual payment herein contemplated, as it may be reduced by the following paragraphs, will be adjusted by multiplying the previous year's payment amount by two percent (2%) under the Chase Manhattan Prime Interest Rate as published in the *Wall Street Journal* ("Prime Rate") and adding that product to the payment. The parties will use the Prime Rate reported in the March 15 edition, or the next business day's edition if March 15 is a weekend or holiday, for the calculation herein contemplated.

**3. Transfers.**

The parties hereto agree, for purposes of this IGA, the Land has an area of four thousand one hundred (4,100) acres. If Aurora sells, transfers or conveys any of the Land to a party who is required to pay property taxes to Otero, there will be a pro rata reduction based upon the ratio of the acres transferred to four thousand one hundred (4,100) acres in the amount of the annual payment by Aurora to Otero. If Aurora transfers the Land to an entity which is not subject to property taxation by Otero, Aurora's obligation to make the annual payments herein described will either be transferred to such receiving entity or Aurora will continue such payments through the period of this IGA, whichever situation is agreed to by Aurora and the receiving entity.

**4. Fire Protection Services.**

Otero County agrees that a portion of the annual payment made by Aurora under this IGA will be given to the Rocky Ford Rural Fire Protection District ("RFRFPD"), which provides fire protection services to the Land. The amount of money given by Otero to the RFRFPD will be determined in Otero's good faith discretion.

**5. No Waiver of Future Fire Protection Service.**

Nothing herein constitutes or should be interpreted to constitute a waiver by Aurora or any successor in interest to the Land of fire protection services after expiration of this IGA.

**6. Enterprise Obligation.**

This IGA shall be deemed an obligation of Aurora's Utility Enterprise and, as such, shall not constitute a multiple-fiscal year direct or indirect debt or financial obligation of Aurora within the meaning of any constitutional, statutory or charter limitation.

**7. Notices.**

Any and all notices, demands or other communications desired or required to be given under any provision of this IGA shall be given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or by fax, addressed as follows:

To Aurora:

Director of Utilities
1470 South Havana Street, Suite 400
Aurora, CO 80012-4090
Fax: 303-695-7491

To Otero:

County Administrator
P.O. Box 511
La Junta, CO 81050
Fax 719-384-4221

Such notices, demands or communications may be sent to such other address as either party may designate from time to time, by written notice, to the other party. Notice shall be effective upon receipt.

**8. No Modification.**

This IGA may be modified, amended, changed or terminated in whole or in part only by an agreement in writing duly authorized and executed by both parties with the same formality as this IGA.

**9. Nonwaiver.**

The waiver of any breach of the provisions of this IGA by any party shall not constitute a continuing waiver of any subsequent breach of said party of either the same or any other provision of this IGA.

**10. Entire Agreement.**

This represents the entire agreement of the parties, and no party has relied upon any other fact or representation not expressly set forth therein.

**11. Interrelation.**

Each paragraph of this IGA is interrelated with the other paragraphs and is not severable except by the mutual consent of the parties hereto. This nonseverability also applies in the case of a judicial determination finding that certain provisions of this IGA are invalid. In the event of such finding, this IGA Agreement shall be considered invalid.

**12. Nonassignability.**

Neither party may assign its rights or delegate its duties under this IGA without the prior written consent of the other party. However, Otero may neither object to nor prevent Aurora's transfer of the Land or the transfer of the responsibility for payment if the Land is transferred to an entity not subject to property taxation by Otero, as such provisions are described in Paragraph 2 hereinabove.

**13. Applicable Law.**

This IGA and its application shall be construed in accordance with the laws of the State of Colorado.

**14. Venue.**

The parties agree and stipulate the proper venue for any court action which might occur in connection with or as a result of this IGA is the District Court in and for Otero County, Colorado.

**15. Nonmerger.**

Each and every covenant, promise and term contained in this IGA shall not merge in any lease, deed or other document executed by either or both parties hereto to affect this IGA, but shall survive each and every such instrument.

**16. Execution of Additional Documents.**

The parties agree to execute any further documents reasonably necessary to complete the transactions provided for or contemplated by this IGA.

**17. Costs and Fees.**

In the event of any litigation, mediation, arbitration or other dispute resolution process arising out of this IGA, the parties agree that each shall be responsible for its own costs and fees.

**18. Paragraph Headings.**

The paragraph headings herein inserted are for convenience and are not intended to govern, define, limit or in any way affect the interpretation of this IGA.

EXHIBIT I

A tract of land lying in Otero County, Colorado, more particularly described as follows:

T.22S., R.56W., 6th P.M.

In Sec. 31: The S½ SE¼, SE¼, SW¼, and Lot 8.

In Sec. 32: All that portion of the SW¼ SW¼ lying west of the Arkansas River.

T.23S., R.56W., 6th P.M.

In Sec. 5: The south 50 feet of Lot 2, Lots 3, 4 and 6, and the W½ SW¼.

In Sec. 6: The E½, N½ NW¼ and the SW¼ except a 10-acre tract in Book 567 at Page 429 and EXCEPT that portion of said Sec. 6 as described in Book 809 at Page 337 of the Otero County Records.

In Sec. 7: The E½ NW¼, Lots 1 & 2, lying east of the westerly right-of-way line of the Rocky Ford Ditch EXCEPT that portion of said E½ NW¼ and Lot 2 which lies within a tract described in Book 836 at Page 16 AND EXCEPT that portion of Lot 1 as described in Book 809 at Page 337, TOGETHER WITH a tract in Lot 3 more particularly described as follows: Beginning at the Northwest corner of said Lot 3; thence along the north line of said Lot 3 bearing N. 89 degrees 17'21"E., 1078.90 feet to the True Point of Beginning; thence S. 24 degrees 32'45"W., 461.55 feet to the westerly right-of-way line of the Rocky Fiord Ditch; thence along said right-of-way line N. 32 degrees 58'50"W., 188.96 feet; thence N. 39 degrees 40'27"W. to the intersection with the north line of said Lot 3; thence N. 89 degrees 17'21"E. to the True Point of Beginning.

T.22S., R.57W., 6th P.M.

In Sec. 25: Lots 2 and 3 EXCEPT Colorado Highway No. 71 deeded right-of-way.

In Sec. 26: Lots 1, 2, 3 and 4 EXCEPT Colorado Highway No. 71 deeded right-of-way.

In Sec. 27: Lots 1, 2, 3 and 4.

In Sec. 28: All that portion of Lot 1, lying east of the centerline flow of Patterson Hollow.

In Sec. 33: All that portion of the E½ NE¼ lying east of the centerline flow of Patterson Hollow and lying north of the Rocky Ford Ditch.

In Sec. 34: All of that portion lying north of the Rocky Ford Ditch.

In Sec, 35: All that portion lying northeasterly of the Rocky Ford Ditch EXCEPT that portion deed for Colorado Highway No. 71, and EXCEPT four (4) tracts of land described in Book 828 at Pages 140, 143, 146 and 149.

In Sec. 36: Lots 1, 2 and 3, W ½ SE ¼ and W ½ EXCEPT that portion deeded for Colorado Highway No. 71.

T.23S., R.57W., 6th P.M.

In Sec. 1: All that portion lying northeasterly of the Rocky Ford Ditch EXCEPT five (5) tracts of land described in Book 721 at Page 487, Book 759 at Page 144, Book 809 at Page 337, Book 827 at Page 206, and Book 827 at Page 373.

In Sec. 2: All that portion lying northeasterly of the Rocky Ford Ditch EXCEPT that portion deeded in Book 828 at Page 146.

In Sec. 12: The N½ NE¼ lying easterly of the Rocky Ford Ditch and that portion of the S½ S½ NE¼ lying northeasterly of the Rocky Ford Ditch.

PROPOSED PARCEL NO. 2

A tract of land lying in Otero County, Colorado, in Sec. 26 and Sec. 35, T. 22S., R57W., 6th P.M., and more particularly described as follows: Lot 1, Sec. 26 and Beginning at the northwest corner of that certain tract as deeded in Book 828 at Page 149, Otero County Records; thence northerly to the southwest corner of Lot 1, Sec. 26; thence easterly along the south line of said Lot 1 to Colorado Highway 71 right-of-way; thence southerly along said right-of-way to the northeast corner of said tract as described in Book 828 at Page 149.

PLUS THE FOLLOWING

A tract of land lying in Otero County, Colorado, more particularly described as follows:

T.23S., R.56W., 6th P.M.

In Sec. 14: Lots 1 and 2.

In Sec. 15: Lots 1, 2, 3 and 4, the W½ SW¼ and a tract in the NW¼ described as beginning at the West quarter corner of said Sec. 15; thence east along the south boundary line of said NW¼ a distance of 2105 feet to the center of the Arkansas River channel; thence N. 70 degrees 30'W. along the center of said river channel a distance of 1400 feet; thence N 25 degrees W. along the center of said river channel a distance of 1172 feet to the north boundary of said NW¼, produced across the river from the east side thereof; thence west along the said north boundary line of the said NW ¼ of said Sec. 15 a distance of 1331 feet to a point on the southeasterly bank of the Arkansas River; thence following said bank of river S. 45 degrees W. a distance of 59 feet; thence S. 9 degrees W. a distance of 346 feet to a point on the west boundary line of said NW¼; thence south along said west boundary line a distance of 2065 feet to the place of beginning. EXCEPT a tract of land described in Book 827 at Page 203.

## ARTICLE 7

## Tri-County ComCor Board

*Intergovernmental Agreement*
*June 5, 1995*

THIS INTERGOVERNMENTAL AGREEMENT made, executed and entered into this 5th day of June, 1995, by and between the following parties:

1. The Board of County Commissioners of Otero County, Colorado, a body politic and corporate, hereinafter referred to as "OTERO COUNTY."

2. The Board of County Commissioners of Bent County, Colorado, a body politic and corporate, hereinafter referred to as "BENT COUNTY."

3. The Board of County Commissioners of Crowley County, Colorado, a body politic and corporate, hereinafter referred to as "CROWLEY COUNTY."

4. The City of La Junta, of Otero County, Colorado, a body politic and corporate, hereinafter referred to as "CITY."

WITNESSETH:

WHEREAS, Part 2 of Article 1 of Title 29, et seq., C.R.S., as amended, authorizes and encourages intergovernmental agreements and contracts for the purpose of governmental entities to cooperate and contract to provide functions, services or lawful facilities; and

WHEREAS, Part 2 of Article 27 of Title 17, et seq., C.R.S., as amended, authorizes municipal and county governments to enter into agreements or associations to establish and operate an approved Community Corrections Board under such terms and conditions as may be approved by the governing bodies of the governmental units involved; and

WHEREAS, it would serve the public welfare and be in the best interest of the citizens of Otero County, Bent County and Crowley County, and the various entities party to this Agreement to participate and cooperate in the organization, development, establishment, operation, administration of a Community Corrections Board for the counties of Bent, Crowley and Otero; and

WHEREAS, the parties hereto desire to enter into this Intergovernmental Agreement to set forth the agreements and understandings of the parties concerning the organization, development, establishment, operation and administration of a Community Corrections Board for the counties of Bent, Crowley and Otero.

NOW, THEREFORE, for and in consideration of the mutual covenants, stipulations, conditions and agreements herein contained, the parties hereto agree and stipulate as follows:

**Section 1. General Provisions.**

The parties hereto hereby support, authorize and direct the organization and establishment of a separate legal entity which shall be responsible for the ownership, operation and administration of a Community Corrections Board for Bent, Crowley and Otero Counties, which separate legal entity shall be known as "THE TRI-COUNTY COMCOR BOARD" and shall be hereinafter referred to herein as the "Corrections Board."

The parties hereto stipulate and agree that, contemporaneously herewith, or as soon as practicable, each party will (by resolution or ordinance) constitute, authorize and empower the Corrections Board on behalf of each party hereto with full power to enter into contracts, to sue and be sued, and otherwise to do all things necessary to carry out the duties and obligations delegated and agreed to hereunder and to further establish, operate and to administer a Community Corrections Board for Bent, Crowley and Otero Counties.

**Section 2. Requirements of Each Party.**

The public entities which are a party to the Agreement shall do the following:

A. Adopt and approve the Agreement.

B. Pass resolutions authorizing the execution of the Agreement, in a form similar to that resolution sample attached hereto as Exhibit "A."

C. Pass ordinances authorizing the execution of the Intergovernmental Agreement, in a form similar to that ordinance sample attached hereto as Exhibit "B."

D. Assign any existing contracts or entitlements to the Sixteenth Judicial District Community Corrections Board.

**Section 3. Organization and Operation of the Corrections Board.**

A. The Entity's governing board shall be comprised of no more than fifteen (15) members, and said membership shall include the following mandated positions for public officials (or their designees) who serve the Sixteenth Judicial District, to wit:

1. The Chief Judge;

2. The District Attorney;

3. A Deputy Public Defender;

4. The President of the Sixteenth Judicial District Bar Association;

5. The Chief Probation Officer;

6. A Sheriff from each county within the District;

7. A County Commissioner from each county within the District;

8. The remaining four (4) members of the Corrections Board (nonmandated positions) shall be residents of the Sixteenth Judicial District, appointed as provided herein.

B. Beginning with appointments July 1, 1995, members of the Corrections Board who are appointed to the four (4) nonmandated positions shall serve staggered two-year terms, such that the term of office for two (2) of said members shall expire in odd-numbered years, and the term of office for the other two (2) members shall expire in even-numbered years. A member may succeed himself or herself if the appointing authority for said member's position so approves.

C. The respective Board of County Commissioners of each signatory county shall have authority to appoint one (1) resident from its county to serve on the Corrections Board based upon the selection procedure as the respective Board of County Commissioners shall establish (consistent with the following Paragraph D); and the Corrections Board itself shall have the authority to appoint the remaining member of the Corrections Board from residents of the Sixteenth Judicial District based upon a selection procedure to be established by the Corrections Board.

D. To facilitate the selection of any member of the Corrections Board, said Board shall establish a method for giving notice of vacancies (including an anticipated vacancy for the position of each member whose term expires on a given date) and for receiving applications to fill the vacancies. If the vacancy is one a signatory county is responsible for filling, then the Corrections Board shall recommend to the signatory county the name of one (1) or two (2) persons who are qualified residents of the signatory county, but the signatory county may reject the Correction Board's recommendation and appoint any other qualified resident in its county to fill the vacancy. If a signatory county fails to appoint such a person to fill said vacancy within forty (40) days after

receipt of the Correction Board's written recommendation, then the Corrections Board shall have authority to fill said vacancy by appointing a qualified resident of the county of said signatory county, if such person can be found to serve. However, if, in the discretion of the Corrections Board, no such person is available, then the Corrections Board may appoint a qualified resident of the Sixteenth Judicial District to serve in said position. (A "qualified resident" is defined as a person who is legally qualified to register to vote in a general election in the Sixteenth Judicial District and who has demonstrated to the Corrections Board or to a signatory county a genuine interest in the work of the Corrections Board.)

E. The Corrections Board may contract with any public or private organization for services and/or employees.

F. The Corrections Board shall maintain adequate and correct accounts of their funds, properties and business transactions, which funds, properties and business transactions shall be open to inspection at all reasonable times by the parties hereto, their attorney and/or their agents.

G. Any amendment to the Agreement shall require the affirmative vote of two-thirds (⅔) of all of its members.

H. The Board of Directors of the Corrections Board, its officers and employees shall not be personally liable for any acts performed or omitted in good faith. The parties hereto shall indemnify and hold harmless the Corrections Board, its members, officers and employees from claims or judgments of third parties resulting from acts or omissions attributable to the good faith performance and the work for or of the Corrections Board. The Corrections Board may purchase insurance to provide coverage for the governing board members, officers and employees and the Corrections Board against suit or suits which may be brought against said members of the board, officers and employees, or the Corrections Board itself, involving or pertaining to any of their acts or duties performed or omitted by the Corrections Board in good faith.

I. All meetings of said Board shall comply with the Open Sassoon Requirements as set forth in Title 24, C.R.S.

**Section 4. Powers and Duties.**

A. That the Board has all the powers and duties allowed in Part 1 of Article 27 of Title 17, C.R.S., including but not limited to the following:

1. Establishing standards, policies and procedures for all community corrections programs under the authority of the City Council of the City of La Junta; and

2. Contracting for the provision of community corrections services in the Sixteenth Judicial District of the State of Colorado; and

3. Establishing acceptance criteria; screening offenders to be placed in its community corrections programs or facilities; and accepting, rejecting or rejecting after acceptance the placement of any offender in its community corrections programs or facilities; provided furthermore, that such procedures shall include the use of an objective risk assessment scale to classify offenders in terms of their risk to the public; and

4. Approving or disapproving new facilities or programs; provided furthermore, that the Board shall: (1) set standards for; (2) monitor; (3) evaluate; and (4) accredit its community corrections programs and facilities; and

5. Coordinating the activities of local governmental, institutional and community corrections programs; and

6. Acting as a pass-through entity for public funds related to community corrections programs in the Sixteenth Judicial District of the State of Colorado; and

7. Full authority to adopt, modify and repeal bylaws concerning officers, meetings, committees (including an Executive Committee), termination of a Board member's term, procedural rules and all other provisions necessary for the organization and operation of the Corrections Board; and

8. Full authority to accept, reject or reject after acceptance the placement of any offender in any community correctional facility or program established in the Sixteenth Judicial District, as more specifically provided by Article 27 of Title 17 of C.R.S., as amended; and

9. The Corrections Board shall have the authority to enter into contracts to allow the placement of individuals from the Sixteenth Judicial District into community corrections programs. The Board shall act as agents of the signatory counties in executing these contracts. These contracts may be made between the Community Corrections Boards and any nongovernmental parties, including the State of Colorado and its agencies. The existing contracts of the Original Corrections Board established by the City, including those with the State of Colorado and its agencies, are hereby ratified with the intention that the successor Corrections Board established hereby shall be entitled to own, possess and use all assets of the original corrections board and shall assume all outstanding unpaid debts and liabilities of the Original Board. When entering into any contract with any governmental agency, the Corrections Board shall require that the contractor shall agree to assume the risk of all injuries, including death resulting therefrom, to persons and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in connection with or arising out of said contracts; or caused or sustained, in whole or in part, because of the actions or omissions of the contractor, its agents or employees, or any offender assigned or sentenced to, or held by contract with any community correctional facility or program, regardless of its location; or arising from any violation of any statute, ordinance or regulation by the contractor, its agents or employees, or any offender under its control, and the contractor must further agree to indemnify and save harmless the Sixteenth Judicial District Community Corrections Board, any signatory county and the courts of the Sixteenth Judicial District, their officers, agents and employees of said entities, from and against any and all liability arising from actions or omissions under the terms of said contracts.

B. That all contracts made by the Board shall be awarded by competitive bidding as described in Part 2 of Article 103 of Title 24, and Title 31, C.R.S.

**Section 5. Establishment of Facility.**

The establishment of any community correctional facility or program within a given County shall he subject to the approval of the County Commissioners of that County as well as to the approval of the governing body of the city or town in which the proposed facility or the situs of the program is to be located. In this regard, said Commissioners shall consult with the Corrections Board as provided by law.

**Section 6. Term and Dissolution.**

The term of the Agreement shall be continuous until such time as the signatory counties, by at least a two-thirds (⅔) affirmative vote, agree otherwise.

Upon dissolution of the Corrections Board, the signatory counties shall retain the power to dispose of any property and equipment acquired by said Corrections Board, subject only to any conditions thereon which may

have been created by the receipt and acceptance of grant funds or operating funds from the United States, the State of Colorado or any private foundation. If, upon dissolution, the Corrections Board holds any funds received from the State of Colorado for any purpose, said funds shall be distributed as required by the State of Colorado, and the signatory counties shall have no authority to distribute said funds in any other way.

**Section 7. Waiver of Immunities.**

The parties, by executing the Agreement, do not waive any of the duties, privileges, immunities, rights and limitations of liabilities that such parties have as a corporate body, governmental entity or political subdivision of the State, or as a quasi-municipal corporation, as the case may be, and to the extent permitted by law, these duties, privileges, rights and limitations of liabilities shall extend to and be binding upon the Corrections Board.

**Section 8. Reporting.**

On an annual basis, the Board shall report the following to the County Commissioners of the signatory counties:

A. Number of persons placed, if any;

B. Type of offenders placed;

C. Recommendations, if any, concerning the operation of the local community corrections facility;

D. Recommendations, if any, concerning the use of entities with which the Corrections Board may contract with regard to the operation of any local community corrections facility;

E. Recommendations, if any, concerning procedures, guidelines and other matters associated with the operation of the local community corrections facility;

F. The proposed budget of the Board, if any;

G. Financial reports.

**Section 9. Severability.**

If any provision of the Agreement or the application thereof to any party or circumstance is held invalid, such invalidity shall not affect other provisions or application of the Agreement which can be given effect without the invalid provision or application; and, to this end, the provisions of the Agreement are declared to be severable.

**Section 10. Assignment of Prior Rights.**

The City acknowledges that it shall perform the following acts:

A. Contemporaneous with the effective date of the Agreement, authorize an ordinance canceling and terminating the La Junta Community Corrections Board.

B. Providing in said ordinance for the assignment of any interest in any contracts of the La Junta Community Corrections Board.

C. Providing for the termination of any current directors, employees and appointees of the La Junta Community Corrections Board.

D. That the City of La Junta shall repeal Ordinance No. 1056 and Ordinance No. 1071, as evidenced by the Ordinance attached hereto as Exhibit "B."

**Section 11. Board Assignment of Rights.**

Effective July I, 1995, the Board shall assign all contracts to the new entity created herein. The Board shall assign all of its assets to the new entity created herein.

**Section 12. Effective Date.**

The effective date of the Agreement shall be July 1, 1995.

## ARTICLE 8

### Otero County Landfill, Inc.

*Operating Agreement*
*1995*

THIS OPERATING AGREEMENT made, executed and entered into this _____ day of _____, 1995, by and between Otero County Landfill, Inc., hereinafter known as "OCLI," and the County of Otero, hereinafter known as the "County."

WITNESSETH:

WHEREAS, Part 2 of Article 1 of Title 29, et seq., C.R.S., as amended, authorizes and encourages intergovernmental agreements and contracts for the purpose of governmental entities to cooperate and contract to provide functions, services or lawful activities; and

WHEREAS, Part 108 of Article 20 of Title 30, et seq., C.R.S., as amended, authorizes municipal and county governments to enter into agreements or associations to establish and operate an approved solid waste disposal site and facility under such terms and conditions as may be approved by the governing bodies of the governmental units involved; and

WHEREAS, the City of La Junta, City of Rocky Ford, Town of Cheraw, Town of Swink, Town of Manzanola, Town of Fowler and County of Otero did enter into an Intergovernmental Agreement to establish and operate an approved solid waste disposal site and facility; and

WHEREAS, "Otero County Landfill, Inc.," was formed as a result of actions authorized pursuant to the Intergovernmental Agreement; and

WHEREAS, Article 6, Section Three – Organization and Operation of the Entity of the Intergovernmental Agreement, "The Entity (subsequently named OCLI) may contract with any public or private organization for services and/or employees"; and

WHEREAS, it has been determined that it is in the best interest of the citizens of Otero County and the various entities who are members of "OCLI" to have the "County" continue to operate the solid waste disposal sites known as the Otero County Landfill and the Manzanola Landfill.

NOW, THEREFORE, for and in consideration of the mutual covenants, stipulations, conditions and agreements herein contained, the parties hereto agree and stipulate as follows:

## PROVISIONS

**1. Purpose.**

The "County" agrees to operate the solid waste disposal sites known as the Otero County Landfill and Manzanola Landfill.

**2. Term of the Agreement.**

The term of this Agreement shall begin on the date that "OCLI" becomes incorporated per the Colorado Secretary of State (__/__/95) and run through December 31, 1995. Notice to terminate the agreement must be given by October 1, 1995.

**3. Contract Amount.**

The "County" will operate the facilities specified in Article 1 for $144,592.00 (2.1475 mills times assessed valuation of $67,330,467.00).

**4. Administration.**

The administrative fee ($5,000.00) outlined in the breakout of budgeted expenditures (see attachment 1.0) represents the "County's" internal services costs for the current level of administration. Items included within the area are administrative personnel costs, data processing, audit, etc. This does not reflect any charges for administering "OCLI's" overall financial accounts, contracts, clerical support, etc. The provisions of these services fall outside the scope of this agreement, and would need to be addressed by the "OCLI" Board.

**5. General Supervision.**

Commissioner Bob Gerler will oversee the operation of these landfills, as well as supervise the closure of the Fowler Landfill site. These duties and responsibilities include, but are not limited to, the task of arranging water sample collection and testing, serving as Otero County's liaison with the State Health Department, the responsibility for the placement of required water monitoring holes, etc.

**6. Hours of Operation.**

The Otero County Landfill will be open from 8:00 a.m. – 4:00 p.m., Monday through Saturday. The Manzanola Landfill will be open from 8:00 a.m. – 4:00 p.m., Monday/Wednesday/Saturday. Authorized closures (exceptions to the operational hours) shall be for Otero County authorized holidays or high winds.

**7. Staffing.**

The current level of staffing will be maintained at the specified landfills. Two (2) full-time employees are assigned to the Otero County Landfill. One (1) Road & Bridge employee is assigned to the Manzanola Landfill on Monday and Wednesday. Manpower for Saturday is provided out of Road & Bridge, with the employee being paid at an overtime rate.

**8. Equipment.**

The "County" will make the final lease/purchase payment on the compactor during 1995. Repairs to the paddle scraper and/or compactor shall be limited to fourteen thousand dollars ($14,000.00). Any costs over this amount shall be the responsibility of "OCLI."

Additional equipment that is assigned to the Otero County Landfill (not listed in original proposal) includes a front-end loader, maintainer, dump truck, bulldozer, drag line and pickup. These charges have been included on the budget sheet (see attachment 1.0).

**9. Insurance.**

Insurance coverage will be extended to the landfill/landfills due to the contracted nature of the operation. This would include liability, property & casualty, workers' compensation, etc., subject to the underwriting and eligibility policies of the pool, carrier, etc. Any exclusion of coverage; i.e., pollution hazard, etc., would be the responsibility of "OCLI."

## ARTICLE 9

### CDOT Drainage Ditch Maintenance

*Maintenance and Apportionment Agreement*
*May 12, 1999*

This Maintenance and Apportionment Agreement ("Agreement") is entered into effective as of May 12, 199, by and between the State of Colorado, Department of Transportation ("CDOT") and the Board of County Commissioners of Otero County ("County").

WHEREAS, the parties to this Agreement were parties to an action in the District Court, County of Otero, State of Colorado, captioned James B. Waltman and Joycelene Waltman, Plaintiffs, v. State of Colorado, Department of Transportation, Defendant, and Third Party Plaintiff v. Board of County Commissioners of Otero County, Jo Carroll Dutton and Barbara Dutton, Kenneth Finkner and Ada Beth Finkner, Eldon Gierhan and Jack K. Kappel, and Howard Miller Land and Cattle Co., Third Party Defendants, Case No. 96 CV 27 (the "Lawsuit"); and

WHEREAS, the Lawsuit involved issues regarding the parties' relative responsibilities for maintaining a lateral drainage ditch running through certain land owned by James B. Waltman and Joycelene Waltman (the "Waltmans"), which is described in Exhibit A attached hereto; and

WHEREAS, following a hearing, the District Court entered an Order for Permanent Injunction and Order for Maintenance of the Easement dated April 6, 1999, with respect to the Lawsuit, which stated, in part, "IT IS FURTHER ORDERED AND DECREED that the plaintiffs, the defendant State of Colorado, Department of Transportation and the third party defendants shall share in the cost of maintaining the easement across the property of the plaintiffs"; and

WHEREAS, the District Court's Order did not define or apportion the maintenance responsibilities of the parties; and

WHEREAS, the parties desire to resolve the apportionment of responsibility for maintenance of the lateral drainage ditch through the property described on the attached Exhibit A and to avoid any further appeal or other proceedings in connection with the Lawsuit; and

WHEREAS, this Agreement is intended to be binding on the parties, their successors and assigns and is also intended to be recorded in the real property records of Otero County so as to provide notice regarding the maintenance responsibilities for the lateral drainage ditch through the property described on the attached Exhibit A.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. The parties agree that responsibility for maintenance of the drainage ditch shall be apportioned as follows: thirty-five percent (35%) to the County and sixty-five percent (65%) to CDOT.

2. The County shall perform or cause to be performed the maintenance of the lateral drainage ditch from the point where the ditch departs from the right-of-way for State Highway 194 to the point where the ditch drains into the Arkansas River on the property described in Exhibit A. Such maintenance shall be sufficient to remove obstructions so that water can drain to the Arkansas River.

3. The County shall annually, not later than February 15, bill CDOT for sixty-five percent (65%) of the costs actually incurred by the County for annual ditch maintenance on a reimbursement basis. CDOT shall annually reimburse the County not later than March 31 for its sixty-five-percent share of the maintenance cost.

4. The County shall bear the remaining thirty-five percent (35%) of the cost of ditch maintenance. The Waltmans, Jo Carroll Dutton, Barbara Dutton, Kenneth Finkner, Ada Beth Finkner, Eldon Gierhan, Jack K. Kappel and Howard Miller Land and Cattle Co. (collectively the "Landowners"), shall bear no financial responsibility for maintenance costs. Any in-kind services which may be provided by the Waltmans or Landowners for ditch maintenance shall not be deemed a cost of ditch maintenance and shall not be billed by the County to CDOT. CDOT shall only be responsible for sixty-five percent (65%) of the actual costs incurred by the County as set forth in an itemized invoice provided by the County to CDOT.

5. The Court's Order dated April 6, 1999, requires CDOT and the County to share in the cost of maintaining the ditch but does not address the limitations of the TABOR Amendment, Article X, Section 20 of the Colorado Constitution. It is understood by the parties that, to the extent the TABOR limitation applies, financial obligations of CDOT and the County payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. CDOT and the County agree to use their best efforts to ensure that funds for the Agreement are appropriated, budgeted and otherwise made available in future years.

6. The County will use a strip of land no more than twenty (20) feet wide adjacent to the lateral ditch through the Waltman property as described in Exhibit A for ditch maintenance.

7. The parties agree that no appeal or other proceedings involving the Lawsuit shall be pursued.

8. The parties agree that the Agreement shall be recorded in the real property records of Otero County so as to provide notice of the apportionment agreement and responsibilities of the parties.

9. The parties agree that the Agreement shall be effective as of May 12, 1999.

10. The County and CDOT represent that they are authorized to enter into the Agreement.

**EXHIBIT A**

A tract of land in Section 31, Township 23 South, Range 54 West, 6th P.M., and in Section 6, Township 24 South, Range 54 West, 6th P.M., more particularly described as follows: Beginning at the S.W. corner of said Section 31, thence S. 1°29'24" E. along the West line of Section 6, Township 24 South, Range 54 West, 6th P.M., 528.30 feet to the point of beginning;

1. Thence N. 80°17'03" E. a distance of 9762.46 feet;

2. Thence N. 4°59'02" W. a distance of 1017.74 feet;

3. Thence S. 88°34'14" E. a distance of 428.32 feet;

4. Thence N. 1°05'57" W. a distance of 313.00 feet;

5. Thence N. 68°55'35" E. a distance of 165.66 feet;

6. Thence N. 35°00'11" E. a distance of 269.45 feet;

7. Thence N. 71°12'15" E. a distance of 869.83 feet;

8. Thence N. 43°48'45" E. a distance of 829.38 feet;

9. Thence S. 2°11'20" E. to the North bank of the Arkansas River located on August 16, 1974;

10. Thence in a Westerly direction along the North bank of said River following its meanderings to its intersection with the West line of Section 6, Township 24 South, Range 54 West of the 6th P.M.;

11. Thence N. 1°29'24" W. along the said West line of Section 6 to the point of beginning.

Together with an easement for a nonexclusive right-of-way 40.0 feet wide for road and public utility purposes only, whose Easterly line is described as follows: Beginning at a point which is N. 72°00' E. a distance of 1378.66 feet from the intersection of the west line of said Section 31 and the north line of Indian Claim No. 11; thence S. 1°05'57" E., a distance of 2797.63 feet to the point of termination. All in the County of Otero, State of Colorado.

## ARTICLE 10

### Tri-County Housing, Inc.

*Intergovernmental Agreement*
*March 1, 2001*

THIS AGREEMENT, made this 1st day of March, 2001, by and among the following:

Town of Cheraw.

Town of Fowler.

The City of La Junta.

The City of Las Animas.

The Town of Manzanola.

The Town of Swink.

Bent County.

Crowley County.

Otero County.

Tri-County Housing, Inc.

WHEREAS, the parties to this Agreement have the authority pursuant to Article XIV, Section 18 of the Colorado Constitution and Section 29-1-201, et seq., C.R.S., to enter into intergovernmental agreements for the purpose of providing any service or performing any function which they can perform individually.

WHEREAS, the parties to this Agreement desire to cooperate in carrying out housing activities for low- and moderate-income families in their respective entities through membership in the 501(c)(3) corporation, Tri-County Housing, Inc.

NOW, THEREFORE, the parties hereby mutually agree as follows:

**1. Designation of lead party.**

The Town of Fowler shall be the lead party in making grant applications to the State Department of Local Affairs, Federal Home Loan Bank, Farmers Home Administration or any other funding sources approved by the Tri-County Housing, Inc., Board of Directors.

**2. Responsibilities of Tri-County Housing, Inc.**

The parties are in agreement that Tri-County Housing, Inc., shall be the sub-grantee of the Town of Fowler and shall be fully and solely responsible for administering grant funds received and for compliance with all financial management, environmental review, labor standards, civil rights, record keeping, reporting and other requirements contained in the Applicant Statement of Assurances for State of Colorado Department of Local Affairs and in any grant contracts or documents entered into, except those responsibilities specified in Paragraph 3 hereafter.

**3. Responsibilities of all parties.**

Each party to the Agreement shall be individually responsible for compliance with any requirements of each grant which are specific to their entity. Examples include:

(a) Adopting a required Citizen Participation Plan and providing to its citizens information and opportunities to comment as required by the State in developing an application and substantially changing project activities.

(b) Identifying its community development and housing needs, including the needs of low- and moderate-income persons, and the activities to be undertaken to meet such needs.

(c) Adopting a required Antidisplacement and Relocation Assistance Plan which calls for replacement of demolished or converted low/ moderate income housing units and provision of necessary relocation assistance.

(d) Taking actions to affirmatively further fair housing.

Furthermore, each party shall provide documentation to Tri-County Housing, Inc., demonstrating compliance with all requirements, and Tri-County Housing, Inc., shall retain such documentation and other required record and documents for the period of time specified by the State.

**4. Contracting.**

The Town of Fowler shall contract with Tri-County Housing, Inc., to carry out all responsibilities assumed by the Town of Fowler in any grant agreements contracted under this Intergovernmental Agreement.

**5. Term of Agreement.**

The Agreement shall remain in full force and effect for so long as the parties to the Agreement are pursuing funding and carrying out project activities. Any party to the Agreement may, however, terminate its participation in the Agreement six (6) months after providing written notice of such termination to the other parties of the Agreement. The Agreement may be terminated at any time by agreement of all parties to the Agreement unless a grant contract is in effect. In this case, the grantor must approve such termination and arrangements for completing the project.

**6. Modification and Changes.**

The terms of this Agreement may be modified or changed at any time by agreement of all parties to the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first above written.

**Bylaws**
**of**
**Tri-County Housing, Inc.**
**A Colorado Nonprofit Corporation**

**Article I. Offices**

**Section 1. Principal Offices.**

The principal office of the Corporation in the State shall be the office of the secretary of the Corporation. The Corporation may have such other offices, either within or without the State, as the Board of Directors may designate or as the business of the Corporation may require from time to time.

**Article II. Seal**

**Section 1. Seal.**

The Corporation shall have a common seal, consisting of a circle having on its circumference the words "TRI-COUNTY HOUSING, INC.," and across its interior body the word "SEAL."

**Article III. Registered Office**

**Section 1. Registered office.**

The registered office of the Corporation, required by the Colorado Revised Nonprofit Corporation Act to be maintained in the State of Colorado, may be, but need not be, identical with the principal office in the State of Colorado, and the address of the registered office may be changed from time to time by the Board of Directors.

**Article IV. Geographical Area**

**Section 1. Geographical area.**

The geographical area to be served by the Corporation is Otero County, Bent County and Crowley County, Colorado. This area may be modified by resolution of the Board of Directors.

**Article V. Members**

**Section 1. Members.**

The Corporation shall have no members.

## Article VI. Board of Directors

**Section 1. Board of Directors.**

The Corporation shall have a Board of Directors and the method and conditions the Board of Directors operate *shall* be as set forth in these bylaws. Each Board Director is entitled to one (1) vote on each matter submitted.

At any election of Directors of the Corporation, they shall be elected by a majority vote of the Directors.

**Section 2. Number, tenure and qualifications.**

The number of the Directors of the Corporation shall be no more than fifteen (15) and no less than twelve (12). The total number of Directors shall be divided among the geographic regions specified in Article IV, Section 1, of these By-laws, between Bent, Crowley and Otero Counties. Demographics of that division are to be no more than one-third (⅓) (five [5] Directors) of the total directors to be a governmental representation, one-third (⅓) (five [5] Directors) to be business representatives, and one-third (⅓) (five [5] Directors) of the Directors to be community representatives. There must be least one (1) representative of each of the demographics listed herein, geographic areas of Otero, Bent and Crowley Counties. There *shall* be at no time in excess of fifty percent (50%) of the Directors who are representatives of government from any of the three (3) counties in the responsible geographical area.

**Section 3. General powers.**

The business and affairs of the Corporation shall be managed by its Board of Directors. The responsibilities of the Board of Directors are:

A. Determination of major personnel, fiscal, organizational and program policies;

B. Determination and development of overall program plans and priorities;

C. Final approval of all programs and budgets;

D. Oversight of the extent and quality of the participation of the poor in the programs of the Corporation;

E. Determination of rules of procedure for the Board of Directors;

F. Selection of the officers;

G. Approval of all evaluation and assessment studies and reports;

H. Approval of all arrangements for delegating the planning, conducting or evaluation of any work program and budget;

I. Appointment and termination of the Executive Director. The Executive Director will be directly responsible to the Board of Directors for the day-to-day operation of the Corporation, including budget preparation, general administration, fiscal management and supervision of staff. The Executive Director, or a designee, will provide a financial status report to the Board of Directors for each regular meeting;

J. Such other powers necessary for the proper operation of the Corporation and are as allowed by law;

**Section 4. Regular meetings.**

The Board of Directors may provide, by resolution, the time and place, either within or without the State, for the holding of regular meetings without other notice than such resolution.

**Section 5. Special meeting.**

Special meetings of the Board of Directors may be called by or at the request of the Chairman or any two (2) Directors. The person or persons authorized to call special meetings of the Board of Directors may fix any place, either within or without the State of Colorado, as the place for holding any special meeting of the Board of Directors called by them.

**Section 6. Notice.**

Written notice of any special meeting of Directors shall be given as follows:

By mail to each Director at his business address at least one (1) day prior to the meeting; or

By personal delivery, e-mail or telephone at least forty-eight (48) hours prior to the meeting to the business address of each Director, or, in the event such notice is given on a Saturday, Sunday or holiday, to the residence address of each Director. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, so addressed, with postage thereon prepaid. If notice is given by e-mail, such notice shall be deemed to be delivered when sent. Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

**Section 7. Quorum.**

A majority of the number of Directors (50% + 1) constitutes a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such majority is present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

**Section 8. Manner of acting.**

Except as otherwise required by law or by the Articles of Incorporation, the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

**Section 9. Informal action by Directors.**

Any action required or permitted to be taken by the Board of Directors or by a committee thereof at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors or all of the committee members entitled to vote with respect to the subject matter thereof.

**Section 10. Participation by electronic means.**

Any member of the Board of Directors or any committee designated by such Board may participate in a meeting of the Board of Directors or committee by means of telephone conference or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

**Section 11. Vacancies.**

Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board of Directors is present. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of Directors may be filled by election by the Board of Directors for a term of office continuing only until the next election of Directors.

**Section 12. Resignation.**

Any Director of the Corporation may resign at any time by giving written notice to the Chairman or the Secretary of the Corporation. The resignation of any Director shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. When one (1) or more Directors shall resign from the Board, effective at a future date, a majority of the Directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

**Section 13. Removal.**

Any Director or Directors of the Corporation may be removed at any time, with or without cause, in the manner provided in the Colorado Revised Nonprofit Corporation Act.

**Section 14. Committees.**

By resolution adopted by a majority of the Board of Directors, the Directors may designate two (2) or more Directors to constitute a committee, any of which shall have such authority in the management of the Corporation as the Board of Directors shall designate and as shall be allowed by the Colorado Revised Nonprofit Corporation Act.

**Section 15. Compensation.**

Directors shall not be paid any salary or other payment from the Corporation for service as a Director.

**Section 16. Presumption of assent.**

A Director of the Corporation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof, or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

## Article VII. Officers

**Section 1. Number.**

The officers of the Corporation shall be a Chairman and a Vice Chairman, each of whom shall be elected by the Board of Directors. The Board of Directors will authorize the appointment of a Secretary and Treasurer. Such other officers as may be deemed necessary may be elected or appointed by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of Chairman and Secretary.

**Section 2. Election and term of office.**

The officers of the Corporation to be elected by the Board of Directors shall be elected annually by the Board of Directors at a meeting of the Board of Directors. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as practicable. Each officer shall hold office until his successor has been duly elected and is qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided.

**Section 3. Removal.**

Any officer or agent may be removed the Board of Directors whenever, in its judgment, the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

**Section 4. Vacancies.**

A vacancy in any office because of death, resignation, removal, disqualification or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

**Section 5. Chairman.**

The Chairman shall be the chief executive officer of the Corporation and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Corporation. He shall, when present, preside at all meetings of the Board of Directors. He may sign, with the Secretary, or any other proper officer of the Corporation thereunto authorized by the Board of Directors, deeds, mortgages, bonds, contracts or other instruments which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors by these Bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of Chairman and such other duties as may be prescribed by the Board of Directors from time to time.

**Section 6. The Vice Chairman.**

The Vice Chairman shall, in the absence of the Chairman or in the event of his death, inability or refusal to act, perform all duties of the Chairman, and, when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman.

**Section 7. The Executive Director/Secretary.**

The Executive Director/Secretary shall: (a) keep the minutes of the proceedings of the Board of Directors in one (1) or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records and of the seal of the Corporation and see that the seal of the Corporation is affixed to all documents the execution of which on behalf of the Corporation under its seal is duly authorized; and (d) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Chairman or by the Board of Directors.

**Section 8. The Treasurer.**

The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Corporation; (b) receive and give receipts for monies due and payable to the Corporation from any source whatsoever, and deposit all such monies in the name of the Corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of these Bylaws; and (c) in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the Chairman or by the Board of Directors.

**Section 9. Bonds.**

If the Board of Directors by resolution shall so require, any officer or agent of the Corporation shall give bond to the Corporation in such amount and with such surety as the Board of Directors may deem sufficient, conditioned upon the faithful performance of their respective duties and offices.

**Article VIII. Contracts, Loans, Checks and Deposits**

**Section 1. Contracts.**

The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

**Section 2. Loans.**

No loans shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

**Section 3. Checks, drafts, etc.**

All checks, drafts or other order for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

**Section 4. Deposits.**

All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

**Article IX. Fiscal Year**

**Section 1. Fiscal year.**

The fiscal year of the Corporation shall end on the last day of December in each calendar year.

**Article X. Waiver of Notice**

**Section 1. Notice.**

Whenever any notice is required to be given under the provisions of these Bylaws or under the provisions of the Articles of Incorporation or under the provisions of the Colorado Revised Nonprofit Corporation Act, or otherwise, a waiver thereof in writing, signed by the person or persons entitled to such notice, shall be deemed equivalent to the giving of such notice.

**Article XI. Amendments**

**Section 1. Amendments.**

These Bylaws may be altered, amended or replaced and new Bylaws may be adopted by a majority of the Directors present at any meeting of the Board of Directors of the Corporation at which a quorum is present.

## ARTICLE 11

## CDBG Contract

*Contract*
*April 27, 2001*

THIS CONTRACT, made this 27th day of April, 2001, by and between the State of Colorado, for the use and benefit of the Department of Local Affairs, 1313 Sherman Street, Denver, CO 80203, hereinafter referred to as the "State," and the County of Otero, P. O. Box 511, La Junta, CO 81050, hereinafter referred to as the "Contractor."

WHEREAS, authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment in Fund No. 100, Appropriations Code Number 121, Org. Unit FC0, GLB 0D74, Contract Encumbrance Number F01CDB01080; and

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, the United States Government, through the Housing and Community Development Act of 1974 ("the Act"), Pub. L. No. 93-383, as amended, has established a Community Development Block Fund ("CDBG") program and has allowed each state to elect to administer such federal funds for its nonentitlement areas, subject to certain conditions, including a requirement that the state's program give maximum feasible priority to activities which will benefit very low-, low- and moderate-income families or aid in the prevention or elimination of slums or blight; the states program may also include activities designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. Additionally, the state's program is subject to a federal requirement that not less than seventy percent (70%) of the aggregate amount of CDBG funds received by the state shall be used for the support of activities that benefit persons of very low-, low- and moderate-income; and

WHEREAS, the State of Colorado has elected to administer such federal funds for its nonentitlement areas through the Colorado Department of Local Affairs ("Department"), pursuant to Sections 24-32-106(1)(d), 24-32-304(2)(j) and 24-32-705(1)(l), C.R.S. 1973, as amended; and

WHEREAS, the Department has received applications from political subdivisions in Colorado for allocations from the federal CDBG funds available to Colorado; and

WHEREAS, the Contractor is one of the eligible political subdivisions to receive CDBG funds; and

WHEREAS, the Department has approved the proposed Project of the Contractor;

NOW, THEREFORE, it is hereby agreed that:

**1. Scope of Services.**

In consideration for the monies to be received from the State, the Contractor shall do, perform and carry out, in a satisfactory and proper manner, as determined by the State, all work elements as indicated in the "Scope of Services" set forth in Exhibit A, which is attached hereto, and is incorporated herein by reference, and is hereinafter referred to as the "Project". Work performed prior to the execution of the Contract shall not be considered part of this Project.

**2. Responsible Administrator.**

The performance of the services required hereunder shall be under the direct supervision of Barry Shioshita, County Administrator, an employee or agent of the Contractor, who is hereby designated as the administrator-in-charge of this Project. At any time the administrator-in-charge is not assigned to this Project, all work shall be suspended until the Contractor assigns a mutually acceptable replacement administrator-in-charge and the State receives notification of such replacement assignment.

**3. Time of Performance.**

The Contract shall become effective upon proper execution of the Contract. The Project contemplated herein shall commence as soon as practicable after the execution of the Contract and shall be undertaken and performed in the sequence set forth in the attached Scope of Services. The Contractor agrees that time is of the essence in the performance of its obligations under the Contract, and that completion of the Project shall occur not later than the termination date set forth in the Scope of Services.

**4. Eligibility and National Objectives.**

All project activities shall be eligible under Section 105 of the Act, as amended, and all related regulations and requirements. Furthermore, project activities shall meet the following indicated (with a "X") broad national objective(s), as set forth in Section 104(b)(3) of the Act, as amended, and all related regulations and requirements:

XX Benefit persons of very low-, low- and moderate-income.

___ Prevent or eliminate slums or blight.

___ Meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs.

**5. Obligation, Expenditure and Disbursement of Funds.**

a) Prior Expenses. Expenses incurred by the Contractor in association with said Project prior to execution of the Contract are not eligible CDBG expenditures and shall not be reimbursed by the State.

b) Environmental Review Procedures. Funds shall not be obligated or utilized for any activities requiring a release of funds by the State under the Environmental Review Procedures for the CDBG program at 24 CFR Part 58 until such release is issued in writing. Administrative costs, reasonable engineering and design costs, and costs of other exempt activities identified in 24 CFR 58.34(a)(1) through (8) do not require a release of funds by the State. For categorically excluded activities listed in 58.35(a) determined to be exempt because there are no circumstances which require compliance with any other federal laws and authorities cited at 58.5, the Contractor must make and document such a determination of exemption prior to incurring costs for such activities.

c) Community Development Plan Requirement. Prior to receiving disbursements of CDBG funds from the State, the Contractor shall identify its community development and housing needs, including the needs of very low-, low- and moderate-income persons, and the activities to be undertaken to meet such needs.

**6. Definition of Very Low-, Low- and Moderate-Income Persons.**

Very low-, low- and moderate-income persons are defined, for the purposes of the Contract, as:

XX Those persons who are members of very low-, low- and moderate-income families as set forth in Exhibit B, which is attached hereto and incorporated herein by reference, or as subsequently promulgated in writing by the State.

___ Those persons who have been determined by HUD, based upon data of the 1990 Census, to be very low-, low- and moderate-income persons.

___ Those persons belonging to clientele groups who are generally presumed by HUD to be principally very low-, low- and moderate-income persons.

___ Not applicable to this project.

**7. Citizen Participation.**

The Contractor shall provide citizens with reasonable notice of, and opportunity to comment on, any substantial change proposed to be made in the use of CDBG funds from one (1) eligible activity to another by following the same citizen participation procedures required for the preparation and submission of its CDBG application to the State. The Contractor shall also comply with the procedure set forth herein regarding the modification and amendment of the Contract.

Additionally, the Contractor shall have and follow a Citizen Participation Plan (CPP) which includes the six (6) elements specified in Section 104(a)(3) the Act. The CPP must include a provision for at least one (1) public hearing during the course of the Project to allow citizens to review and comment on the Contractor's performance in carrying out the Project.

**8. Residential Antidisplacement and Relocation Assistance Plan.**

The Contractor shall follow a Residential Antidisplacement and Relocation Assistance Plan which, should displacement occur, provides that:

a) Governmental agencies, non- and for-profit organizations, or private developers shall provide within the same community comparable replacement dwellings for the same number of occupants as could have been housed in the occupied and vacant occupiable low- and moderate-income dwelling units demolished or converted to a use other than for housing for low- and moderate-income persons, and provide that such replacement housing may include existing housing assisted with project based assistance provided under Section 8 of the United State Housing Act of 1939.

b) Such comparable replacement dwellings shall be designed to remain affordable to persons of low- and moderate-income for ten (10) years from the time of initial occupancy.

c) Relocation benefits shall be provided for all low-income persons who occupied housing demolished or converted to a use other than for low- or moderate-income housing, including reimbursement for actual and reasonable moving expenses, security deposits, credit checks and other moving-related expenses; including any interim living costs; and, in the case of displaced persons of low- and moderate-income, provided either:

i) Compensation sufficient to ensure that, for a five-year period, the displaced families shall not bear, after relocation, a ratio of shelter costs to income that exceeds thirty percent (30%); or

ii) If elected by a family, a lump sum payment equal to the capitalized value of the benefits available under subclause (i) above to permit the household to secure participation in a housing cooperative or mutual housing association.

d) Persons displaced shall be relocated into comparable replacement housing that is:

i) Decent, safe and sanitary;

ii) Adequate in size to accommodate the occupants;

iii) Functionally equivalent; and

iv) In an area not subject to unreasonably adverse environmental conditions.

Persons displaced shall have the right to elect, as an alternative to the benefits under this paragraph Section, to receive benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, if such persons determine that it is in their best interest to do so; and, where a claim for assistance under subparagraph (d) is denied by the Contractor, the claimant may appeal to the State, and that the decision of the State shall be final unless a court determines the decision was arbitrary and capricious.

The Contractor shall follow the Residential Antidisplacement and Relocation Assistance Plan, except that paragraphs a) and b) shall not apply in a case in which the Secretary of the U.S. Department of Housing and Urban Development finds, on the basis of objective data, that there is available in the area an adequate supply of habitable affordable housing for low- and moderate-income persons. A determination under this paragraph is final and nonreviewable.

**9. Affirmatively Furthering Fair Housing.**

The Contractor shall affirmatively further fair housing in addition to conducting and administering its Project in conformity with the equal opportunity requirements of Title VI of the Civil Rights Act of 1964 and the Fair Housing Act, as required herein.

**10. Recovery of Capital Costs of Public Improvements.**

The Contractor shall not attempt to recover any capital costs of public improvements assisted in whole or part with CDBG funds by assessing any amount against properties owned and occupied by persons of very low-, low- or moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless:

a) CDBG funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than the CDBG program, or

b) For the purposes of assessing any amount against properties owned and occupied by persons of moderate income who are not persons of very low- or low-income, it certifies that it lacks sufficient CDBG funds to comply with the requirements of subparagraph a) above.

**11. Compensation and Payment Schedule.**

The State agrees to pay to the Contractor, in consideration for the work and services to be performed, a total amount not to exceed two hundred fifty thousand dollars ($250,000.00). The method and time of payment shall be made in accordance with the "Payment Schedule" set forth herein in Exhibit A.

**12. Financial Management.**

At all times from the effective date of the Contract until completion of the Contract, the Contractor shall comply with the administrative requirements, cost principles and other requirements set forth in the State's Financial Management Guide and the Financial Management Section of the State CDBG Guidebook.

**13. Payment Method.**

Unless otherwise provided in the Scope of Services:

a) The Contractor shall periodically initiate all drawdown requests by submitting to the Department a written request using the State-provided form, for reimbursement of actual and proper expenditures of state CDBG funds, plus an estimation of funds needed for a reasonable length of time.

b) The State may withhold any payment if the Contractor has failed to comply with the State CDBG program objectives, contractual terms or reporting requirements.

c) The State may withhold the final payment until the Contractor has submitted and the Department has accepted all required quarterly Financial Status Report and Performance Report information.

**14. Audit.**

a) Discretionary Audit. The State, through the Executive Director of the Department, the State Auditor or any of their duly authorized representatives, including an independent Certified Public Accountant of the State's choosing, or the federal government or any of its properly delegated or authorized representatives, shall have the right to inspect, examine and audit the Contractor's (and any subcontractor's) records, books, accounts and other relevant documents. Such discretionary audit may be requested at any time and for any reason from the effective date of the Contract until five (5) years after the date final payment for this Project is received by the Contractor, provided that the audit is performed during normal business hours.

b) Mandatory Audit. Whether or not the State calls for a discretionary audit as provided above, the Contractor shall include the Project in an annual audit report as required by the Colorado Local Government Audit Law, Section 29-1-601, et seq., C.R.S., and the Single Audit Act of 1984, Pub. L. 98-502, and Federal and State implementing rules and regulations. Such audit reports shall be simultaneously submitted to the Department and the State Auditor. Thereafter, the Contractor shall supply the Department with copies of all correspondence from the State Auditor related to the relevant audit report. If the audit reveals evidence of noncompliance with applicable requirements, the Department reserves the right to institute compliance or other appropriate proceedings, notwithstanding any other judicial or administrative actions filed pursuant to Section 29-1-607 or 29-1-608, C.R.S.

**15. Contract an Independent Contractor.**

The Contractor shall be an independent Contractor and shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability or understanding except as expressly set forth herein.

**16. Personnel.**

The Contractor shall perform its duties hereunder as a Contractor and not as an employee. Neither the Contractor nor any agent or employee of the Contractor shall be deemed to be an agent or employee of the State. The Contractor shall pay when due all required employment taxes and income tax withholding, shall provide and keep in force worker's compensation (and show proof of such insurance) and unemployment compensation insurance in the amounts required by law, and shall be solely responsible for the acts of the Contractor, its employees and agents.

The Contractor is responsible for providing Workman's Compensation Coverage and Unemployment Compensation Coverage for all of its employees to the extent required by law, and for providing such coverage for themselves. In no case is the State responsible for providing Workman's Compensation Coverage for any employees or subcontractors of the Contractor pursuant to this agreement, and the Contractor agrees to indemnify the State for any costs for which the State may be found liable in this regard.

**17. Contract Suspension.**

If the Contractor fails to comply with any contractual provision, the State may, after notice to the Contractor, suspend the Contract and withhold further payments or prohibit the Contractor from incurring additional obligations of contractual funds, pending corrective action by the Contractor or a decision to terminate in

accordance with provisions herein. The State may determine to allow such necessary and proper costs which the Contractor could not reasonably avoid during the period of suspension, provided that such costs were necessary and reasonable for the conduct of the Project.

**18. Contract Termination.**

The Contract may be terminated as follows:

a) Termination Due to Loss of Funding. The parties hereto expressly recognize that the Contractor is to be paid, reimbursed or otherwise compensated with federal CDBG funds provided to the State for the purpose of contracting for the services provided for herein or with program income; and, therefore, the Contractor expressly understands and agrees that all its rights, demands and claims to compensation arising under the Contract are contingent upon receipt of such funds by the State. In the event that such funds or any part thereof are not received by the State, the State may immediately terminate or amend the Contract.

b) Termination for Cause. In accordance with 24 CFR Part 85.44, suspension or termination may occur if the Contractor materially fails to comply with any term of the Contract, or, in the State's discretion, the Contract may be terminated for convenience. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under the Contract, or if the Contractor shall violate any of the covenants, agreements or stipulations of the Contract, the State shall thereupon have the right to terminate the Contract for cause by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Contractor under the Contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, the Contractor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the Contract by the Contractor, and the State may withhold any payments to the Contractor for the purpose of offset until such time as the exact amount of damages due the State from the Contractor is determined.

c) Termination for Convenience. The State may terminate the Contract at any time the State determines that the purposes of the distribution of State CDBG monies under the Contract would no longer be served by completion of the Project. The State shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials as described in subparagraph 18.b) above shall, at the option of the State, become its property. If the Contract is terminated by the State as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor covered by the Contract, less payments of compensation previously made; provided, however, that, if less than sixty percent (60%) of the services covered by the Contract have been performed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under the Contract) incurred by the Contractor during the Contract period which are directly attributable to the uncompleted portion of the services covered by the Contract. If the Contract is terminated due to the fault of the Contractor, subparagraph 18.b) hereof relative to termination shall apply.

**19. Modification and Amendment.**

a) Modification by Operation of Law. The Contract is subject to such modifications as may be required by changes in federal or state law or regulations. Any such required modification shall be incorporated into and be part of the Contract as if fully set forth herein.

b) Programmatic or Budgetary Changes. The Contract has a simplified Change Letter Procedure for modifying the Contract for the following reasons:

i) Unless otherwise specified in the Scope of Services, when cumulative budgetary line item changes exceed twenty thousand dollars ($20,000.00);

ii) When any budget transfers to or between administration budgetary categories are proposed;

iii) When the scope, objective or completion date of the Project changes as determined by the Department;

iv) When additional or less State funding is needed;

v) When there are additional federal statutory or regulatory compliance changes to Paragraph 23 of the Original Contract.

Under such circumstances, the Department's approval is not binding until memorialized in a fully executed Change Letter as specified in subparagraph c).

c) Change Letter process. The Contractor must submit a written request to the Department if programmatic or budgetary modifications are desired. Paragraph 11, Compensation and Method of Payment, Paragraph 23, Compliance with Applicable Laws; and Exhibit A, Scope of Services, may be modified by Change Letters (in the form which is attached hereto as Exhibit C), signed by the State and the Contractor. Upon proper execution and approval, such Change Letter shall become an amendment to the Contract, effective on the date specified in the Letter. No such Change Letter shall be valid until approved by the State Controller or such assistant as he may designate. All other modifications to the Contract must be accomplished through amendment to the Contract pursuant to fiscal rules and in accordance with subparagraph 19.d.

d) Other Modifications. If either the State or the Contractor desires to modify the terms of the Contract other than as set forth in subparagraphs b) and c) above, written notice of the proposed modification shall be given to the other party. No such modification shall take effect unless agreed to in writing by both parties in an amendment to the Contract properly executed and approved in accordance with applicable law. Any amendment required per this subparagraph will require the approval of other state agencies; appropriate, e.g., Attorney General, State Controller, etc.

**20. Integration.**

The Contract, as written, with attachments and references, is intended as the complete integration of all understanding between the parties at this time and no prior or contemporaneous addition, deletion or amendment hereto shall have any force or effect whatsoever, unless embodied in a written authorization or contract amendment incorporating such changes, executed approved pursuant to applicable law.

**21. Reports.**

a) Financial Reports. The Contractor shall submit to the Department three (3) copies of quarterly financial status reports in the manner and method set forth in the Reporting Section of the State CDBG Guidebook.

b) Performance Reports. The Contractor shall submit to the Department three (3) copies of quarterly performance reports and of a project completion report in a manner and method prescribed by the Department in the Reporting Section and Close-Out Section of the State CDBG Guidebook.

**22. Conflict of Interest.**

(a) In the Case of Procurement. In the procurement of supplies, equipment, construction and services by the Contractor and its subcontractors, no employee, officer or agent of the Contractor or its subcontractors shall participate in the selection or in the award of administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent; any member of his immediate family; his partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the party or firm selected for award. Officers, employees or agents of the Contractor and its subcontractors shall neither solicit nor accept gratuities, favors or anything of monetary value from parties or potential parties to contracts. Unsolicited items provided as gifts are not prohibited if the intrinsic value of such items is nominal.

b) In all Cases Other Than Procurement. In all cases other than procurement (including the provision of housing rehabilitation assistance to individuals, the provision of assistance to businesses and the acquisition and disposition of real property), no persons described in subparagraph i) below who exercise or have exercised any functions or responsibilities with respect to CDBG activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure for one (1) year thereafter.

i) Persons covered. The conflict of interest provisions of this subparagraph b) apply to any person who is an employee, agent, consultant, officer, elected official or appointed official of the Contractor or of any designated public agencies or subcontractors receiving CDBG funds.

ii) Threshold requirements for exceptions. Upon the written request of the Contractor, the State may grant an exception to the provisions of this subparagraph b) when it determines that such an exception will serve to further the purposes of the CDBG program and the effective and efficient administration of the Contractor's Project. An exception may be considered only after the Contractor has provided the following:

a) A disclosure of the nature of the conflict, accompanied by an assurance that:

i. There has been or will be a public disclosure of the conflict and a description of how the public disclosure was or will be made; and

ii. The affected person has withdrawn from his functions or responsibilities or the decision-making process with respect to the specific CDBG-assisted activity in question; and

b) An opinion of the Contractor's attorney that the interest for which the exception is sought would not violate state or local law; and

c) A written statement signed by the chief elected official of the Contractor holding the State harmless from all liability in connection with any exception which may be granted by the State to the provisions of this subparagraph b).

iii) Factors to be considered for exceptions. In determining whether to grant a requested exception after the Contractor has satisfactorily met the requirements of subparagraph ii) above, the State shall consider the cumulative effect of the following factors, where applicable:

a) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the Project which would otherwise not be available;

b) Whether an opportunity was provided for open competitive bidding or negotiation;

c) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be beneficiaries of the CDBG-assisted activity, and the exception will permit such person to receive generally the same benefits as are being made available or provided to the group or class;

d) Whether the interest or benefit was present before the affected person was in a position as described in this subparagraph b);

e) Whether undue hardship will result either to the Contractor or the person affected when weighted against the public interest served by avoiding the prohibited conflict; and

f) Any other relevant considerations.

**23. Compliance With Applicable Laws.**

At all times during the performance of the Contract, the Contractor and any subcontractors shall strictly adhere to all applicable federal and state laws, orders and all applicable standards, regulations, interpretations or guidelines issued pursuant thereto. The applicable federal laws and regulations include:

a) National Environmental Policy Act of 1969 (42 USC 4321, et seq.), as amended, and the implementing regulations of HUD (24 CFR Part 58) and of the Council on Environmental Quality (40 CFR Parts 1500–1508) providing for establishment of national policy, goals and procedures for protecting, restoring and enhancing environmental quality.

b) National Historic Preservation Act of 1966 (16 USC 470, et seq.), as amended, requiring consideration of the effect of a project on any district, site, building, structure or object that is included in or eligible for inclusion in the National Register of Historic Places.

c) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921, et seq.), requiring that federally funded projects contribute to the preservation and enhancement of sites, structures and objects of historical, architectural or archaeological significance.

d) The Archaeological and Historical Data Preservation Act of 1974, amending the Reservoir Salvage Act of 1960 (16 USC 469, et seq.), providing for the preservation of historic and archaeological data that would be lost due to federally funded development and construction activities.

e) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951, et seq.), prohibits undertaking certain activities in floodplains unless it has been determined that there is no practical alternative, in which case notice of the action must be provided and the action must be designed or modified to minimize potential damage.

f) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961, et seq.), requiring review of all actions proposed to be located in or appreciably affecting a wetland. Undertaking or assisting new construction located in wetlands must be avoided unless it is determined that there is no practical al-

ternative to such construction and that the proposed action includes all practical measures to minimize potential damage.

g) Safe Drinking Water Act of 1974 (42 USC 201, 300f, et seq., 7401, et seq.), as amended, prohibiting the commitment of federal financial assistance for any project which the Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area.

h) The Endangered Species Act of 1973 (16 USC 1531, et seq.), as amended, requiring that actions authorized, funded or carried out by the federal government do not jeopardize the continued existence of endangered and threatened species or result in the destruction or modification of the habitat of such species which is determined by the Department of the Interior, after consultation with the State, to be critical.

i) The Wild and Scenic Rivers Act of 1968 (16 USC 1271, et seq.), as amended, prohibiting federal assistance in the construction of any water resources project that would have a direct and adverse effect on any river included in or designated for study or inclusion in the National Wild and Scenic Rivers System.

j) The Clean Air Act of 1970 (42 USC 1857, et seq.), as amended, requiring that federal assistance will not be given and that license or permit will not be issued to any activity not conforming to the state implementation plan for national primary and secondary ambient air quality standards.

k) Flood Disaster Protection Act of 1973 (42 USC 4001), placing restrictions on eligibility and acquisition and construction in areas identified as having special flood hazards.

l) HUD Environmental Criteria and Standards (24 CFR Part 51), providing national standards for noise abatement and control, acceptable separation distances from explosive or fire prone substances and suitable land uses for airport runway clear zones.

m) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 – Title III, Real Property Acquisition (Pub. L. 91-646 and implementing regulations at 24 CFR Part 42), providing for uniform and equitable treatment of persons displaced from their homes, businesses or farms by federal or federally assisted programs and establishing uniform and equitable land acquisition policies for federally assisted programs. Requirements include bona fide land appraisals as a basis for land acquisition, specific procedure for selecting contract appraisers and contract negotiations, furnishing to owners of property to be acquired a written summary statement of the acquisition price offer based on the fair market price, and specified procedures connected with condemnation.

n) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 – Title II, Uniform Relocation Assistance (Pub. L. 91-646 and implementing regulations at 24 CFR Part 42), providing for fair and equitable treatment of all persons displaced as a result of any federal or federally assisted program. Relocation payments and assistance, last-resort housing replacement of displacing agency, and grievance procedures are covered under the Uniform Act. Payments and assistance will be made pursuant to state or local law, or the grant recipient must adopt a written policy available to the public describing the relocation payments and assistance that will be provided. Moving expenses and up to twenty-two thousand five hundred dollars ($22,500.00) or more for each qualified homeowner or up to five thousand two hundred fifty ($5,250.00) or more for each tenant are potential costs.

o) Section 104(d) of the Housing and Community Development Act of 1974 (42 USC 5301, as amended and implementing regulations at 24 CFR Part 570), providing for the replacement of all low- and moderate-income dwelling units that are demolished or converted to another use as a direct result of the use

of CDBG funds, and which provides for relocation assistance for low- and moderate-income households so displaced.

p) Davis-Bacon Fair Labor Standards Act (40 USC 276A – 276a-5) requiring that, on all contracts and subcontracts which exceed two thousand dollars ($2,000.00) for federally assisted construction, alteration or rehabilitation, laborers and mechanics employed by contractors or subcontractors shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. (This requirement applies to the rehabilitation of residential property only if such property is designed for use of eight (8) or more units.) The requirements set forth in this subparagraph are inapplicable to individuals who volunteer their services under circumstances set forth in 24 CFR Part 70.

Assistance shall not be used directly or indirectly to employ, award contracts to or otherwise engage the services of, or fund any subcontractor or subrecipient during any period of debarment, suspension or placement in ineligibility status under the provisions of 24 CFR Part 24.

q) Contract Work Hours and Safety Standards Act of 1962 (40 USC 327, et seq.), requiring that mechanics and laborers employed on federally assisted contracts which exceed two thousand dollars ($2,000.00) be paid wages of not less than one and one-half (1.5) times their basic wage rates for all hours worked in excess of forty (40) in a work week.

r) Copeland "Anti-Kickback" Act of 1934 (40 USC 276(c)), prohibiting and prescribing penalties for kickbacks of wages in federally financed or assisted construction activities.

s) The Lead-Based Paint Poisoning Prevention Act – Title IV (42 USC 4831), prohibiting the use of lead-based paint in residential structures constructed or rehabilitated with federal assistance, and requiring notification to purchasers and tenants of such housing of the hazards of lead-based paint and of the symptoms and treatment of lead-based paint poisoning.

t) Unless otherwise provided for in Exhibit A, Scope of Services, the Contract is subject to the following: Section 3 of the Housing and Community Development Act of 1968 (12 USC 1701(u)), as amended.

i) The work to be performed under the Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701(u) (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to very low- and low-income persons, particularly persons who are recipients of HUD assistance for housing.

ii) The parties to the Contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of the Contract, the parties to the Contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

iii) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of ap-

prenticeship and training positions, the qualifications for each; and the name and location of the persons taking applications for each of the positions; and the anticipated date the work shall begin.

iv) The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135 ((Paragraph 23t(i) – 23t)vii).a. through 21.g of this Contract), and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

v) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.

vi) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of the Contract for default and debarment or suspension from future HUD-assisted contracts.

vii) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 USC 450e) also applies to the work to be performed under the Contract. Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians; and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to the Contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

u) Section 109 of the Housing and Community Development Act of 1974 (42 USC 5309), as amended, providing that no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin or sex under any program or activity funded in whole or in part under Title I (Community Development) of the Act.

v) Title IV of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 USC 2000(d)), prohibiting discrimination on the basis of race, color, and incorporates laws prohibiting age or handicap or religious affiliation, or national origin discrimination in any program or activity receiving federal financial assistance.

w) The Fair Housing Act (42 USC 3601-20), as amended, prohibiting housing discrimination on the basis of race, color, religion, sex, national origin, handicap and familial status.

x) Executive Order 11246 (1965), as amended by Executive Orders 11375 and 12086, prohibiting discrimination on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of federal or federally assisted contracts in excess of two thousand dollars ($2,000.00).

y) Executive Order 11063 (1962), as amended by Executive Order 12259, requiring equal opportunity in housing by prohibiting discrimination on the basis of race, color, religion, sex or national origin in the sale or rental of housing built with federal assistance.

z) Section 504 of the Rehabilitation Act of 1973 (29 USC 793), as amended, providing that no otherwise qualified individual shall, solely by reason of a handicap, be excluded for participation (including employment), denied program benefits or subjected to discrimination under any program or activity receiving federal funds.

aa) Age Discrimination Act of 1975 (42 USC 6101), as amended, providing that no person shall be excluded from participation, denied program benefits or subjected to discrimination on the basis of age under any program or activity receiving federal funds.

ab) Fire Administration Authorization Act of 1992 (P.L. 102-522), prohibiting the use of housing assistance in connection with certain assisted and insured properties, unless various protection and safety standards are met.

ac) Excessive Force. In accordance with Section 519 of Public Law 101-144, the HUD Appropriations Act, Section 906 of Cranston-Gonzalez Affordable Housing Act of 1990, the Contractor has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and has adopted and is enforcing a policy of enforcing applicable state and local laws against physically barring entrance to or exits from a facility or location which is the subject of such nonviolent civil rights demonstration within its jurisdiction.

ad) Lobbying. The Contractor assures and certified that:

i) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of a federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

ii) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress or an employee of a Member of Congress in connection with this federally funded contract, grant, loan or cooperative agreement, it shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

iii) It shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

iv) It understands that this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, USC Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars ($10,000.00) and not more than one hundred thousand dollars ($100,000.00) for each such failure.

**24. Monitoring and Evaluation.**

The State will monitor and evaluate the Contractor for compliance with the terms of the contract, and the rules, regulations, requirements and guidelines which the State has promulgated or may promulgate, including the State CDBG Guidebook. The Contractor may also be subject to monitoring and evaluation by the U.S. Department of Housing and Urban Development.

**25. Severability.**

To the extent that this Contract may be executed and performance of the obligations of the parties may be accomplished within the intent of this Contract, the terms of this Contract are severable; and should any term

or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as waiver of any other term nor as waiver of a subsequent breach of the same term.

**26. Binding on Successors.**

Except as herein otherwise provided, this agreement shall inure to the benefit of and be binding upon the parties, or any subcontractors hereto, and their respective successors and assigns.

**27. Subletting, Assignment or Transfer.**

Neither party nor any subcontractors hereto may sublet, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of its rights, title, interest or duties therein, without the prior written consent of the other party. No subcontract or transfer of Contract shall in any case release the Contractor of liability under this Contract.

**28. Nondiscrimination.**

The Contractor shall comply with all applicable State and Federal laws, rules, regulations and Executive Orders of the Governor of Colorado involving nondiscrimination on the basis of race, color, religion, national origin, age, handicap or sex. In compliance with Paragraph 5 of the Special Provisions section of this contract, Contractor agrees to consider minorities or minority businesses as employees, specialists, agents, consultants or subcontractors under this Contract. Contractor may utilize the expertise of the State Minority Business Office within the Office of the Governor for assistance in complying with the nondiscrimination and affirmative action requirements of this Contract and applicable statutes.

**29. Applicant Statement of Assurances and Certifications.**

The Contractor has previously signed an "Applicant Statement of Assurances and Certifications," which is hereby incorporated and made a part of the Contract by reference.

**30. Survival of Certain Contract Terms.**

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of the Contract and the exhibits and attachments hereto which may require continued performance or compliance beyond the termination date of the Contract shall survive such termination date and shall be enforceable to the State as provided herein in the event of such failure to perform or comply by the Contractor or its subcontractors.

**SPECIAL PROVISIONS**

**Controller's Approval.**

1. This contract shall not be deemed valid until it shall have been approved by the Controller of the State or such assistant as he may designate. This provision is applicable to any contract involving the payment of money by the State.

**Fund Availability.**

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

**Bond requirement.**

3. If this contract involves the payment of more than fifty thousand dollars ($50,000.00) for the construction, erection, repair, maintenance or improvement of any building, road, bridge, viaduct, tunnel, excavation or other public work for this State, the Contractor shall, before entering upon the performance of any such work included in this contract, duly execute and deliver to the State official who will sign the contract a good and sufficient bond or other acceptable surety to be approved by said official, in a penal sum not less than one-half (½) of the total amount payable by the terms of this contract. Such bond shall be duly executed by a qualified corporate surety, conditioned upon the faithful performance of the contract and, in addition, shall provide that if the Contractor or his subcontractors fail to duly pay for any labor, materials, team hire, sustenance, provisions, provendor or other supplies used or consumed by such contractor or his subcontractor in performance of the work contracted to be done, or fails to pay any person who supplies rental machinery, tools or equipment in the prosecution of the work, the surety will pay the same in an amount not exceeding the sum specified in the bond, together with interest at the rate of eight percent (8%) per annum. Unless such bond is executed, delivered and filed, no claim in favor of the contractor arising under such contract shall be audited, allowed or paid. A certified or cashier's check or a bank money order payable to the Treasurer of the State of Colorado may be accepted in lieu of a bond. This provision is in compliance with Section 38-26-106, C.R.S.

**Indemnification.**

4. To the extent authorized by law, the contractor shall indemnify, save and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards, including costs, expenses and attorney fees, incurred as a result of any act or omission by the contractor, or its employees, agents, subcontractors or assignees pursuant to the terms of this contract.

**Discrimination and affirmative action.**

5. The Contractor agrees to comply with the letter and spirit of the Colorado Antidiscrimination Act of 1957, as amended, and other applicable law respecting discrimination and unfair employment practice (Section 24-34-402, C.R.S.), and as required by Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975.

During the performance of this contract, the contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap or age. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to the above-mentioned characteristics. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertisings; lay-offs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap or age.

(c) The Contractor will send to each labor union or representative of workers, with which he has a collective bargaining agreement or other contract or understanding, notice to be provided by the contracting officer, advising the labor union or workers' representative of the Contractor's commitment under the Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975, and of the rules, regulations and relevant orders of the Governor.

(d) The Contractor and labor unions will furnish all information and reports required by Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, and by the rules, regulations and orders of the Governor, or

pursuant thereto, and will permit access to his books, records and accounts by the contracting agency and the office of the Governor or his designee for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(e) A labor organization will not exclude any individual otherwise qualified from full membership rights in such labor organization, or expel any such individual from membership in such labor organization or discriminate against any of its members in the full enjoyment of work opportunity, because of race, creed, color, sex, national origin or ancestry.

(f) A labor organization, or the employees or members thereof, will not aid, abet, incite, compel or coerce the doing of any act defined in the Contract to be discriminatory or obstruct or prevent any person from complying with the provisions of the Contract or any order issued thereunder; or attempt either directly or indirectly, to commit any act defined in the Contract to be discriminatory.

(g) In the event of the Contractor's noncompliance with the nondiscrimination clauses of the Contract or with any such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further State contracts in accordance with procedures, authorized in Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, or by rules, regulations or orders promulgated in accordance therewith, and such other sanctions as may be imposed and remedies as may be invoked as provided in Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, or by rules, regulations or orders promulgated in accordance therewith, or as otherwise provided by law.

(h) The Contractor will include the provisions of paragraphs (a) through (h) in every subcontract and subcontractor purchase order unless exempted by rules, regulations or orders issued pursuant to Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontracting or purchase order as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in or is threatened with litigation with the subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the State of Colorado to enter into such litigation to protect the interest of the State of Colorado.

**Colorado Labor Preference.**

6a. Provisions of Sections 8-17-101 and 8-17-102, C.R.S., for preference of Colorado labor are applicable to the Contract if public works within the State are undertaken hereunder and are financed in whole or in part by State funds.

b. When a construction contract for a public project is to be awarded to a bidder, a resident bidder shall be allowed a preference against a nonresident bidder from a state or foreign country equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident. If it is determined by the officer responsible for awarding the bid that compliance with this subsection .06 may cause denial of federal funds which would otherwise be available or would otherwise be inconsistent with requirements of federal law, this subsection shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with Federal requirements (Sections 8-19-101 and 8-19-102, C.R.S.).

**General**

7. The laws of the State and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that the contract is capable of execution.

8. At all times during the performance of this contract, the Contractor shall strictly adhere to all applicable federal and state laws, rules and regulations that have been or may hereafter be established.

9. Pursuant to Section 24-30-202.4, C.R.S. (as amended), the State Controller may withhold debts owed to state agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest or other charges specified in Article 22, Title 39, C.R.S.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the Controller.

10. The signatories aver that they are familiar with Section 18-8-301, et seq., C.R.S. (Bribery and Corrupt Influences) and Section 18-8-401, et seq., C.R.S. (Abuse of Public Office), and that no violation of such provisions is present.

11. The signatories aver that to their knowledge, no state employee has any personal or beneficial interest whatsoever in the service or property described herein.

Exhibit A
Scope of Services

Exhibit B
Definition of Very Low-, Low- and
Moderate-Income Families and Persons

Exhibit C
Sample CDBG Contract Change Letter

## ARTICLE 12

### City of Aurora Utility Enterprise

*Intergovernmental Agreement*
*October 29, 2001*

This Intergovernmental Agreement ("IGA") is made and entered into this 29th day of October, 2001, by and between the City of Aurora, Colorado, a municipal corporation of the Counties of Adams, Arapahoe and Douglas, by and through its Utility Enterprise ("Aurora"), whose address is 1470 South Havana Street, Suite 400, Aurora, Colorado 80012, and the Board of County Commissioners of Otero County, Colorado ("Otero"), whose address is Third and Colorado, P. O. Box 511, La Junta, Colorado 81050.

WITNESSETH:

WHEREAS, the Rocky Ford Ditch Company is a Colorado mutual ditch company with its facilities located in Otero County, Colorado; and

WHEREAS, Aurora is the Utility Enterprise of a municipal corporation of the State of Colorado that, *inter alia*, provides water and wastewater service to the inhabitants of the City of Aurora and others; and

WHEREAS, Aurora is presently the owner of 466.48 shares of said Rocky Ford Ditch Company purchased in 1086; and

WHEREAS, Aurora is party to numerous agreements captioned Master Contract for Purchase and Sale of Rocky Ford Ditch Company Stock, which agreements were executed by Aurora and Sellers of an additional 288.574 shares of stock in the Rocky Ford Ditch Company ("Sellers Group"); and

WHEREAS, Aurora is a co-applicant along with the Sellers Group concerning the 288.574 shares stock, which are the subject of water rights change action in WD-2, Case No. 99CW169 ("99CW169"); and

WHEREAS, Aurora is the Applicant in a water right exchange action in WD-2, Case No. 99CW170 ("99CW170"); and

WHEREAS, Aurora has identified its need for the additional water rights and rights for exchange identified in 99CW169 and 99CW170 for the health and safety of its citizens; and

WHEREAS, Otero County is an Opposer in both 99CW169 and 99CW170; and

WHEREAS, *inter alia* Aurora and Otero County wish to resolve their differences pertaining to the two (2) Water Court cases so that Otero County will withdraw its opposition; and

WHEREAS, Aurora is willing to provide to Otero County certain funds and undertake certain activities; and

WHEREAS, Aurora is currently the owner of approximately four thousand one hundred (4,100) acres of land in Otero County and Aurora would like to receive input from Otero County in efforts to develop a land use plan for said property; and

WHEREAS, Otero County wishes to participate in the use of any water storage facilities within Otero County that Aurora itself, in its sole discretion, may construct in the future; and

WHEREAS, Otero County and Aurora wish to develop any positional water storage facility that Aurora may build in Otero County in a manner that will encourage the economy of Otero County.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants, payments and agreements contained herein, and other good and valuable consideration, the adequacy, sufficiency in receipt of which is hereby acknowledged, the parties agree as follows:

**1. Payments Concerning 99CW169 Lands.**

When agricultural production ceases upon any portion of the land formerly irrigated by the water rights that are the subject of 99CW169 (the land is more particularly described in Exhibit A attached hereto and made a part hereof), the tax classification for such property may be changed from the present status of irrigated agricultural land. If such reclassification occurs and results in a lower level of taxation per acre for any of such property, Aurora, as set forth hereinafter, will pay to Otero any decrease between the actual taxes assessed against the affected portion of such property, and the taxes that would have been assessed against the same affected portion if the Rocky Ford Ditch Company irrigation water was not removed. Payments will be limited to assessments for those entities currently assessing property taxes against the Property in the future. The evaluation for any such payments will be done on an annual basis. Payments shall commence on April 1st following the year in which final decrees are entered that allow the requested transfer in 99CW169, and the requested transfer in 99CW170. If entry of a decree in 99CW170 is delayed and Aurora exchanges the water that is the subject thereof by other means, or Aurora exercises the change in point of diversion under 99CW169, Aurora will commence payments on April 1st following the year in which any such alternative exchange or change in point of diversion occurs. The payments shall continue thereafter to be made on April 1st of each successive year for a total of ninety (90) years. Aurora's payment will be made to the Otero County Treasurer, who shall distribute such payments to the individual tax entity.

**2. Extension of 1994 Agreement.**

Otero County acknowledges that Aurora is and has been for some time making payments to Otero related to four thousand one hundred (4,100) acres of land owned by Aurora. (the land is more particularly described in Exhibit B attached hereto and made a part hereof). Such payments are made pursuant to an Agreement dated February 22, 1994 ("1994 Agreement). The 1994 Agreement has a twenty-year term. Otero County and Aurora hereby agree to extend the term of the 1994 Agreement to the date when the ninety-year period of payments set forth in Paragraph 1. hereinabove are completed. All other terms of the 1994 Agreement remain unchanged.

**3. Rocky Ford School District R-2.**

Should Aurora reach a future agreement with Rocky Ford School District R-2 ("R-2") for direct payment of any funds that R-2 would have received pursuant to Paragraph 1 hereinabove, the amounts of such payments made directly to R-2 will be deducted from the payments made to Otero County. Aurora agrees to provide Otero County with a certified copy of any such agreement with R-2.

**4. Maintenance of Drainage Ways.**

Aurora agrees that, concerning the Land described in Exhibit B, it will maintain the ABS Drainage Way that runs through the so-called Center and West Ranches and the East Ranch Drainage Ditch on the so-called East Ranch as facilities capable of carrying surface drainage in substantially the same matter as presently configured. A map of the facilities to be maintained is set forth on Exhibit C attached hereto and incorporated herein. Aurora also agrees that, as the majority shareholder in the Rocky Ford Ditch Company, it will require that said Company maintain the capability of the Rocky Ford Ditch for carrying surface drainage in substantially the same manner and capacity as presently configured. Should Aurora sell, transfer or assign the East, Center or West Ranches, it will nonetheless retain easements for the continued operation of said facilities for drainage purposes and Aurora will continue to operate and maintain the same perpetually.

**5. Land Use Planning.**

Aurora agrees to develop a land use plan for the lands described in Exhibit B. Aurora will solicit input from Otero County and the City of Rocky Ford regarding this land use plan and will endeavor in good faith to incorporate reasonable desires and ideas of Otero County and the City of Rocky Ford in the development of this property. The land use plan will identify areas most suitable for particular development strategies. The land use plan will also recognize and reflect any requirements that may be imposed as a result of any applicable Water Court decree. Aurora will solicit the cooperation of the current owners of the lands described in Exhibit A in a similar land use planning process. However, Otero County recognizes the inclusion of any land described in Exhibit A in any land use planning process will be at the sole discretion of the individual landowners thereof.

**6. Potential Use of Water Above Aurora's Annual Arkansas Basin Component Requirements.**

The parties hereto acknowledge Aurora is entering into an Intergovernmental Agreement with the Southeastern Colorado Water Conservancy District ("Southeastern"). Said agreement, dated _____, 2001, which *inter alia* provides that, should Aurora have water in amounts above its annual Arkansas Basin component requirements, Aurora may make a portion of that water available. Pursuant to the Intergovernmental Agreement between Aurora and Southeastern, Aurora will endeavor to enter into an agreement with Otero County concerning use of a portion of the water above Aurora's annual Arkansas Basin component requirements described in the Intergovernmental Agreement between Aurora and Southeastern.

**7. PSOP Payments.**

The parties hereto recognize that Southeastern Colorado Water and Storage Needs Assessment Enterprise, a water activity enterprise, formed by the Southeastern, prepared a Preferred Storage Options Plan ("PSOP") report dated September 21, 2000, which PSOP report identifies estimated future water storage needs for several potential participants and outlines a plan for meeting those needs, including reoperation of existing water storage in Fry-Ark Project East Slope Reservoirs, followed by construction of enlargements to Pueblo and Turquoise Reservoirs. Aurora agrees it will pay the first one hundred twenty-five thousand dollars ($125,000.00) of the feasibility and study portion for the PSOP entities within Otero County concerning up to five thousand (5,000) acre-feet of enlargement space in Pueblo Reservoir. Aurora will make such payment directly to Southeastern. Otero County agrees that entities within Otero County may participate in the development of the storage space as apportioned in Otero County's sole discretion.

**8. Withdrawal of Opposition.**

Upon execution of this IGA, Otero County will immediately withdraw its Statements of Opposition in 99CW169 and 99CW170 and will henceforth refrain from participating in those cases in any way, including but not limited to any future diligence proceedings. This provision does not restrict Otero County's participation in any Water Court matter that is not the subject of 99CW169, 99CW170 or future retained jurisdiction proceedings concerning 99CW169 and 99CW170 that concern subjects not addressed in the initial decrees entered in those matters. Aurora agrees that the decree in 99CW169 will retain the material provisions of language addressing re-irrigation as currently proposed in Exhibit E attached hereto and incorporated herein.

**9. Otero County Support of PSOP and H.R. 1714.**

Upon execution of this IGA, Otero County will immediately announce, and thereafter continue, its support of the PSOP Report referenced hereinabove. Upon execution of this IGA, Otero County will immediately announce, and thereafter continue, its support of H.R. 1714 of the 107th Congress of the United States in the form of the amended legislation attached hereto as Exhibit D and made a part hereof. Exhibit D is the same form of amended legislation that Aurora and Southeastern have agreed to in their hereinabove referenced Intergovernmental Agreement. Otero County agrees that it will continue to support revised or successor versions of H.R. 1714 that Aurora and Southeastern may jointly propose, provided that such revisions do not substantially change the original purpose and intent of Exhibit D.

**10. Other Economic Development Distinct.**

Any agreements that Aurora enters into with the City of Rocky Ford or Rocky Ford Development are a separate and distinct agreement(s) and will not affect any provision of this IGA.

**11. Notice.**

Any and all notices, demands or other communications desired or required to be given under any provision of this IGA shall be given in writing, delivered personally or sent by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

To Otero County:

Chairman, Board of County Commissioners
Third & Colorado
P.O. Box 511
La Junta, CO 81050

To Aurora:

Director of Utilities
1470 South Havana Street, Suite 400
Aurora, CO 80012

Or at any other address as either party may hereinafter, from time to time designate by written notice to the other party given in accordance with this paragraph. Notice shall be effective upon receipt.

**12. Headings for Convenience Only.**

Paragraph headings and titles contained in this IGA are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provisions of this IGA.

**13. Amendment.**

This IGA may be modified, amended or changed in whole or in part only by an agreement in writing duly authorized and executed by Aurora and Otero County with the same formality as this IGA.

**14. Waiver.**

The waiver of any breach of the provisions of this IGA by either Aurora or Otero County shall not constitute a continuing waiver of any subsequent breach of said party, either for breach of the same or any other provision of this IGA.

**15. Nonseverability.**

Each paragraph of this IGA is intertwined with the others and is not severable unless by mutual consent of Aurora and Otero County.

**16. Effect of Invalidity.**

If any portion of this IGA is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either party or as to both parties, the parties agree to use their best efforts to reform as soon as possible any such invalidity and achieve a valid agreement that accomplishes the purposes of this IGA as originally set forth.

**17. Governing Law.**

This IGA and its application shall be construed in accordance with the laws of the State of Colorado.

**18. Multiple Originals.**

This IGA may be simultaneously executed in any number of counterparts, each of which shall be deemed original but all of which constitute one and the same IGA.

**19. Survival of Representations.**

Each and every covenant, promise, payment or option contained in this IGA shall not merge in any deed, lease, contract or other instrument conveying or concerning any interest in the land, water rights or any other type of real property, but shall survive each instrument and transfer, nevertheless, and be binding and obligatory upon each of the parties.

**20. No Costs and Fees.**

In the event of any litigation, mediation, arbitration or other dispute resolution process arising out of this IGA, the parties agree that each shall be responsible for their own costs and fees, including but not limited to attorneys' fees, associated with any such activities, with the exception of claims found by the courts to be frivolous or groundless as per Colorado statutes.

**21. Specific Performance Available.**

In the event of litigation concerning this IGA, without limiting other forms of remedies available, the remedy of specific performance will be available to either Aurora or Otero County.

**22. Intent of Agreement.**

This IGA is intended to describe the rights and responsibilities of and between Aurora and Otero County and is not intended to, and shall not be deemed to, confer rights upon any persons or entities not signatories hereto, nor to limit, impair or enlarge in any way the powers, regulatory authority and responsibilities of Aurora or Otero County, or any other governmental entity not a party hereto.

**23. Joint Draft.**

The parties hereto, with each having the advice of legal counsel and an equal opportunity to contribute to its content, jointly drafted this IGA.

**24. Non-Business Day.**

If the date for any action under this IGA falls on a Saturday, Sunday or a day that is a "holiday," as such term is defined in C.R.C.P. 6, then the relevant date shall be extended automatically until the next business day.

**25. Nonassignability.**

Neither Aurora nor Otero County may assign its rights or delegate its duties under this IGA without the prior written consent of the other party, except that either party may assign and delegate to an enterprise organization formed by that party's governing board or council, which enterprise organization is a subsidiary of the party.

**26. Successors and Assigns.**

This IGA and the rights and obligations created hereby shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns in the event assignment is allowed.

**27. Sole Obligation of the Utility Enterprise.**

The parties agree that any and all obligations of Aurora under this IGA are the sole obligations of the City of Aurora Utility Enterprise and, as such, shall not constitute a general obligation or other indebtedness of the City of Aurora or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City of Aurora within the meaning of any constitutional, statutory or charter limitation. The parties also agree that, in the event of a default by Aurora on any of its obligations under this Agreement, Otero County shall not have any recourse against any of the properties or revenues of the City of Aurora, except that, in order to satisfy any non-appealable judgment against Aurora, Otero County shall have recourse against the net revenues of the Aurora Water System that are available therefor in the City of Aurora Utility Enterprise Water Fund, or

any successor enterprise fund, after payment of all expenses related to the operation and maintenance of said Aurora Water System.

EXHIBIT A

Legal Description for the 2870 acres currently irrigated.

EXHIBIT B

Legal Description for the approximately 4,100 acres formally irrigated by the water rights transferred in WD-2, Case No. 83CW18.

EXHIBIT C

Map of ABS Drainage Way and East Ranch Drainage Ditch.

EXHIBIT D

Copy of revised H.R. 1714 agreed to by Aurora and Southeastern.

EXHIBIT E

Proposed Re-Irrigation Language.

## ARTICLE 13

## "Sk8way" Park

*Intergovernmental Agreement*
*March 18, 2002*

THIS AGREEMENT, made this 18th day of March, 2002, by and between the BOARD OF COUNTY COMMISSIONERS OF OTERO COUNTY, hereinafter referred to as "COUNTY," and the CITY OF LA JUNTA, COLORADO, hereinafter referred to as "CITY."

WITNESSETH:

WHEREAS, COUNTY is a political subdivision of the State of Colorado and is organized and existing and operating under the laws of the State of Colorado; and

WHEREAS, CITY is a political subdivision of the State of Colorado and incorporated as a Home Rule City pursuant to Article 20 of the Colorado State Constitution; and

WHEREAS, the Colorado Constitution, Article 14, Section 18, and Section 29-1-201, et seq., C.R.S. 1973 authorize political subdivisions of the State of Colorado to enter into intergovernmental agreements for the mutual benefit of both parties; and

WHEREAS, the parties are desirous of memorializing their desires and agreements with regard to this grant;

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and stipulations hereinafter set forth, and for such other and further consideration, the receipt and sufficiency of which are hereby acknowledged, COUNTY and CITY mutually agree, covenant and stipulate as follows:

## GENERAL USE PROVISIONS

1. The project shall be named the "SK8WAY."

2. The park shall be available to all members of the public without regard to their residence.

## CITY DUTIES

3. The City shall dedicate to the use of the public, an area consisting of approximately one hundred (100) feet by one hundred (100) feet, which will be generally located to the west of the tennis courts currently located at 12th and Colorado in the City Park in La Junta, Colorado.

4. The City shall allow the nonexclusive use of the premises for the general purposes contained herein.

5. The City shall allow for the erection of a skateboard park, in general consisting with the requirements of the City Codes for installation of a skateboard area.

6. As an "in kind" contribution, the City shall provide all ground preparatory work at the expense of the City.

7. The City shall provide ten thousand dollars ($10,000.00) towards the purchase of the skateboard facility and for the construction thereon.

8. After construction of the facility, the City shall be obligated to maintain the skateboard area, to pay for all costs of maintenance and all labor associated therein.

9. After construction of the facility, in the event of need for modification, for removal, termination or other nonanticipated use of the skateboard facility, that election shall be made at the sole discretion of the City.

10. After construction of the facility, the City shall maintain ownership of all improvements made thereon, and all improvements shall become the sole and separate property of the City.

11. After construction of the facility, the City shall provide utilities in the form of electricity to light the skateboard area.

12. The City shall provide general policing services for the facility.

13. The skateboard area shall be subject to all conditions of rules of operation and hours of operation generally imposed by the City of La Junta for use of other patrons within other areas of the City Park.

14. Unless specifically authorized by the City, no entity shall be allowed to advertise on the skateboard park area.

## COUNTY RESPONSIBILITIES

15. Upon start of construction, the County shall pay over to the City, for partial cost of construction, the sum of forty-five thousand dollars ($45,000.00).

16. The County shall use its best efforts to offer a grant which will incorporate the monies paid for this project, as part of a larger GOCO Grant Application. However, nothing contained herein shall limit or terminate the County's responsibilities to donate the monies set forth in Paragraph 15 above, the parties having agreed in advance that such sums shall be donated by the County irrespective of the ultimate outcome of the grant process.

17. The County shall assist the City in developing rules and regulations with regard to the operation of the skateboard park.

18. The County shall assist the City in selecting the proper skateboard park facility to be installed and the proper ramps and other areas of use of the skateboard park.

19. The County and City shall accept donations from members of the community, and shall turn over said monies to the City, which funds shall thereafter be used by the City to maintain the subject premises.

**GENERAL CONTRACT PROVISIONS**

20. This contract may be amended only by execution of a written agreement by and between the principals contained herein, and in a form and manner similar to the execution of this contract.

21. This contract shall be binding upon the successor, heirs and assigns of the parties.

22. This contract must be approved by the respective governing bodies of the City and the County, prior to execution hereof, and subject to appropriations ordinances and/or appropriations resolutions as may be required by law.

23. That, in the event that any party should fail to meet the covenants of funding as anticipated in the Agreement, then this contract shall become null and void.

## ARTICLE 14

## Tri-County ComCor Board

*Amendment to Intergovernmental Agreement*
*September 1, 2002*

THIS AMENDMENT TO INTERGOVERNMENTAL AGREEMENT is entered into by and between the following parties:

1. The Board of County Commissioners of Otero County, Colorado, a body politic and corporate, hereinafter referred to as "Otero County";

2. The Board of County Commissioners of Bent County, Colorado, a body politic and corporate, hereinafter referred to as "Bent County";

3. The Board of County Commissioners of Crowley County, Colorado, a body politic and corporate, hereinafter referred to as "Crowley County";

4. The City of La Junta, of Otero County, Colorado, a body politic and corporate, hereinafter referred to as "City";

WITNESSETH:

WHEREAS, the above-mentioned parties previously entered into an Intergovernmental Agreement effective July 1, 1995; and

WHEREAS, said Intergovernmental Agreement dealt with the authorization, organization and establishment of a board known as "the Tri/County ComCor Board"; and

WHEREAS, said Intergovernmental Agreement not only provided for the formation of The Tri/County ComCor Board, but authorized said Board to exercise all of the powers and duties allowed in Part 1 of Article 27 of Title 17 of the Colorado Revised Statutes as concerns the operation, oversight and administration of community corrections programs; and

WHEREAS, the above-mentioned parties are units of local government and governing bodies as those terms are defined in Section 17-27-102, C.R.S.; and

WHEREAS, the Intergovernmental Agreement entered into by the parties provided, among other things, that said Intergovernmental Agreement would require an affirmative vote of two-thirds (⅔) of the parties in order to be amended; and

WHEREAS, the above-mentioned parties have unanimously agreed that certain amendments relating to the composition of the Board are essential and appropriate; and

WHEREAS, the parties desire to amend the Intergovernmental Agreement effective July 1, 1995, in certain respects;

NOW, THEREFORE, for and in consideration of the mutual covenants, stipulations, conditions and agreements herein contained, the parties hereto agree and stipulate as follows:

1. Section 3, Paragraph A of the Intergovernmental Agreement is hereby amended as follows:

**Section 3. Organization and operation of the Corrections Board.**

A. The Entity's governing board shall be comprised of seventeen (17) members, and said membership shall include the following mandated positions for public officials (or their designees) who serve the Sixteenth Judicial District, to wit:

1. The Chief Judge;
2. The District Attorney;
3. A Deputy Public Defender;
4. The President of the Sixteenth Judicial District Bar Association;
5. The Chief Probation Officer;
6. A Sheriff from each county within the District;
7. A representative from the Department of Corrections;
8. A representative from the City of La Junta;
9. A County Commissioner from each county within the District;
10. The remaining four (4) members of the Corrections Board (nonmandated positions) shall be residents of the Sixteenth Judicial District, appointed as provided herein.

2. That all other terms and provisions of the Intergovernmental Agreement effective July 1, 1995, between the parties shall remain in full force and effect except as modified by this Amendment.

3. The effective date of this Amendment shall be September 1, 2002.

BYLAWS
OF THE
TRI/COUNTY COMCOR BOARD

## Article I
## Name and Principal Office

Section 1. Name. The name of the entity shall be the Tri-County ComCor Board, hereinafter referred to as the "Board."

Section 2. Principal Address. The official address shall be P.O. Box 474, La Junta, Colorado 81050.

## Article II
## Purpose

The purpose of the Board shall be as follows:

1. Carry out the intent and purpose of that certain Intergovernmental Agreement approved by the Sixteenth District County Commissioners in its Resolution, effective July 1, 1995.

2. Act as a functional Community Corrections Board pursuant to the Section 17-27-103, C.R.S., in particular, and Section 17-27-101, et seq., C.R.S., in general.

3. Serve as a planning agency for suggestions, ideas and formulation of proposals concerning the future community corrections in the Sixteenth Judicial District.

## Article III
## Powers, Rights and Duties

Section 1 Powers. The Board shall exercise all powers which can be delegated to such a board by units of the local government pursuant to Article 27 of Title 17, C.R.S.

Section 2. Duties. The duties of the Board shall include those mandated by state law, as well as the following:

a. Establish procedures for screening placements, if necessary, with facilities established by participating local units of government.

b. Recommend guidelines to the Courts for "diversion" placement in community corrections facilities within the territorial limits.

c. Obtain approval of guidelines from the Chief Judge of the Sixteenth Judicial District and from the State Judicial Department.

Additional duties of the Board shall include, but not be limited to, providing annual reports, if requested, to the Sixteenth Judicial District County Commissioners.

## Article IV
## Fiscal Year

The fiscal year of the Board shall coincide with the state fiscal year, July 1 to June 30.

## Article V
## Board Members

Section 1. Composition. The Board shall have fifteen (15) members from the Sixteenth Judicial District as follows:

MANDATED

a. Chief Judge.

b. District Attorney.

c. Deputy Public Defender.

d. President of the Sixteenth Judicial District Bar Association.

e. Chief Probation Officer.

f. Sheriff from each County within the District.

g. Representative from the Department of Corrections.

h. Representative from the City of La Junta.

i. A County Commissioner from each County within the District.

NON-MANDATED

a. Three (3) citizens, one (1) from each County appointed by the County Commissioners.

b. One citizen appointed by the Community Corrections Board.

Section 2. Selection. All members of the Board shall become so by virtue of their appointment as stated in Article V, page 2. When vacancies occur, notice shall be given to the Board of County Commissioners. Such notice shall be given within seven (7) days of its becoming known to the Board.

Section 3. Term. The Board members shall serve at the pleasure of the Board of County Commissioners and may be removed by that Board for cause or without cause.

Section 4. Meetings. The Board shall hold at least one (1) regular meeting every three (3) months unless sooner convened by the Chairman, Vice Chairman or any five (5) members. Meetings shall be at the time and place as called by the Chairman, Vice Chairman or any five (5) members upon five (5) days' written notice unless such notice is waived by all members. Notices shall state the time and place of the meeting but need not state the purpose. Board members present shall constitute a quorum. Any vote by a majority of the quorum shall be the act of all the Board of Directors. All meetings shall comply with the "Colorado Sunshine Act of 1972" and amendments thereto so long as it or derivative legislation remains in effect.

Section 5. Procedures. Agendas for the regular meetings will be prepared and distributed to the Board prior to each meeting whenever possible.

Section 6. Compensation. No Board member, and no person from whom the program may receive any property or funds or be lawfully entitled to receive any pecuniary profit from the operation of the program, and in no event and under no circumstances shall any part of the assets, whether principal, income or accumulations, be paid as salary or compensation to, or be distributed to, or inure to the benefit of, any Board members or their successors, or any person or his or her heirs or personal representatives who shall contribute any money or other property to the program; provided, however: (a) that reasonable compensation may be paid to any officer, agent or employee for the services rendered in effecting one (1) or more of the purposes of the program; and (b) that any Board member may, from time to time, be reimbursed for his actual or reasonable expenses incurred in connection with the administration of the affairs of the program.

Section 7. Absences From Meetings. A Board member shall be removed and a vacancy on the Board shall occur when any member shall fail to be present at three (3) consecutive meetings of the Board or at four (4) regular meetings during the calendar year, unless such absence in formally excused by a two-thirds majority of the voting members present.

**Article VI**
**Officers**

Section 1. Number and Type. Officers of the Board shall initially consist of a Chairman, Vice Chairman and a Secretary/Treasurer. At the Board's option and without amendment thereto, the Secretary/Treasurer office may become two (2) offices, Secretary and Treasurer.

Section 2. Term. Officers shall serve for one (1) year, though eligible to run for consecutive terms.

Section 3. Selection. Selection of officers shall be made by the full Community Corrections Board at the regular April meeting of each year, where a simple majority of those voting shall elect the officer or officers.

Section 4. Vacancies. Officer vacancies due to termination or resignation shall be filled by a majority vote of the Board; the newly elected officer shall serve in that office only the remainder of the term, but shall be eligible to run for a full term in said office.

Section 5. Duties. Duties of the officers shall be as follows:

1. The Chairman shall preside at all meetings of the Board. The Chairman shall serve as an ex officio member of all committees. The Chairman shall perform other duties designated by the Board. The Chairman shall serve as the official spokesperson for the Board.

2. The Vice Chairman shall perform such duties as the Chairman and/or the Board may designate. In the absence of the Chairman, the Vice Chairman shall perform his/her duties.

3. The Secretary/Treasurer shall be responsible for maintaining the minutes of all meetings, maintain all official records of the Board, prepare agendas and notices and answering correspondence as directed by the Chairman, aiding in the preparation of the annual budget and reporting on expenditures from that budget on a regular basis.

Section 6. Administrative Staff. The Chairman may engage paid administrative staff to carry on the affairs of the Board, if the Board of Directors determines that need exists and that adequate financial resources are available.

**Article VII**
**Committees**

Section 1. The Board's Chairman may appoint ad hoc committees to deal with problems and actions. A majority of the Board may appoint ad hoc or standing committees as deemed appropriate.

Section 2. All standing committee chairmen shall be established by a majority of the Board. Ad hoc committee chairman may be designated by the Chairman or by the Board.

**Article VIII**
**Amendments**

Section 1. Board members shall be given five (5) days' written notice prior to any vote amending these Bylaws.

Section 2. Amendments to these Bylaws shall take effect when they have been approved by no fewer than two-thirds (⅔) of the Board members present at the meeting of which notice was properly given.

ADOPTED by the TRI/COUNTY COMCOR BOARD this ____day of _____, 2002.

## ARTICLE 15

## Bent County Jail Services

*Intergovernmental Agreement*

*February 10, 2003*

THIS AGREEMENT, made this 10th day of February 2003, by and between the BOARD OF COUNTY COMMISSIONERS OF BENT COUNTY, hereinafter referred to as "BENT COUNTY," and OTERO, hereinafter referred to as "JURISDICTION";

WITNESSETH:

WHEREAS, JURISDICTION does not have sufficient capacity to properly and sufficiently house prisoners which are being held for hearings or trails or are being detained following sentencing; and

WHEREAS, BENT COUNTY is willing to provide space in its County jail at various times to assist the JURISDICTION in housing and detaining the JURISDICTION's prisoners; and

WHEREAS, BENT COUNTY is willing to provide space in its County jail on space available basis and upon the terms and conditions as hereinafter set forth; and

WHEREAS, BENT COUNTY is a political subdivision of the State of Colorado and is organized and existing and operating under the laws of the State of Colorado; and

WHEREAS, JURISDICTION is a political subdivision of the State of Colorado; and

WHEREAS, the Colorado Constitution, Article 14, Section 18, and Section 29-1-201, et seq., C.R.S. 1973, authorizes political subdivisions of the State of Colorado to enter into intergovernmental agreements for the mutual benefit of both parties.

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and stipulations hereinafter set forth, and for such other and further consideration, the receipt and sufficiency of which are hereby acknowledged, BENT COUNTY and JURISDICTION mutually agree, covenant and stipulate as follows:

1. BENT COUNTY hereby agrees to provide detention in its County jail for prisoners and detainees of the JURISDICTION on space-available basis; that is, to say BENT COUNTY shall only provide detention facilities, if any, when space is available in the BENT COUNTY jail, based upon the sole discretion and determination of the Bent County Sheriff.

2. The term of the Agreement shall be indefinite, beginning the 10th day of February, 2003.

3. In the event BENT COUNTY accepts prisoners and detainees from JURISDICTION, BENT COUNTY shall be responsible to confine and supervise the detainees and prisoners that are confined in the Bent County jail. BENT COUNTY shall provide detainees and prisoners such care and treatment, including subsistence, providing for their physical needs, make available such other programs of training and treatment which are consistent with BENT COUNTY's present programs offered to BENT COUNTY detainees and prisoners, retain them in a safe, supervised custody, maintain proper discipline and control, and to otherwise comply with applicable State and Federal laws, except as otherwise provided herein.

4. JURISDICTION hereby agrees to provide any and all ordinary and emergency medical care and treatment and agrees to indemnify and hold BENT COUNTY harmless for any and all such expenses.

5. For and in consideration of the detention services referred to above, JURISDICTION, on its part, agrees to reimburse BENT COUNTY at the rate of forty-five dollars ($45.00) per prisoner or detainee per day. In determining this per diem rate of reimbursement, JURISDICTION shall be required to reimburse BENT COUNTY a full-day rate of forty-five dollars ($45.00) for any fraction of a day that a prisoner or detainee is

present and housed in the Bent County jail. The reimbursement as set forth hereinabove shall be paid on a monthly basis at the normal and customary times the JURISDICTION pays its monthly bills. BENT COUNTY hereby reserves the right, and JURISDICTION stipulates and agrees, that BENT COUNTY may adjust or modify the rate hereinabove set forth at any time during the Agreement, based upon a cost allocation audit by BENT COUNTY. BENT COUNTY shall be required to give JURISDICTION thirty (30) days' written notice of its intent to increase the per diem rate of reimbursement hereunder.

6. BENT COUNTY shall not be subject to the direct supervision or control of JURISDICTION in terms of management and operation of the Bent County jail; however, JURISDICTION shall have the right to inspect the Bent County jail upon twenty-four-hour notice.

7. JURISDICTION hereby agrees to provide any and all transportation of *a* prisoner or detainee to or from the jail, to or from court and to or from any other hearing and/or point as required by any Court.

8. a. JURISDICTION shall save and hold harmless and indemnify BENT COUNTY to the extent allowed by law against any and all liability claims and costs of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any property occurring in connection with, or in any way incident to or arising out of the occupancy, use, service, operation or performance of work under the terms of this Agreement, resulting from the negligent acts or omissions of JURISDICTION, or any employee or agent of JURISDICTION. In so agreeing, JURISDICTION does not waive any defenses, immunities or limits of liability available to it under state or federal law.

b. BENT COUNTY shall save and hold harmless and indemnify JURISDICTION to the extent allowed by law against any and all liability claims and costs of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any property occurring in connection with, or in any way incident to or arising out of the occupancy, use, service, operation or performance of work under the terms of the Agreement, resulting from the negligent acts or omissions of BENT COUNTY, or any employee or agent of BENT COUNTY. In so agreeing, BENT COUNTY does not waive any defenses, immunities or limits of liability available to it under state or federal law.

9. Neither party shall be entitled to assign this Agreement or any right or obligation thereunder without the express written approval of the other party.

10. This Agreement contains the final and entire agreement between the parties thereto with respect to the use of the Bent County jail, and is intended to be an integration of all prior understandings. The parties hereto shall not be bound by terms, conditions, statements or representations not contained therein. No change or modification of this Agreement shall be valid unless the same shall be in writing and signed by the parties thereto. All agreements and covenants contained therein are severable; and, in the event any of them shall be held to be invalid by any competent court, this Agreement shall be interpreted as of the invalid agreements and covenants were not contained therein.

11. It is the intention of the parties to this Agreement that this Agreement and performance thereunder, and all suits and special proceedings thereunder, be construed in accordance with, and under and pursuant to the laws of the State of Colorado.

## ARTICLE 16

### La Junta Street Maintenance

*Intergovernmental Agreement*

*February 2003*

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between the BOARD OF COUNTY COMMISSIONERS OF OTERO COUNTY, COLORADO, hereinafter referred to as "County," and the CITY OF LA JUNTA, COLORADO, a municipal corporation, hereinafter referred to as "City."

WHEREAS, Section 29-1-203, C.R.S., authorizes and encourages intergovernmental agreements and contracts for the purpose of governmental entities to cooperate and contract to provide a function, service or a facility; and

WHEREAS, Colorado law governing intergovernmental agreements further provides that the contracting governments shall enter into a contract which sets forth fully the purposes, powers, rights, obligations and responsibilities of the contracting parties; and

WHEREAS, Colorado law dealing with intergovernmental agreements provides that the contracts between the governing entities must be authorized by the approval of the legislative body of the entities in question; and

WHEREAS, County and City wish to enter into an intergovernmental agreement regarding the maintenance of streets and roads surrounding the City of La Junta;

NOW, THEREFORE, based upon good and valuable considerations, the receipt of which is acknowledged, the parties hereby agree as follows:

1. The County agrees to maintain the following streets and roads:

    1. County Road BB from City Limits to Conley.
    2. County Road 27.25 (Cuchara Avenue) from City Limits to Highway 50.
    3. County Road AA (Sixth Street) from City Limits to Potter Drive.
    4. County Road 28 from City Limits to Tenth Street.
    5. County Road 28 from City Limits (Sixth Street) to Highway 10.
    6. County Road Z.70 (Tenth Street) from County Road 28 to City Limits.
    7. County Road Z (Twenty-second Street) from Smithland Avenue to City Limits (Grace Avenue).
    8. County Road Z.5 (Fourteenth Street) from Highway 109 (Adams Avenue) to East City Limits.
    9. County Road 30 (Daniel Avenue) from City Limits to Eighth Street.
    10. County Road Z.80 (Eighth Street) from Daniel Avenue to City Limits.
    11. County Road 30.15 (Sunset Avenue) from City Limits to Sixth Street.
    12. County Road 30.20 (Prospect Avenue) from City Limits to Sixth Street.
    13. County Road 30.25 (Kenilworth Avenue) from Eighth Street to Sixth Street.
    14. County Road AA from Lacy Avenue to City Limits.
    15. County Road 30.30 (Malouff Avenue) from City Limits to Frontage Road.

2. The City agrees to maintain the following streets and roads:

16. County Road Z.70 (Tenth Street) from City Limits to Russell Avenue.

17. Garfield from City Limits to Tenth Street.

18. County Road AA (Sixth Street) from Highway 350 to City Limits.

19. County Road Z.60 (Twelfth Street) from Garfield Avenue to Topeka Avenue.

20. County Road 28.30 (Topeka Avenue) from Twelfth Street along City Limits.

21. County Road 28.30 (Topeka Avenue) from Eighth Street to Seventh Street.

22. County Road AA (Sixth Street) from Hayes Avenue to Lawrence Avenue.

23. County Road Z.70 (Tenth Street) from Belmont Avenue to the Anderson Arroya City Limits Line.

24. County Road 28.60 (Barnes Avenue) from Tenth Street to City Limits (Sixth Street).

29. County Road Z (Twenty-second Street) from City Limits to Cimarron Avenue.

30. County Road Z.40 (Sixteenth Street) from Grace Avenue to Highway 109 (Adams Avenue).

31. County Road 29.60 (Grace Avenue) from Sixteenth Street to Fourteenth Street.

32. County Road Z.5 (Fourteenth Street) from Grace Avenue to Highway 109 (Adams Avenue).

33. County Road 29.80 (Best Avenue) from City Limits to City Limits (Tenth Street).

34. County Road AA (Sixth Street) from City Limits to City Limits (Cooper Avenue).

35. County Road 30.20 (Prospect Avenue) from City Limits to State Highway 50.

36. County Road Z.80 (Eighth Street) from Sunrise Avenue to County Road 30.25 (Kenilworth Avenue).

37. County Road 30.22 (Sunrise Avenue) from Eighth Street to City Limits.

38. Third Street from Highway 109 (Adams Avenue) to Best Avenue.

39. Third Street from Prospect to Highway 50 Frontage Road.

3. The City agrees to remove the snow from the following streets and roads and the County agrees to maintain the following streets and roads in all other respects:

25. County Road Z.75 (Ninth Street) from Nevada Avenue to Maple Avenue.

26. County Road 28.75 (Nevada Avenue) from Ninth Street to Eighth Street.

27. County Road Z.80 (Eighth Street) from Nevada Avenue to Maple Avenue.

28. County Road 28.80 (Maple Avenue) from Ninth Street to Eighth Street.

4. The roadways listed in Paragraphs 1, 2 and 3 above are set forth in the attached map, which is hereby incorporated by reference.

5. Each party agrees that they will maintain the streets and roads as listed herein. Maintenance shall include the proper maintenance of the driving surface, proper drainage, sanding and snow plowing, as well as other necessary and needed maintenance to make the streets and roads useable by the public.

6. The Agreement may be amended at any time by further agreement of the parties placed in writing.

## ARTICLE 17

### State of Colorado Recreational Rights

*Lease Agreement*
*December 22, 2003*

THIS LEASE, made this 22nd day of December, 2003, by and between the COUNTY OF OTERO, acting through its Board of County Commissioners, hereinafter referred to as "Lessor" or "Contractor," and the State of Colorado, acting by and through the Department of Natural Resources for the use and benefit of the Division of Wildlife and Wildlife Commission, hereinafter referred to as the "Lessee;"

WHEREAS, required approval, clearance and coordination have been accomplished from and with appropriate agencies; and

WHEREAS, the Lessor is the owner of property situated in the County of Otero, State of Colorado, described and illustrated on Exhibit "A" attached hereto and incorporated herein by reference and hereinafter referred to as the "property"; and

WHEREAS, Lessee is desirous of obtaining a lease of the property for use by the public for fishing access, hunting, watching wildlife and other wildlife related recreation.

NOW, THEREFORE, it is hereby agreed that:

1. Subject to the laws and regulations of the State of Colorado and the limitations and conditions contained herein, the Lessor does hereby lease, grant and demise unto the Lessee the right of use by the Lessee and the public for fishing access, hunting, watching wildlife and other wildlife-related recreation, upon and across the property for a term of ten (10) years beginning on February 1, 2004, and ending the 31st day of January, 2014.

2. It is expressly understood by the Lessor that the afore-described property does not currently have an existing lease or contract which is inconsistent with the rights hereby leased to the Lessee or which would interfere with the Lessee's intended use of the property, and the Lessor shall not have the right to further grant rights to any person or entity which are inconsistent with the rights hereby leased to the Lessee or which would interfere with the Lessee's intended use of the property.

3. The Lessee shall patrol the property for compliance with the terms of this Lease and applicable statutes and regulations as determined by the Lessee's law enforcement officers, as manpower resources will permit.

4. The Lessee shall supply, install and maintain any boundary, interpretive and information signs determined by the Lessee to be necessary to inform the public what uses are permitted and prohibited on the property.

5. Liability. Lessee Liability Exposure. Notwithstanding any other provision of this Lease to the contrary, no term or condition of the Lease shall be construed or interpreted as a waiver, either expressed or implied, of any of the immunities, rights, benefits or protection provided to the parties hereto under the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as amended or may be amended (including, without limitation, any amendments to such statute or under any similar statute which is subsequently enacted).

The parties hereto understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101, et seq., C.R.S., as amended or as may be amended, and Section 24-30-1501, et seq., C.R.S., as amended or as may be amended. Any provision of this Lease, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of the Lessee to the above cited laws.

To the extent authorized by Section 24-30-1510(3)(e), C.R.S. (1988), the Lessee shall defend and hold harmless the Lessor against claims arising from the alleged negligent acts or omissions of the Lessee and its public employees, which occurred or is alleged to have occurred during the performance of their duties and within the scope of their employment, unless such acts or omissions are, or are alleged to be, willful and wanton. Such claims shall be subject to the limitations of the Colorado Governmental Immunity Act, Sections 24-10-101 to 24-10-120, C.R.S., as amended or as may be amended.

6. The Lessee shall not sublet any part of the property or assign the Lease or any portion thereof without the written consent of the Lessor, which consent shall not be unreasonably withheld and, at the expiration of the term thereof, the Lessee will surrender and deliver up the property in as good order and condition as now exists – loss by fire, inevitable accident, act of God and ordinary wear and tear excepted.

7. In the event of termination for any reason, the Lessor shall acquire all of the possessory interest as the owner of the property, subject to the right of removal of any improvements placed thereon by the Lessee which may be removed without injury to the property. Such improvements must be removed by the Lessee within ninety (90) days of expiration or termination of this Lease. Upon termination, the Lessor shall not be obligated to offer the use of the property to the public, but shall reserve the exclusive use to itself.

8. Notice Procedure and Official Addresses. All notices required or provided for in this Agreement shall be mailed to the other party at its official address, United States mail, postage prepaid, certified, return receipt requested. For the purposes of this agreement, the official addresses of the parties shall be:

Division of Wildlife
Real Estate Unit
6060 Broadway
Denver, CO 80216

Otero County
P. O. Box 511
La Junta, CO 81050

Either party may change its official address by giving notice of such change to the other party as provided for above. Except as may otherwise be provided herein, all notices shall be effective upon receipt.

9. Nondiscrimination. The Lessor agrees to comply with Title VI of the Civil Rights Acts of 1964 (P.L. 88-352); and, in accordance with that Act, no person in the United States shall, on the grounds of race, color or

national origin, be excluded from participation in, be denied the benefits of or be otherwise subjected to discrimination upon the leased property and will immediately take any measure necessary to effectuate this agreement.

As a recipient of federal funds from the United States Department of the Interior, the Lessee operates programs subject to the nondiscrimination requirements of Title VI of the 1964 Civil Rights Act.

The Lessee provides this assurance that, in its operations of such programs, it shall prohibit discrimination on the grounds of race, color or national origin.

In order to further this end, the Lessee shall have the right to:

a. Display prominently, and in reasonable numbers and places, posters which state that the recipient operates programs subject to the nondiscrimination requirements of Title VI.

b. Provide to the Department of the Interior current and relevant information and data to the extent necessary and appropriate for determining compliance with Title VI, and comply with regulations implementing Title VI.

The Lessor's signature on this document indicates that it is aware of the above cited responsibilities of the Lessee and agrees to grant the Lessee the right to carry out these responsibilities on its leased property.

10. All provisions of this Lease, including the benefits and burdens, run with the land and are binding upon and inure to the heirs, successors, tenants and legal representatives of the parties hereto.

11. In the event of default by either party under the terms of this agreement, notice of such default shall be given in writing by the nondefaulting party to the defaulting party. If such default is not cured within ninety (90) days of written notice of default or the party in default has not begun curing the default within said period, and continued to pursue curative action with due diligence, the Lease may be terminated by the nondefaulting party by giving written notice of termination, given in the manner provided in Paragraph 8, effective thirty (30) days from the date of mailing of the notice of termination.

12. This Lease Agreement may be terminated by either party without cause only upon the anniversary date each year. In such case, the party wishing to terminate shall notify the other party, in the manner provided in Paragraph 8 at least sixty (60) days prior to the anniversary date, of its intention to terminate. The liability of the parties hereunder for the further performance of the terms of this Agreement shall thereupon cease, but the parties shall not be relieved of the duty to perform their obligations up to the date of termination.

13. If the leased property shall be taken by right of eminent domain, in whole or in part, for public purposes, then this Agreement, at the option of either the Lessor or the Lessee, shall forthwith cease and terminate. In such event, the entire damages which may be awarded for such taking shall be apportioned between the Lessor and the Lessee, as their interests appear.

14. In the event the leased property is damaged by fire, flood or other casualty, the Lessee may terminate this Lease within fifteen (15) days of the Lessee's knowledge of such occurrence if, in the opinion of the Lessee, the leased property has been so damaged as to render it wholly or partially untenantable or unfit for the Lessee's purposes. The Lessee shall terminate this Lease under these circumstances by giving written notice to the Lessor as provided in Paragraph 8 herein. Such termination shall be effective not less than fifteen (15) days from the date of mailing of the notice of termination.

15. The Lessor warrants and represents itself to be the owner of, or the authorized representative or agent of the owner of or the legal entity who has the right to use and grant leases of the leased property in the form and manner as stated herein; and, during the term of this Lease Agreement, covenants and agrees to warrant and defend the Lessee in the quiet, peaceable enjoyment and possession of the leased property. In the event of any dispute regarding the Lessor's ownership, the Lessor shall immediately, upon request from and at no cost to the Lessee, furnish proof thereof by delivering to the Lessee copies of deeds and any plats of record, which shall show the Lessor's ownership of the leased property.

16. The undersigned is subject to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and offers all persons the opportunity to participate in programs or activities regardless of race, color, national origin, age, sex or disability. Further, it is agreed that no individual will be turned away from or otherwise denied access to or benefit from any program or activity that is directly associated with a program of the recipient on the basis of race, color, national origin, age, sex (in education activities) or disability.

17. This Agreement constitutes the entire understanding of the parties and there are not other provisions other than set forth herein. Any changes in the Agreement shall be made in writing and signed by both parties in accordance with required contracting procedures before the same shall be effective.

**SPECIAL PROVISIONS**

1. Nondiscrimination.

The contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

2. Choice of Law.

The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this contract. Any provision of the contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations, shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that this contract is capable of execution.

At all times during the performance of this contract, the Contractor shall strictly adhere to all applicable federal and state laws, rules and regulations that have been or may hereafter be established.

3. Employee Financial Interest. Sections 24-18-201 and 24-50-507, C.R.S.

The signatories aver that, to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

EXHIBIT A

Description and illustration of the leased property referred to in the Lease Agreement between Otero County, Lessor, and the State of Colorado, acting by and through the Department of Natural Resources, for the use and benefit of the Division of Wildlife and Wildlife Commission, Lessee.

Located within Section 7, Township 23 South, Range 55 West, 6th P.M., Otero County, Colorado, as illustrated below.

## ARTICLE 18

### Otero County Housing Authority

*Agreement*
*January 7, 2004*

THIS AGREEMENT, made this 7th day of January, 2004, by and among the following: OTERO COUNTY, COLORADO, a political subdivision of the State of Colorado (hereinafter "Otero County") as lead party, and OTERO COUNTY HOUSING AUTHORITY (hereinafter "the Authority";

WHEREAS, the parties to this agreement desire to cooperate in developing and carrying out various housing projects.

NOW, THEREFORE, the parties hereby mutually agree as follows:

1. Responsibilities. In the event Otero County is the recipient of any grant contracts in which it is action as "lead party" for the Authority, it is hereby agreed that Otero County shall assume any and all responsibilities of Otero County in connection with such grant contracts, including but not limited to all financial management, environmental review, labor standards, civil rights, record keeping, reporting and other requirements of the entity providing the grant funds; and the Authority hereby indemnifies and agrees to hold Otero County harmless from and against any of such liabilities and responsibilities.

2. Sub-recipient. The Authority shall be designated a sub-recipient of Otero County for grant funds under this Agreement.

3. Term of Agreement. This Agreement shall remain in full force and effect for so long as the parties to this Agreement are pursuing funding for such projects, or, if awarded, carrying out such project activities. Any party to this Agreement may, however, terminate its participation in this Agreement ninety (90) days after providing written notice of such termination to the other party. This Agreement may be terminated at any time by agreement by both parties to this case; the State must approve such termination and arrangements must be made for completing the project.

4. Auditing and Reporting. The Authority shall provide Otero County with an annual audit report, as well as all reports submitted to grant funding source and any other reports reasonably requested by Otero County.

5. Modifications and Changes. The terms of this Agreement may be modified or changed at any time by written agreement of all parties to this Agreement.

## ARTICLE 19

### CDBG Contract

*Contract*
*April 1, 2004*

Contract Routing # 01490
Vendor # 846000789 A
CFDA # 14.228

THIS CONTRACT, made by and between the State of Colorado, for the use and benefit of the Department of Local Affairs, 1313 Sherman Street, Denver, CO 80203, hereinafter referred to as the "State," and the County of Otero, P. O. Box 511, La Junta, CO 81050, hereinafter referred to as the "Contractor."

WHEREAS, authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment in Fund No. 100, Appropriations Code Number 125, Org. Unit FDCO, GLB 4D78, Contract Encumbrance Number F05CDB05081; and

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, the United States Government, through the Housing and Community Development Act of 1974 ("the Act"), Pub. L. No. 93-383, as amended, has established a Community Development Block Fund ("CDBG") program and has allowed each state to elect to administer such federal funds for its nonentitlement areas, subject to certain conditions, including a requirement that the state's program give maximum feasible priority to activities which will benefit very low-, low- and moderate-income families or aid in the prevention or elimination of slums or blight; the states program may also include activities designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. Additionally, the state's program is subject to a federal requirement that not less than seventy percent (70%) of the aggregate amount of CDBG funds received by the state shall be used for the support of activities that benefit persons of very low-, low- and moderate-income; and

WHEREAS, the State of Colorado has elected to administer such federal funds for its nonentitlement areas through the Colorado Department of Local Affairs ("Department"), pursuant to Sections 24-32-106(1)(d) and 24-32-705(1)(i), C.R.S. 1973; and

WHEREAS, the Department has received applications from political subdivisions in Colorado for allocations from the federal CDBG funds available to Colorado; and

WHEREAS, the Contractor is one of the eligible political subdivisions to receive CDBG funds; and

WHEREAS, the Department has approved the proposed Project of the Contractor;

NOW, THEREFORE, it is hereby agreed that:

**1. Scope of Services.**

In consideration for the monies to be received from the State, the Contractor shall do, perform and carry out, in a satisfactory and proper manner, as determined by the State, all work elements as indicated in the Scope of Services set forth in Exhibit A, which is attached hereto and is incorporated herein by reference, and is hereinafter referred to as the "Project." Work performed prior to the execution of the Contract shall not be considered part of this Project.

**2. Responsible Administrator.**

The performance of the services required hereunder shall be under the direct supervision of Barry Shioshita, an employee or agent of the Contractor, who is hereby designated as the responsible administrator of this Project. At any time the Contractor wishes to change the responsible administrator, the Contractor shall propose and seek the State's approval of such replacement responsible administrator. The States approval shall be

evidenced through a Contract Amendment to this Contract initiated by the State as set forth in paragraph 16.b) of this Contract. Until such time as the State concurs in the replacement responsible administrator, the State may direct that project work be suspended.

**3. Time of Performance.**

This Contract shall become effective upon proper execution of this Contract by the State Controller or designee. The Project contemplated herein shall commence as soon as practicable after the execution of the Contract and shall be undertaken and performed in the sequence set forth in the attached Exhibit A, Scope of Services. The Contractor agrees that time is of the essence in the performance of its obligations under this Contract, and that completion of the Project shall occur not later than the termination date set forth in the Scope of Services.

**4. Eligibility and National Objectives.**

All project activities shall be eligible under Section 105 of the Act, as amended, and all related regulations and requirements. Furthermore, project activities shall meet the following indicated (with a "X") broad national objective(s), as set forth in Section 104(b)(3) of the Act, as amended, and all related regulations and requirements:

XX Benefit persons of very low-, low- and moderate-income.

___ Prevent or eliminate slums or blight.

___ Meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs.

**5. Obligation, Expenditure and Disbursement of Funds.**

a) Prior Expenses. Expenses incurred by the Contractor in association with said Project prior to execution of this Contract are not eligible CDBG expenditures and shall not be reimbursed by the State.

b) Environmental Review Procedures. Funds shall not be obligated or utilized for any activities requiring a release of funds by the State under the Environmental Review Procedures for the CDBG program at 24 CFR Part 58 until such release is issued in writing. Administrative costs, reasonable engineering and design costs, and costs of other exempt activities identified in 24 CFR 58.34(a)(1) through (8) do not require a release of funds by the State. For categorically excluded activities listed in 58.35(a) determined to be exempt because there are no circumstances which require compliance with any other federal laws and authorities cited at 58.5, the Contractor must make and document such a determination of exemption prior to incurring costs for such activities.

c) Community Development Plan Requirement. Prior to receiving disbursements of CDBG funds from the State, the Contractor shall identify its community development and housing needs, including the needs of very low-, low- and moderate-income persons, and the activities to be undertaken to meet such needs.

**6. Definition of Very Low-, Low- and Moderate-Income Persons.**

Very low-, low- and moderate-income persons are defined, for the purposes of the Contract, as:

XX Those persons who are members of very low-, low- and moderate-income families as set forth in Exhibit B, which is attached hereto and incorporated herein by reference, or as subsequently promulgated in writing by the State.

___ Those persons who have been determined by HUD, based upon the most recent Census data, to be very low-, low- and moderate-income persons.

___ Those persons belonging to clientele groups who are generally presumed by HUD to be principally very low-, low- and moderate-income persons.

___ Not applicable to this project.

**7. Citizen Participation.**

The Contractor shall provide citizens with reasonable notice of, and opportunity to comment on, any substantial change proposed to be made in the use of CDBG funds from one (1) eligible activity to another by following the same citizen participation procedures required for the preparation and submission of its CDBG application to the State. The Contractor shall also comply with the procedure set forth herein regarding the modification and amendment of this Contract.

Additionally, the Contractor shall have and follow a Citizen Participation Plan (CPP) which includes the six (6) elements specified in Section 104(a)(3) the Act. The CPP must include a provision for at least one (1) public hearing during the course of the Project to allow citizens to review and comment on the Contractor's performance in carrying out the Project.

**8. Residential Antidisplacement and Relocation Assistance Plan.**

The Contractor shall follow a residential antidisplacement and relocation assistance plan which, should displacement occur, provides that:

a) Governmental agencies, non- and for-profit organizations, or private developers shall provide within the same community comparable replacement dwellings for the same number of occupants as could have been housed in the occupied and vacant occupiable low- and moderate-income dwelling units demolished or converted to a use other than for housing for low- and moderate-income persons, and provide that such replacement housing may include existing housing assisted with project-based assistance provided under Section 8 of the United State Housing Act of 1939.

b) Such comparable replacement dwellings shall be designed to remain affordable to persons of low- and moderate-income for ten (10) years from the time of initial occupancy.

c) Relocation benefits shall be provided for all low-income persons who occupied housing demolished or converted to a use other than for low- or moderate-income housing, including reimbursement for actual and reasonable moving expenses, security deposits, credit checks and other moving-related expenses; including any interim living costs; and, in the case of displaced persons of low- and moderate-income, provided either:

i) Compensation sufficient to ensure that, for a five-year period, the displaced families shall not bear, after relocation, a ratio of shelter costs to income that exceeds thirty percent (30%); or

ii) If elected by a family, a lump sum payment equal to the capitalized value of the benefits available under subclause (i) to permit the household to secure participation in a housing cooperative or mutual housing association.

d) Persons displaced shall be relocated into comparable replacement housing that is:

i) Decent, safe and sanitary;

ii) Adequate in size to accommodate the occupants;

iii) Functionally equivalent; and

iv) In an area not subject to unreasonably adverse environmental conditions.

Persons displaced shall have the right to elect, as an alternative to the benefits under this paragraph, to receive benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, if such persons determine that it is in their best interest to do so; and, where a claim for assistance under subparagraph (d) is denied by the Contractor, the claimant may appeal to the State, and that the decision of the State shall be final unless a court determines the decision was arbitrary and capricious.

The Contractor shall follow the Residential Antidisplacement and Relocation Assistance Plan, except that paragraphs a) and b) shall not apply in a case in which the Secretary of the U.S. Department of Housing and Urban Development finds, on the basis of objective data, that there is available in the area an adequate supply of habitable affordable housing for low- and moderate-income persons. A determination under this paragraph is final and nonreviewable.

**9. Affirmatively Furthering Fair Housing.**

The Contractor shall affirmatively further fair housing in addition to conducting and administering its Project in conformity with the equal opportunity requirements of Title VI of the Civil Rights Act of 1964 and the Fair Housing Act, as required herein.

**10. Recovery of Capital Costs of Public Improvements.**

The Contractor shall not attempt to recover any capital costs of public improvements assisted in whole or part with CDBG funds by assessing any amount against properties owned and occupied by persons of very low-, low- or moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless:

a) CDBG funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than the CDBG program, or

b) For the purposes of assessing any amount against properties owned and occupied by persons of moderate income who are not persons of very low- or low-income, it certifies that it lacks sufficient CDBG funds to comply with the requirements of subparagraph (a) hereinabove.

**11. Compensation and Method of Payment.**

The State agrees to pay to the Contractor, in consideration for the work and services to be performed, a total amount not to exceed two hundred fifty thousand dollars ($250,000.00). The method and time of payment shall be made in accordance with the "Payment Schedule" set forth herein in Exhibit A. Any State funds not required for completion of the Project will be de-obligated by the State through the processing of a bilateral amendment.

Unless otherwise provided in the Scope of Services:

a) The Contractor shall periodically initiate all reimbursement requests by submitting to the Department a written request using the State-provided form, for reimbursement of actual and proper expenditures of State CDBG funds, plus an estimation of funds needed for a reasonable length of time.

b) The State may withhold any payment if the Contractor has failed to comply with the State CDBG program objectives, contractual terms or reporting requirements.

c) The State may withhold the final payment until the Contractor has submitted and the Department has accepted all required quarterly Financial Status Report and Performance Report information.

**12. Financial Management and Budget.**

At all times from the effective date of this Contract until completion of this Contract, the Contractor shall comply with the administrative requirements, cost principles and other requirements set forth in the State's Financial Management Guide and the Financial Management Section of the State CDBG Guidebook. The Contractor may adjust individual budgeted expenditure amounts without approval of the State; provided that no budget transfers to or between administration budget categories are proposed; and provided that cumulative budgetary lien item changes do not exceed twenty thousand dollars ($20,000.00), unless otherwise specified in the "Budget" section of Exhibit A. Any budgetary modifications that exceed these limitations must be approved by the State through a Contract Amendment as set forth in paragraph 16.c).

**13. Audit.**

a) Discretionary Audit. The State, through the Executive Director of the Department, the State Auditor or any of their duly authorized representatives, including an independent Certified Public Accountant of the State's choosing, or the federal government or any of its properly delegated or authorized representatives, shall have the right to inspect, examine and audit the Contractor's (and any subcontractor's) records, books, accounts and other relevant documents. Such discretionary audit may be requested at any time and for any reason from the effective date of the Contract until five (5) years after the date final payment for this Project is received by the Contractor, provided that the audit is performed during normal business hours.

b) Mandatory Audit. Whether or not the State calls for a discretionary audit as provided above, the Contractor shall include the Project in an annual audit report as required by the Colorado Local Government Audit Law, Section 29-1-601, et seq., C.R.S., and the Single Audit Act of 1996, Pub. L. 104-156, and Federal and State implementing rules and regulations. Such audit reports shall be simultaneously submitted to the Department and the State Auditor. Thereafter, the Contractor shall supply the Department with copies of all correspondence from the State Auditor or Federal Agency related to the relevant audit report. If the audit reveals evidence of noncompliance with applicable requirements, the Department reserves the right to institute compliance or other appropriate proceedings, notwithstanding any other judicial or administrative actions filed pursuant to Section 29-1-607 or 29-1-608, C.R.S. 1973.

**14. Contract Suspension.**

If the Contractor fails to comply with any contractual provision, the State may, after notice to the Contractor, suspend the Contract and withhold further payments or prohibit the Contractor from incurring additional obligations of contractual funds, pending corrective action by the Contractor or a decision to terminate in accordance with provisions herein. The State may determine to allow such necessary and proper costs which the Contractor could not reasonably avoid during the period of suspension, provided that such costs were necessary and reasonable for the conduct of the Project.

**15. Contract Termination.**

The Contract may be terminated as follows:

a) Termination Due to Loss of Funding. The parties hereto expressly recognize that the Contractor is to be paid, reimbursed or otherwise compensated with federal CDBG funds provided to the State for the purpose of contracting for the services provided for herein or with program income; and, therefore, the Contractor expressly understands and agrees that all its rights, demands and claims to compensation arising under this Contract are contingent upon receipt of such funds by the State. In the event that such funds or any part thereof are not received by the State, the State may immediately terminate or amend this Contract.

b) Termination for Cause. In accordance with 24 CFR Part 85.44, suspension or termination may occur if the Contractor materially fails to comply with any term of the Contract, or, in the State's discretion, the Contract may be terminated for convenience. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements or stipulations of this Contract, the State shall thereupon have the right to terminate this Contract for cause by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Contractor under this Contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, the Contractor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the Contract by the Contractor, and the State may withhold any payments to the Contractor for the purpose of offset until such time as the exact amount of damages due the State from the Contractor is determined.

c) Termination for Convenience. The State may terminate this Contract at any time the State desires. The State shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. All finished or unfinished documents and other materials as described in subparagraph 16.b) above shall, at the option of the State, become its property. If the Contract is terminated by the State as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor covered by this Contract, less payments of compensation previously made; provided, however, that, if less than sixty percent (60%) of the services covered by this Contract have been performed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the Contractor during the Contract period which are directly attributable to the uncompleted portion of the services covered by this Contract. If this Contract is terminated due to the fault of the Contractor, subparagraph 16.b) hereof relative to termination shall apply.

**16. Modification and Amendment.**

a) Modification by Operation of Law. This Contract is subject to such modifications as may be required by changes in federal or state law or regulations. Any such required modification shall be incorporated into and be part of this Contract as if fully set forth herein.

b) Unilateral Amendment. The State may unilaterally modify the following portions of this Contract when such modifications are requested by the Contractor or determined by the State to be necessary and appropriate. In such cases, the amendment is binding upon proper execution by the Executive Director of the Department and State Controller's designee and without the signature of the Contractor.

i) Paragraph 2 of this Contract, "Responsible Administrator";

ii) Paragraph 3 of Exhibit A, Scope of Services, "Time of Performance;"

iii) Paragraph 4 of Exhibit A, Scope of Services, "Remit Address";

iv) Paragraph 5 of Exhibit A, Scope of Services, "Payment Schedule."

The Contractor must submit a written request to the Department if modifications are required. Amendments to this Contract for the provisions outlined in this Paragraph 16.b.i) through iv): Responsible Administrator, Time of Performance, Remit Address or Payment Schedule can be executed by the State (Exhibit C1).

c) Bilateral Amendment. In the following circumstances, modifications shall be made by an amendment signed by the Contractor, the Executive Director of the Department and the State Controller's designee. Such amendments must be executed by the Contractor, then the State, and are binding upon proper execution by the State Controller's designee.

i) Unless otherwise specified in the "Budget" section of Exhibit A, when cumulative budgetary line item changes exceed twenty thousand dollars ($20,000.00);

ii) Unless otherwise specified in the "Budget" section of Exhibit A, when any budget transfers to or between administration budgetary categories are proposed;

iii) When any other material modifications, as determined by the State, are proposed to Exhibit A or any other exhibits;

iv) When additional or less funding is needed and approved and modifications are required to Paragraph 11 of this Contract, Compensation and Method of Payment as well as to Exhibit A, "Budget" and "Payment Schedule";

v) When there are additional federal statutory or regulatory compliance changes in accordance with Paragraph 20 of this Contract.

Such Bilateral Amendment may also incorporate any modifications allowed to be made by Unilateral Amendment as set forth in subparagraph 16.b) of this paragraph.

Upon proper execution and approval, such amendment (Exhibit C2) shall become an amendment to the Contract, effective on the date specified in the amendment. No such amendment shall be valid until approved by the State Controller or such assistant as he may designate. All other modifications to this Contract must be accomplished through amendment to the Contract pursuant to fiscal rules and in accordance with subparagraph 16.d).

d) Other Modifications. If either the State or the Contractor desired to modify the terms of the Contract other than as set forth in subparagraphs 16.b) and 16.c) above, written notice of the proposed modification shall be given to the other party. No such modification shall take effect unless agreed to in writing by both parties in an amendment to this Contract properly executed and approved in accordance with applicable law.

Any amendment required per this subparagraph will require the approval of other state agencies as appropriate; e.g., Attorney General, State Controller, etc.

Such amendment may also incorporate any modifications allowed to be made by Unilateral and Bilateral Amendment as set forth in subparagraphs 16.b) or 16.c) of this paragraph.

**17. Integration.**

This Contract, as written, with attachments and references, is intended as the complete integration of all understanding between the parties at this time, and no prior or contemporaneous addition, deletion or amendment hereto shall have any force or effect whatsoever, unless embodied in a written authorization or contract amendment incorporating such changes, executed approved pursuant to applicable law.

**18. Reports.**

a) Financial Reports. The Contractor shall submit to the Department quarterly financial status reports in the manner and method set forth in the Reporting Section of the State CDBG Guidebook.

b) Performance Reports. The Contractor shall submit to the Department quarterly performance reports and a project completion report in a manner and method prescribed by the Department in the Reporting Section and Close-Out Section of the State CDBG Guidebook.

**19. Conflict of Interest.**

a) In the Case of Procurement. In the procurement of supplies, equipment, construction and services by the Contractor and its subcontractors, no employee, officer or agent of the Contractor or its subcontractors shall participate in the selection or in the award of administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent; any member of his immediate family; his partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the party or firm selected for award. Officers, employees or agents of the Contractor and its subcontractors shall neither solicit nor accept gratuities, favors or anything of monetary value from parties or potential parties to contracts. Unsolicited items provided as gifts are not prohibited if the intrinsic value of such items is nominal.

b) In All Cases Other Than Procurement. In all cases other than procurement (including the provision of housing rehabilitation assistance to individuals, the provision of assistance to businesses and the acquisition and disposition of real property), no persons described in subparagraph i) below who exercise or have exercised any functions or responsibilities with respect to CDBG activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure for one (1) year thereafter.

i) Persons Covered. The conflict of interest provisions of this subparagraph 19.b) apply to any person who is an employee, agent, consultant, officer or elected official or appointed official of the Contractor or of any designated public agencies or subcontractors receiving CDBG funds.

ii) Threshold Requirements for Exceptions. Upon the written request of the Contractor, the State may grant an exception to the provisions of this subparagraph 19.b) when it determines that such an exception will serve to further the purposes of the CDBG program and the effective and efficient administration of the Contractor's Project. An exception may be considered only after the Contractor has provided the following:

a) A disclosure of the nature of the conflict, accompanied by an assurance that:

i. There has been or will be a public disclosure of the conflict and a description of how the public disclosure was or will be made; and

ii. The affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific CDBG-assisted activity in question; and

b) An opinion of the Contractor's attorney that the interest for which the exception is sought would not violate State or local law; and

c) A written statement signed by the chief elected official of the Contractor holding the State harmless from all liability in connection with any exception which may be granted by the State to the provisions of this subparagraph 19.b).

iii) Factors to be Considered for Exceptions. In determining whether to grant a requested exception after the Contractor has satisfactorily met the requirements of subparagraph 19.b)ii) above, the State shall consider the cumulative effect of the following factors, where applicable:

a) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the Project which would otherwise not be available;

b) Whether an opportunity was provided for open competitive bidding or negotiation;

c) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be beneficiaries of the CDBG-assisted activity, and the exception will permit such person to receive generally the same benefits as are being made available or provided to the group or class;

d) Whether the interest or benefit was present before the affected person was in a position as described in this subparagraph 19.b);

e) Whether undue hardship will result either to the Contractor or the person affected when weighted against the public interest served by avoiding the prohibited conflict; and

f) Any other relevant considerations.

**20 Compliance With Applicable Laws.**

At all times during the performance of this Contract, the Contractor and any subcontractors shall strictly adhere to all applicable Federal and State laws, orders and all applicable standards, regulations, interpretations or guidelines issued pursuant thereto. The applicable Federal laws and regulations include:

a) National Environmental Policy Act of 1969 (42 USC 4321, et seq.), as amended, and the implementing regulations of HUD (24 CFR Part 58) and of the Council on Environmental Quality (40 CFR Parts 1500–1508) providing for establishment of national policy, goals and procedures for protecting, restoring and enhancing environmental quality.

b) National Historic Preservation Act of 1966 (16 USC 470, et seq.), as amended, requiring consideration of the effect of a project on any district, site, building, structure or object that is included in or eligible for inclusion in the National Register of Historic Places.

c) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921, et seq.), requiring that federally funded projects contribute to the preservation and enhancement of sites, structures and objects of historical, architectural or archaeological significance.

d) The Archaeological and Historical Data Preservation Act of 1974, amending the Reservoir Salvage Act of 1960 (16 USC 469, et seq.), providing for the preservation of historic and archaeological data that would be lost due to federally funded development and construction activities.

e) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951, et seq.), prohibits undertaking certain activities in floodplains unless it has been determined that there is no practical alternative, in which case notice of the action must be provided and the action must be designed or modified to minimize potential damage.

f) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961, et seq.), requiring review of all actions proposed to be located in or appreciably affecting a wetland. Undertaking or assisting new construction located in wetlands must be avoided unless it is determined that there is no practical alternative to such construction and that the proposed action includes all practical measures to minimize potential damage.

g) Safe Drinking Water Act of 1974 (42 USC 201, 300f, et seq., 7401 et seq.), as amended, prohibiting the commitment of federal financial assistance for any project which the Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area.

h) The Endangered Species Act of 1973 (16 USC 1531, et seq.), as amended, requiring that actions authorized, funded or carried out by the federal government do not jeopardize the continued existence of endangered and threatened species or result in the destruction or modification of the habitat of such species which is determined by the Department of the Interior, after consultation with the State, to be critical.

i) The Wild and Scenic Rivers Act of 1968 (16 USC 1271, et seq.), as amended, prohibiting federal assistance in the construction of any water resources project that would have a direct and adverse effect on any river included in or designated for study or inclusion in the National Wild and Scenic Rivers System.

j) The Clean Air Act of 1970 (42 USC 1857, et seq.), as amended, requiring that federal assistance will not be given and that a license or permit will not be issued to any activity not conforming to the State implementation plan for national primary and secondary ambient air quality standards.

k) Flood Disaster Protection Act of 1973 (42 USC 4001), placing restrictions on eligibility and acquisition and construction in areas identified as having special flood hazards.

l) HUD Environmental Criteria and Standards (24 CFR Part 51), providing national standards for noise abatement and control, acceptable separation distances from explosive or fire-prone substances and suitable land uses for airport runway clear zones.

m) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 – Title III, Real Property Acquisition (Pub. L. 91-646 and implementing regulations at 24 CFR Part 42), providing for uniform and equitable treatment of persons displaced from their homes, businesses or farms by federal or federally assisted programs and establishing uniform and equitable land acquisition policies for federal assisted programs. Requirements include bona fide land appraisals as a basis for land acquisition, specific procedure for selecting contract appraisers and contract negotiations, furnishing to owners of property to be acquired a written summary statement of the acquisition price offer based on the fair market price, and specified procedures connected with condemnation.

n) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 – Title II, Uniform Relocation Assistance (Pub. L. 91-646 and implementing regulations at 24 CFR Part 42), providing for fair and equitable treatment of all persons displaced as a result of any federal or federally assisted program. Relocation payments and assistance, last-resort housing replacement of displacing agency and grievance procedures are covered under the Uniform Act. Payments and assistance will be made pursuant to State or local law, or the grant recipient must adopt a written policy available to the public describing the relocation payments and assistance that will be provided. Moving expenses and up to twenty-two thousand five hundred dollars ($22,500.00) or more for each qualified homeowner or up to five thousand two hundred fifty dollars ($5,250.00) or more for each tenant are potential costs.

o) Section 104(d) of the Housing and Community Development Act of 1974 (42 USC 5301 as amended and implementing regulations at 24 CFR Part 570), providing for the replacement of all low- and moderate-income dwelling units that are demolished or converted to another use as a direct result of the use of CDBG funds, and which provides for relocation assistance for low- and moderate-income households so displaced.

p) Davis-Bacon Fair Labor Standards Act (40 USC 276A–276a-5), requiring that, on all contracts and subcontracts which exceed two thousand dollars ($2,000.00) for federally assisted construction, alteration or rehabilitation, laborers and mechanics employed by contractors or subcontractors shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. (This requirement applies to the rehabilitation of residential property only if such property is designed for use of eight [8] or more units.) The requirements set forth in this subparagraph are inapplicable to individuals who volunteer their services under circumstances set forth in 24 CFR Part 70.

Assistance shall not be used directly or indirectly to employ, award contracts to or otherwise engage the services of or fund any subcontractor or subrecipient during any period of debarment, suspension or placement in ineligibility status under the provisions of 24 CFR Part 24.

q) Contract Work Hours and Safety Standards Act of 1962 (40 USC 327, et seq.), requiring that mechanics and laborers employed on federally assisted contracts which exceed two thousand dollars ($2,000.00) be paid wages of not less than one and one-half (1.5) times their basic wage rates for all hours worked in excess of forty (40) in a work week.

r) Copeland "Anti-Kickback" Act of 1934 (40 USC 276(c)), prohibiting and prescribing penalties for "kickbacks" of wages in federally financed or assisted construction activities.

s) The Lead-Based Paint Poisoning Prevention Act – Title IV (42 USC 4831), prohibiting the use of lead-based paint in residential structures constructed or rehabilitated with federal assistance, and requiring notification to purchasers and tenants of such housing of the hazards of lead-based paint and of the symptoms and treatment of lead-based paint poisoning.

t) Unless otherwise provided for in Exhibit A, Scope of Services, this Contract is subject to the following: Section 3 of the Housing and Community Development Act of 1968 (12 USC 1701(u)), as amended.

i) The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701(u) (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to very low- and low-income persons, particularly persons who are recipients of HUD assistance for housing.

ii) The parties to this Contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

iii) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each and the name and location of the persons taking applications for each of the positions; and the anticipated date the work shall begin.

iv) The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135 (Paragraph 23t)i)–23t)vii) of this Contract) and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

v) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.

vi) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.

vii) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 USC 450e) also applies to the work to be performed under this Contract. Section 7(b) requires that, to the greatest extent feasible, (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

u) Section 109 of the Housing and Community Development Act of 1974 (42 USC 5309), as amended, providing that no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin or sex under any program or activity funded in whole or in part under Title I (Community Development) of the Act.

v) Title IV of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 USC 2000(d)), prohibiting discrimination on the basis of race, color, and incorporates laws prohibiting age or handicap or religious affiliation or national origin discrimination in any program or activity receiving federal financial assistance.

w) The Fair Housing Act (42 USC 3601–20), as amended, prohibiting housing discrimination on the basis of race, color, religion, sex, national origin, handicap and familial status.

x) Executive Order 11246 (1965), as amended by Executive Orders 11375 and 12086, prohibiting discrimination on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of federal or federally assisted contracts in excess of two thousand dollars ($2,000.00).

y) Executive Order 11063 (1962), as amended by Executive Order 12259, requiring equal opportunity in housing by prohibiting discrimination on the basis of race, color, religion, sex or national origin in the sale or rental of housing built with federal assistance.

z) Section 504 of the Rehabilitation Act of 1973 (29 USC 793), as amended, providing that no otherwise qualified individual shall, solely by reason of a handicap, be excluded for participation (including employment), denied program benefits or subjected to discrimination under any program or activity receiving federal funds.

aa) Age Discrimination Act of 1975 (42 USC 6101), as amended, providing that no person shall be excluded from participation, denied program benefits or subjected to discrimination on the basis of age under any program or activity receiving federal funds.

ab) Fire Administration Authorization Act of 1992 (P.L. 102-522), prohibiting the use of housing assistance in connection with certain assisted and insured properties, unless various protection and safety standards are met.

ac) Excessive Force. In accordance with Section 519 of Public Law 101-144, the HUD Appropriations Act, Section 906 of Cranston-Gonzalez Affordable Housing Act of 1990, the Contractor has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent, civil rights demonstrations; and has adopted and is enforcing a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstration within its jurisdiction.

ac) Lobbying. The Contractor assures and certified that:

i) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of a federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

ii) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federally funded contract, grant, loan or cooperative agreement, it shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

iii) It shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

iv) It understands that this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, USC. Any person who

fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars ($10,000.00) and not more than one hundred thousand dollars ($100,000.00) for each such failure.

**21. Monitoring and Evaluation.**

The State will monitor and evaluate the Contractor for compliance with the terms of this Contract and the rules, regulations, requirements and guidelines which the State has promulgated or may promulgate, including the State CDBG Guidebook. The Contractor may also be subject to monitoring and evaluation by the U.S. Department of Housing and Urban Development.

**22. Severability.**

To the extent that this Contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the Contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as waiver of any other term nor as waiver of a subsequent breach of the same term.

**23. Binding on Successors.**

Except as herein otherwise provided, this agreement shall inure to the benefit of and be binding upon the parties or any subcontractors hereto, and their respective successors and assigns.

**24. Subletting, Assignment or Transfer.**

Neither party nor any subcontractors hereto may sublet, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of its rights, title, interest or duties therein, without the prior written consent of the other party. No subcontract or transfer of this Contract shall in any case release the Contractor of liability under this Contract.

**25. Nondiscrimination.**

The Contractor agrees to comply with the letter and the spirit of all applicable state and federal laws and requirements with respect to discrimination and unfair employment practices.

**26. Applicant Statement of Assurances and Certifications.**

The Contractor has previously signed an "Applicant Statement of Assurances and Certifications," which is hereby incorporated and made a part of this Contract by reference.

**27. Survival of Certain Contract Terms.**

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Contract and the exhibits and attachments thereto which may require continued performance or compliance beyond the termination date of the Contract shall survive such termination date and shall be enforceable to the State as provided herein in the event of such failure to perform or comply by the Contractor or its subcontractors.

**28. Order of Precedence.**

In the event of conflicts or inconsistencies between this Contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

A. Colorado Special Provisions.

B. Contract.

C. The Scope of Services, Exhibit A.

**SPECIAL PROVISIONS**

**(For Use Only With Inter-Governmental Contracts)**

**1. Controller's Approval (Section 24-30-202(1), C.R.S.).**

This Contract shall not be deemed valid until it has been approved by the Controller of the State of Colorado or such assistant as he may designate.

**2. Fund Availability (Section 24-30-202(5.5), C.R.S.).**

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

**3. Indemnification.**

To the extent authorized by law, the Contractor shall indemnify, save and hold harmless the State against any and all claims, damages, liability and court awards, including costs, expenses and attorney fees, incurred as a result of any act or omission by the Contractor or its employees, agents, subcontractors or assignees pursuant to the terms of this Contract.

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, protection or other provisions for the parties, of the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., or the Federal Tort Claims Act, 28 USC 2671, et seq., as applicable, as now or hereafter amended. The Contractor, by execution of the Contract containing this indemnification clause, does not waive the operation of any law concerning the parties' ability to indemnify.

**4. Independent Contractor (4 CCR 801-2).**

The Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither the Contractor nor any agent or employee of the Contractor shall be or shall be deemed to be an agent or employee of the State. The Contractor shall pay when due all required employment taxes and income tax and local head tax on any monies paid by the State pursuant to this Contract. The Contractor acknowledges that the Contractor and its employees are not entitled to unemployment insurance benefits unless the Contractor or third party provides such coverage and that the State does not pay for or otherwise provide such coverage. The Contractor shall have no authorization, express or implied, to bind the State to any agreements, liability or understanding except as expressly set forth herein. The Contractor shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by the State) and unemployment compensation insurance in the amounts required by law, and shall be solely responsible for the acts of the Contractor, its employees and agents.

**5. Nondiscrimination.**

The Contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

**6. Choice of Law.**

The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Contract. Any provision of this Contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by

reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Contract to the extent that the Contract is capable of execution.

At all times during the performance of this Contract, the Contractor shall strictly adhere to all applicable federal and state laws, rules and regulations that have been or may hereafter be established.

**7. Software Piracy Prohibition (Governor's Executive Order D 002 00).**

No State or other public funds payable under this Contract shall be used for the acquisition, operation or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Contractor hereby certifies that, for the term of this Contract and any extensions, the Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this Contract, including, without limitation, immediate termination of the Contract and any remedy consistent with United States copyright laws or applicable licensing restrictions.

**8. Employee Financial Interest (Sections 24-18-201 and 24-50-507, C.R.S.).**

The signatories aver that, to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

Exhibit A
Scope of Services

Exhibit B
Definition of Low- and Moderate-Income Families and Persons

Exhibit C
Sample CDBG Unilateral and Bilateral Amendments

## ARTICLE 20

## Fowler Historic Preservation

*Intergovernmental Agreement*
*May 17, 2004*

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between the BOARD OF COUNTY COMMISSIONERS OF OTERO COUNTY, COLORADO, hereinafter referred to as "County," and the TOWN OF FOWLER, a Municipal corporation, hereinafter referred to as "Town."

WHEREAS, the Town is a political subdivision of the State of Colorado, incorporated as a statutory town pursuant to Title 31, C.R.S., and its boundaries are located wholly within the County of Otero, State of Colorado; and

WHEREAS, the County is a political subdivision of the State of Colorado, as organized, existing and operating pursuant to Title 30, C.R.S.; and

WHEREAS, the Colorado Constitution, Article 14, Section 18, and Section 29-1-201, et seq., C.R.S., authorize political subdivisions to enter into intergovernmental agreements for the mutual benefit of both parties; and

WHEREAS, the Board of County Commissioners of Otero County, Colorado, finds that the economic, cultural and aesthetic standing of Otero County cannot be maintained if the heritage of the County is disregarded; and

WHEREAS, the Board of County Commissioners of Otero County, Colorado, finds and declares that the protection, preservation and enhancement of the County's cultural historic and architectural heritage is essential to the public health, safety and welfare; and

WHEREAS, the Board of County Commissioners of Otero County, Colorado, is authorized, pursuant to Section 30-11-107(1)(bb), C.R.S., to provide for the preservation oaf the cultural historic and architectural history within the County.

NOW, THEREFORE, based upon good and valuable consideration, the receipt of which is acknowledged, the parties hereby agree as follows:

1. The Town of Fowler authorizes Otero County to form a Historic Preservation Advisory Board, whose function it will be to designate historic buildings, landmarks and sites, located in the Town, and provide for the preservation thereof.

## ARTICLE 21

### Assignment of 4-H Building Lease

*Assignment*
*July 6, 2004*

THIS ASSIGNMENT is entered into by and between the ARKANSAS VALLEY EXPOSITION AND FAIR ASSOCIATION, a corporation, hereinafter referred to as "Association," and the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF OTERO, STATE OF COLORADO, hereinafter referred to as "County."

WHEREAS, the Association is the Lessee in a certain lease dated June 13, 1978, where the City of Rocky Ford is the Lessor; and

WHEREAS, said Lease has been modified by an Addendum dated August 28, 1979; and

WHEREAS, the Association desires to assign its interest in said Lease and Addendum to the County; and

WHEREAS, the terms of the Lease in question require any subletting or assigning by the Association to be done only upon obtaining the prior written consent of the Lessor (the City of Rocky Ford); and

WHEREAS, it is the desire of the parties to facilitate this Assignment.

NOW, THEREFORE, based upon good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. The Association hereby assigns to the County any and all interest which it may have in the Lease dated June 13, 1978, and the Addendum to Lease dated August 28, 1979, between the City of Rocky Ford and the Arkansas Valley Exposition and Fair Association, copies of which are attached hereto as Exhibit "A" and Exhibit "B," respectively, and hereby incorporated by reference.

2. The Association states and affirms that it has obtained the consent of the Lessor, the City of Rocky Ford, to such assignment. Such consent is in writing, and a copy of such consent is attached hereto as Exhibit "C," and hereby incorporated by reference.

3. The County hereby agrees to accept the Assignment of the leasehold interest as set forth herein from the Association.

## ARTICLE 22

### 4-H Livestock Building

*Operating Agreement*
*July 6, 2004*

THIS AGREEMENT is made and entered into this 6th day of July, 2004, between BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM, acting by and through CSUCE for the benefit of OTERO COUNTY 4-H COUNCIL, hereinafter referred to as "Council," and the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF OTERO, STATE COLORADO, hereinafter referred to as the "County."

**WITNESSETH**

WHEREAS, the County is the Lessee of the building known as the Otero County 4-H Livestock Building, owned by the Arkansas Valley Exposition and Fair Association (hereinafter "Association"), located on the portion of the Arkansas Valley Fair Grounds leased from the City of Rocky Ford, Colorado; and

WHEREAS, the County requires that an operating agreement be entered into for the benefit of the 4-H members and the general public for the use of said building; and

WHEREAS, the Council is the responsible party designated to manage the use of said building and grounds in accordance with this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED as follows:

1. The Council, as operator, shall exercise control and dominion over said building and grounds adjacent thereto as described in the Lease Agreement between the City of Rocky Ford, Colorado, and the Association, which Association has assigned to the County. The Council shall further have complete and exclusive authority to schedule all events and use of said building.

2. The Council, as operator, shall be entitled to establish all charges in connection with the use of said building and shall be entitled to receive all funds generated from the use of said building, subject to the agreements contained herein.

3. The Council, as operator, shall be responsible for the operation and maintenance of said building and adjacent grounds and shall be required to keep said building in a state of good repair at all times, and the expense of such operation and maintenance shall be the expense of the Council, but which in all cases shall be limited to the funds generated from the use of the building and fund raising efforts of the Council.

4. The County is currently providing insurance under its insurance policy and will continue to do so in the minimum amount of one hundred fifty thousand dollars ($150,000.00) per claim and six hundred thousand dollars ($600,000.00) in the aggregate on liability and an amount sufficient to cover the replacement costs of

the building. The County shall further name the Association as an additional insured or loss payee on the policy, as well as the United States of America, acting through the Department of Agriculture.

5. The Council, as operator, shall be required to pay all utilities and any other fees and assessments relating to the use of said building. Total expenses for the operation and maintenance of the building shall be limited to the funds generated from the use of the building and fundraising efforts of the Council.

6. The Council, as operator, shall comply with all laws, rules and regulations of the City of Rocky Ford, Colorado, the County of Otero and the State of Colorado, and any applicable federal requirements. The building shall not be used for any unlawful purposes. The building shall be first used for the purposes of local 4-H groups and the Association, but shall further be made available to the general public as a public use building upon such terms and conditions as the Council may direct. A schedule of said fees and a policy for the use of said building by the public shall be provided to the Association. If the City of Rocky Ford, the Council and the Association should agree upon a central schedule, the Council agrees to cooperate with said scheduler and to allow said scheduler to schedule events in the building when not used by the Council, and to further provide the scheduler with the Council's requirements for the use of the building as soon as available.

7. All funds generated by the Council from the use of the building shall be accounted for separately, and an annual report of receipts, together with expenditures, shall be made by the Council to the Association and the County. Said reports shall be made not later than January 31 of each year. Any funds collected in excess of expenditures shall be paid to the County for reimbursement of the County's costs related to insurance provided for the building and liability coverage. Any funds in excess of the amount needed to fully reimburse the County will be made or contributed towards payment on the mortgage which is upon the building, said mortgage granted by the Association to the Farmers Home Administration in the original principal amount of two hundred two thousand seven hundred dollars ($202,700.00) and guaranteed by the County.

8. The Council, as operator, shall be responsible for maintaining such contingency or other funds as may be required by the United States Department of Agriculture, acting through the Farmers Home Administration.

9. This Agreement shall be in full force and effect until June 13, 2028, provided that the Council fully complies with all terms and conditions herein.

10. The parties further agree that, in the event that the Council shall dissolve or the Council shall breach this Operating Agreement in any respect, the Association shall have the first right to assume this Operating Agreement and become the operator. Any such assumption, other than by dissolution of the Council, shall be effective upon the Association giving the Council ninety (90) days' written notice stating the reason for the assumption. If the Council has not corrected or cured any such breach or default within ninety (90) days, the Operating Agreement shall be deemed null and void and the Association shall become the operator. If this Agreement is terminated, the Council may remove all personal property in the building owned by it.

11. Any party may terminate this Agreement at any time by written notice given sixty (60) days prior to the anticipated time of termination.

12. The parties acknowledge that this contract does provide certain third-party beneficial rights to the Association as provided herein.

13. Each party to this Agreement shall be responsible to the fullest extent allowed by law for its own negligence and that of its employees, agents and servants. Nothing in this Agreement shall be construed as a waiver of the provisions of the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S. As an institution of higher education of the State of Colorado, Colorado State University is not authorized to

indemnify any party, public or private, from the claims, demands or damage of third parties. As an entity of the State of Colorado, the University is self-insured for one hundred fifty thousand dollars ($150,000.00) per person and six hundred thousand dollars ($600,000.00) per occurrence, as more fully set forth in the Risk Management Act, Section 24-30-1501, et seq., C.R.S.

## ARTICLE 23

### Driver License Office Lease

*Lease Agreement*
*August 24, 2004*

Contract Routing Number TAA 05/00024

THIS LEASE AGREEMENT, made and entered into this 24th day of August, 2004, by and between the Otero County Board of Commissioners, whose address or principal place of business is Third Street and Colorado, P. O. Box 511, La Junta, Colorado 80150, hereinafter referred to as "Lessor," and the STATE OF COLORADO, acting by and through the DEPARTMENT OF REVENUE, hereinafter referred to as "Lessee."

**WITNESSETH:**

WHEREAS, as to Lessee, authority exists in the law and funds have been budgeted, appropriated and otherwise made available, and a sufficient unencumbered balance thereof remains available for payment in Fund Number ____, GBL Account Number ____ (Organizational Unit Code ____, Appropriation Code ____, Program Code ____, Function Code ____), Contract Encumbrance Number _____.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

**1. Premises, Term, Rent.**

(A) The Lessor hereby leases and demises unto the Lessee the Premises, hereinafter referred to as "Premises" within the building located at the Otero County Courthouse, 13 West Third Street, La Junta, Colorado 80150, hereinafter referred to as "Building" (including land, improvements and other rights appurtenant thereto). The Premises, known and described as the Otero County Courthouse, 13 West Third Street, La Junta, Colorado 80150, includes approximately eight hundred thirty-five (835) square feet of rentable floor area; the leased premises being as shown on the plat attached hereto, made a part hereof and marked "Exhibit One."

(B) TO HAVE AND TO HOLD the same, together with all appurtenances, unto the Lessee for the term beginning September 1, 2004, and ending August 31, 2009, at and for a monthly rental for the full term as shown below:

| *Term Dates* | *Term Rent* | *Monthly Rent* | *Approx. Annualized Sq. Ft. Cost* |
|---|---|---|---|
| 09/01/2004 — 08/31/2005 | $6,479.60 | $539.97 | $7.76 |
| 09/01/2005 — 08/31/2006 | 6,638.25 | 553.19 | 7.95 |
| 09/01/2006 — | 6,805.25 | 567.10 | 8.15 |

| | | | |
|---|---|---|---|
| 08/31/2007 | | | |
| 09/01/2007 — 08/31/2008 | 6,972.25 | 581.02 | 8.35 |
| 09/01/2008 — 08/31/2009 | 7,147.60 | 595.63 | 8.56 |

The Premises is to be used and occupied as a drivers' license office space. Payment shall be made on the first of each month during the term hereof, to the Lessor at the Otero County Courthouse, Third Street and Colorado, P.O. Box 511, La Junta, Colorado 80150, or at such place as the Lessor from time to time designates by notice as provided herein, subject to the limitations and conditions set forth in article 11, Fiscal Funding and article 14, Federal Funding, herein.

**2. Services by Lessor.**

The Lessor shall provide to the Lessee during the occupancy of said Premises, as a part of the rental consideration, the following:

Notwithstanding any other provision of this lease agreement contract, the Lessor shall provide the following, at the sole cost to the Lessor:

1. The Lessor shall provide all utility services, including electricity, water, sewer and gas. The Lessor shall also be responsible to maintain such services in safe and good working conditions. This shall include service, repair or replacement of pipes, lines, outlets, switches, connections, plumbing, wiring or any other parts and accessories used in connection with providing such services to and within the Premises and, if applicable, to common areas of the Building.

2. Heat, ventilating and air-conditioning (HVAC) services in quantities and distributions sufficient for the Lessee's use of the Premises, including re-balancing of the HVAC distribution system as necessary, and also including service, repair and/or replacement of equipment, parts and accessories for the HVAC units and systems serving the Premises.

3. The Lessor shall pay for and provide common area maintenance and exterior building maintenance, which shall include the foundation, the roof, all exterior walls and exterior doors, foundations and any other structural aspect of the building;

4. Insurance on the Building, including hazard insurance for the Premises, and liability insurance.

5. Repair and replacement of tenant improvements, including the Lessee's work, for damage caused by the shifting or leaking of the foundation or roof or of any other structural aspect of the Building.

6. Real estate taxes and assessments, including real property taxes, special improvement district taxes or fees or other special district taxes or charges. The Lessee shall be responsible for all taxes and assessments on its personal property, if any.

7. The Lessor shall pay for and provide snow and ice removal and sanding, when appropriate, and provide maintenance and repair of the parking area and sidewalks (including re-striping and resurfacing as needed) and trash removal.

8. The Lessor shall provide adequate parking for employees and customers of the Lessee.

9. The Lessor shall pay for service, repair or replacement of plate glass, windows and doors. This shall include weather stripping, hardware and accessories.

10. The Lessor shall pay for repair or replace flooring (tile or carpet), for cause of normal wear and tear or damaged by the shifting of the foundation or any other structure of the building.

11. The Lessor shall install smoke detectors and provide adequate fire extinguisher or equivalent device.

12. The Lessor will ensure that the Premises are handicap-accessible.

**3. Work Requirements.**

None.

**4. Lessor's Representations.**

(A) The Lessor represents that either: (1) no "asbestos response action" pursuant to that portion of the Colorado Air Quality Control Commission, Regulation 8, entitled Emission Standards for Asbestos, hereafter referred to as "Regulation 8," is contemplated as a part of the tenant finish for the Lease; or (2) in the event that an "asbestos response action" is contemplated as a part of the tenant finish for the Lease, the Lessor agrees to fully cooperate with the Lessee in the Lessee's exercise of its duties and responsibilities in accordance with Section V of Part B of Regulation 8.

(B) The Lessor, in the Lessor's sole opinion, represents that, with respect to this Lease and the Lessee's Premises, the Building meets the requirements of the Americans with Disabilities Act.

**5. Maintenance of Premises.**

The Lessor shall, unless herein specified to the contrary, maintain the Premises in good repair and in tenantable condition during the term of this Lease, except in the event of damage arising from an act or the negligence of the Lessee, its agents or employees. The Lessor shall have the right to enter the Premises at reasonable times for the purpose of making necessary inspections and repairs or maintenance. In the event the Premises are damaged by an act or the negligence of the Lessee, its agents or employees, the Lessee will be responsible for the repair and correction of said damage.

**6. Lessor's Ownership.**

The Lessor warrants and represents itself to be the owner of, or the authorized representative or agent of the owner of, the leased Premises in the form and manner as stated herein and, during the term of this Lease, covenants and agrees to warrant and defend the Lessee in the quiet, peaceable enjoyment and possession of the leased Premises. In the event of any dispute regarding the Lessor's ownership, the Lessor shall immediately, upon request from and at no cost to the Lessee, furnish proof thereof by delivering to the Lessee an "Ownership and Encumbrance Letter" issued by a properly qualified title insurance company.

**7. Lease Assignment.**

The Lessee shall not assign the Lease and shall not sublet the demised premises, except to a desirable tenant for a similar use and purpose, and will not permit the use of said Premises to anyone, other than the Lessee, its agents or employees, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld or delayed.

**8. Applicable Law.**

The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Lease. Any provision of this Lease, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person, or which is otherwise in conflict with said laws, rules and regulations, shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Lease to the extent that this Agreement is capable of execution.

**9. Eminent Domain; Termination of Lease.**

If the leased Premises shall be taken by right of eminent domain, in whole or in part, then this Lease, at the option of either party, shall forthwith cease and terminate and the current rent shall be properly apportioned to the date of such taking; and, in such event, the entire damages which may be awarded for such taking shall be apportioned between the Lessor and the Lessee, as their interests appear.

**10. Damage and Destruction.**

In the event the leased Premises are rendered untenantable or unfit for the Lessee's purposes by fire or other casualty, this Lease will immediately terminate and no rent shall accrue to the Lessor from the date of such fire or casualty. In the event the leased Premises are damaged by fire or other casualty so that there is partial destruction of such Premises or such damage as to render the leased Premises partially untenantable or partially unfit for the Lessee's purposes, either party may, within five (5) days of such occurrence, terminate this Lease by giving written notice to the other party. Such termination shall be effective not less than fifteen (15) days from the date of mailing of the notice. Rent shall be apportioned to the effective date of termination. If the leased Premises are rendered untenantable or unfit due to the act or negligence of the Lessee, its agents or employees, then the Lessee will have no right or option to terminate the Lease and will be responsible for the repair of said damage and destruction.

**11. Fiscal Funding.**

(A) As prescribed by State of Colorado Fiscal Rules, it is understood and agreed this Lease is dependent upon the continuing availability of funds beyond the term of the State's current fiscal period ending upon the next succeeding June 30, as financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. Further, the parties recognize that the act of appropriation is a legislative act, and the Lessee hereby covenants to take such action as is necessary under the laws applicable to the Lessee to timely and properly budget for, request of and seek and pursue appropriation of funds of the Legislature of the State of Colorado which will permit the Lessee to make all payments required under this Lease during the period to which such appropriation shall apply. In the event there shall be no funds made available, this Lease shall terminate at the end of the then-current fiscal year, with no penalty or additional cost as a result thereof to the Lessee.

(B) To make certain the understanding of the parties because this Lease will extend beyond the current fiscal year, the Lessee and the Lessor understand and intend that the obligation of the Lessee to pay the monthly rental hereunder constitutes a current expense of the Lessee payable exclusively from the Lessee's funds and shall not in any way be construed to be a general obligation indebtedness of the State of Colorado or any agency or department thereof within the meaning of any provision of Section 1, 2, 3, 4 or 5 of Article XI of the Colorado Constitution, or any other constitutional or statutory limitation or requirement applicable to the State

concerning the creation of indebtedness. Neither the Lessee, nor the Lessor on its behalf, has pledged the full faith and credit of the State or any agency or department thereof to the payment of the charges hereunder, and this Lease shall not directly or contingently obligate the State or any agency or department thereof to apply money from, or levy or pledge any form of taxation to, the payment of the annual rental charges.

(C) With such limitations in mind, the Lessee contracts to lease the Premises hereinbefore described and has reason to believe that sufficient funds will be available for the full term of the Lease. Where, for reasons beyond the Lessee's control, the Lessee's funding entity does not allocate funds for any fiscal period beyond the one in which this Lease is entered into, or does not allocate funds to continue this Lease from the then-current fiscal period, such failure to obtain funds not resulting from any act or failure to act on the part of the Lessee, the Lessee will not then be obligated to make the payments remaining beyond the Lessee's then-current fiscal period. In such event, the Lessee shall notify the Lessor of such non-allocation of funds by sending written notice thereof to the Lessor forty-five (45) days prior to the effective date of termination.

(D) The parties hereto further understand and agree that the only funds that have or may be so appropriated and available for payment under this Lease in any one (1) particular fiscal year are for the purpose and in an amount sufficient only to pay the rental charges provided for in article 1 above. Therefore, notwithstanding anything herein to the contrary, the payment by the Lessee of any other charges, liabilities, costs, guarantees, waivers and any awards thereon of any kind pursuant to this Lease against the Lessee are contingent upon funds for such purpose(s) being appropriated, budgeted and otherwise made available through the said State of Colorado Legislature process.

**12. Complete Agreement.**

This Lease, including all exhibits, supersedes any and all prior written or oral agreements, and there are no covenants, conditions or agreements between the parties except as set forth herein. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to the State Fiscal Rules.

**13. Captions, Construction and Lease Effect.**

The captions and headings used in this Lease are for identification only, and shall be disregarded in any construction of the lease provisions. All of the terms of this Lease shall inure to the benefit of and be binding upon the respective heirs, successors and assigns of both the Lessor and the Lessee. If any provision of this Lease shall be determined to be invalid, illegal or without force by a court of law or rendered so by legislative act, then the remaining provisions of this Lease shall remain in full force and effect.

**14. Federal Funding.**

In the event that any or all funds for payment of this Lease are provided by the Federal Government, this Lease is subject to and contingent upon the continuing availability of Federal funds for the purposes hereof, and if such funds are not made available, this Lease may be unilaterally terminated by the Lessee at the end of any month, provided a ninety-day advance notice of termination is given to the Lessor in writing.

**15. No Beneficial Interest.**

The signatories aver that, to their knowledge, no state employee has any personal or beneficial interest whatsoever in the service or property described herein.

**16. No Violation of Law.**

The signatories hereto aver that they are familiar with Section 18-8-301, et seq. (Bribery and Corrupt Influences), and Section 18-8-401, et seq. (Abuse of Public Office), C.R.S., as amended, and that no violation of such provisions is present.

**17. Controller's Approval.**

In accordance with the requirements of Section 24-30-202(1), C.R.S., as amended, this Lease shall not be deemed valid until it has been approved by the State Controller, or such assistant as he may designate.

**18. Notice.**

Any notice required or permitted by this Lease may be delivered in person or sent by registered or certified mail, return receipt requested, to the parties listed and at the addresses hereinafter provided; and, if sent by mail, it shall be effective when posted in the U.S. Mail Depository with sufficient postage attached thereto:

Lessor:

Office of Otero County Commissioners
Attn: Barry Shioshita
County Administrator
P O Box 511
La Junta CO 80150

And

Office of Otero County Commissioners
Attn: Deni Darnell
P O Box 511
La Junta CO 80150
Phone: (719)383-3000

Lessee:

Department of Revenue
Attn: Nestor A Lujan – Leasing Services
Driver License Administration
1865 West Mississippi Ave Ste C
Denver CO 80223
Phone: (303)934-0447

And

Department of Revenue
Attn: Roger Thomte
Contract Specialist
1375 Sherman Street Room 427
Denver CO 80203

With a copy to:

State Buildings and Real Estate Programs
Attn: Clark Bolser
1313 Sherman St., Suite 319
Denver, CO 80203

Notice of change of address shall be treated as any other notice.

**19. Holding Over.**

If the Lessee shall fail to vacate the Premises upon expiration or sooner termination of this Lease, the Lessee shall be a month-to-month Lessee and subject to all the laws of the State of Colorado applicable to such tenancy. The rent to be paid by the Lessee during such continued occupancy shall be the same being paid by the Lessee as of the date of expiration or sooner termination. The Lessor and the Lessee each hereby agree to give the other party at least thirty (30) days' written notice prior to termination of this holdover tenancy.

**20. Consent.**

Unless otherwise specifically provided, whenever consent or approval of the Lessor or the Lessee is required under the terms of this Lease, such consent or approval shall not be unreasonably withheld or delayed and shall be deemed to have been given if no response is received within thirty (30) days of the date the request was made. If either party withholds any consent or approval, such party shall on written request deliver to the other party a written statement giving the reasons therefor.

**21. Lessee Liability Exposure.**

Notwithstanding any other provision of this Lease to the contrary, no term or condition of this Lease shall be construed or interpreted as a waiver of any provision of the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties hereto understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees, is controlled and limited by the provisions of Section 24-10-101, et seq., C.R.S., as now or hereafter amended, and 24-30-1501, et seq., C.R.S., as now or hereafter amended. Any provision of this Lease, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of the Lessee to the above cited laws.

**22. Security Deposit.**

The Lessee shall not be required to remit a security deposit to the Lessor.

**23. Interruption of Services.**

Notwithstanding anything in this Lease to the contrary, if there is an interruption in essential services to the Premises (including but not limited to HVAC, electrical service, elevator service), and such interruption continues for a period of five (5) consecutive days, the Lessee shall be entitled to an abatement of rent for the period that such services are not provided to the extent that such interruption interferes with the use of the Premises by the Lessee. If such interruption continues for a period of ninety (90) days, the Lessee shall have the option to cancel and terminate this Lease without penalty. The above shall not apply if the interruption of essential services is caused or arises from an act or the negligence of the Lessee, its agents or employees. If such should be the case, then the Lessee will be responsible for correcting the damage and the cause of the interruption of services.

**24. Collocation.**

In the event the State of Colorado builds, leases or otherwise acquires a building for the purpose of collocating State agencies in one (1) area, or designates an existing State-owned building for such collocation of the Lessee, this Lease may be terminated by the Lessee upon giving written notice to the Lessor not less than sixty (60) days prior to the anticipated termination date.

**25. Lessee's Tax-Exempt Status.**

If, because of the Lessee's tax exempt status, the Building is able to reduce its tax liability (hereinafter "building taxes"), then the Lessee's rental obligation shall be decreased by the amount of the reduction in building taxes on a monthly pro rata basis.

**26. Lessee's Insurance.**

The Lessee shall, at its sole cost and expense, obtain insurance on its inventory, equipment and all other personal property located on the leased Premises against loss resulting from fire or other casualty. The Lessee shall have the right to provide such insurance under a self-insurance program or, at any time during the term of this Lease, to provide such insurance through an insurance company. With respect to general liability, the Lessor recognizes that the Lessee is self-insured for general liability in accordance with the provisions of the Colorado Governmental Immunity Act and the Colorado Risk Management Act, Section 24-30-1501, et seq., C.R.S., as amended.

**27. Broker Representation.**

Lessor and Lessee acknowledge that _____ is acting as a Landlord-Agent in this transaction and _____ is acting as a Tenant-Agent on behalf of Lessee in this transaction. Further, Lessor and Lessee acknowledge that in consideration of _____ acting as a Tenant-Agent on behalf of the State of Colorado in this transaction, _____ will receive a leasing commission by separate agreement with _____.

**28. Lessor/Vendor Offsets Notice.**

Pursuant to Section 24-30-202.4, C.R.S. (as amended), the State Controller may withhold debts owed to state agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest or other charges specified in Article 21, Title 39, C.R.S.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the Controller.

**29. Cancellation of Previous Lease.**

Lessee and Lessor have previously entered into a lease no. TAA XX/XXXXXX on _____. This lease had a term that began on June 1, 20XX and was to have run through June 30, 20XX. Both parties agree that upon approval of this new lease, lease TAA XX/XXXXXX shall be considered terminated and that all its terms and conditions shall be considered as fulfilled by both parties.

**30. Conveyance of the Premises; Attornment and Nondisturbance.**

If the Premises are sold, transferred or conveyed, or if the Lessor assigns this Lease, the Lessor shall provide notice pursuant to Section 18 of this Lease within ten (10) days of such conveyance or assignment. Said notice shall include the name and address of the New Lessor, Social Security or Federal Employer's Identifica-

tion Number of the New Lessor and a copy of the deed, assignment agreement or other evidence of the conveyance or assignment.

The Lessee agrees to attorn to any assignee of this Lease, or to any purchaser of the Premises, or any other successor owner or assignee of the Lessor through foreclosure or deed in lieu of foreclosure (the "New Lessor"), provided the New Lessor grants to the Lessee a nondisturbance agreement which provides that the Lessee, notwithstanding any default of the Lessor hereunder, shall have the right to remain in possession of the Premises in accordance with the terms and provisions of the Lease for so long as the Lessee shall not be in default under the Lease. The nondisturbance agreement shall be executed by the New Lessor and shall indicate that: (1) nothing in the nondisturbance agreement shall be construed as a waiver of any rights of the Lessee against the Lessor; and (2) all payments previously made by the Lessee to the Lessor and all other previous actions taken by the Lessee under the Lease shall be considered to have discharged those obligations of the Lessee under the Lease.

**31. Additional Provisions.**

None.

## ARTICLE 24

### Otero County Landfill, Inc.

*Exchange-of-Use Agreement*
*September 20, 2004*

THIS AGREEMENT is made this 20th day of September, 2004, by and between OTERO COUNTY LANDFILL, INC., whose address is P. O. Box 511, La Junta, Colorado, 81050, herein referred to as "OCLI," and the STATE OF COLORADO, acting by and through the DEPARTMENT OF NATURAL RESOURCES for the use and benefit of the WILDLIFE COMMISSION and the DIVISION OF WILDLIFE, herein referred to as the "State."

WHEREAS, the State owns certain property in Otero County, hereinafter referred to as the State Property, which is as follows:

That portion of the NW¼NW¼ of Section 17, Township 24 South, Range 56 West, 6th P.M., Otero County, Colorado, located south of the Catlin Canal;

and

WHEREAS, OCLI owns certain property in Otero County, hereinafter referred to as the OCLI Property, which is as follows:

That portion of the NE¼NW¼ of Section 17, Township 24 South, Range 56 West, 6th P.M., Otero County, Colorado, located north of the Catlin Canal;

and

WHEREAS, the State wishes to create and maintain public access to OCLI Property; and

WHEREAS, OCLI desires to construct a drainage ditch on the State Property; and

WHEREAS, authority exists in Law and the required approvals, clearances and coordination have been accomplished from and with appropriate agencies of the State of Colorado;

NOW, THEREFORE, IT IS HEREBY AGREED THAT:

**1. Term:**

The term of this Agreement shall be for a period of twenty-four (24) years, commending on the day and year first mentioned above, and ending on the 1st day of September, 2028.

**2. Exchange-of-use Agreements:**

a) OCLI hereby grants to the State, for the term of this Agreement, unrestricted access to and across the OCLI Property.

b) The State shall have the exclusive right for the term of this Agreement to occupy and use the OCLI Property for all purposes, including but not necessarily limited to public hunting, recreation and agriculture.

c) The State hereby grants to OCLI the exclusive right for the term of this Agreement to excavate borrow soils and to construct and maintain a drainage ditch on the State Property. The location and nature of the drainage ditch shall be as described and depicted in Exhibit A. When constructing said drainage ditch, OCLI shall be responsible for revegetation and weed control of any disturbed area of the State Property, and for maintenance and reclamation of the ditch.

d) The State retains all other rights on the State Property not hereby expressly granted, including hunting and fishing rights.

e) This Agreement shall inure to the benefit and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

**3. Nondiscrimination Requirements:**

OCLI agrees to comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and, in accordance with that Act, no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination upon the premises and will immediately tae any measure necessary to effectuate this Agreement.

As a recipient of Federal funds from the United States Department of the Interior, the State operates programs subject to the nondiscrimination requirements of Title VI of the 1964 Civil Rights Act.

The State provides this assurance that, in its operations of such program, it shall prohibit discrimination on the grounds of race, color or national origin and shall:

a) Display prominently and in reasonable numbers and places posters which state that the recipient operates programs subject to the nondiscrimination requirements of Title VI.

b) Provide to the Department of the Interior current and relevant information and data to the extent necessary and appropriate for determining compliance with Title VI, and comply with regulations implementing Title VI.

OCLI's signature on this document indicates that it is aware of the above cited responsibilities of the State and agrees to grant the State the right to carry out these responsibilities on its land.

**4. Liability:**

a) The parties acknowledge that OCLI enjoys significant limitations on its potential liability which may arise from use of its property by members of the public for public recreational purposes pursuant to the provisions of Article 41 of Title 33, C.R.S. (1984 and 1995 Supp.), as may be amended.

b) State's liability exposure. Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, either expressed or implied, of any of the immunities, rights, benefits or protection provided to the State under the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as amended or as may be amended (including, without limitation, any amendments to such statute or under any similar statute which is subsequently enacted).

c) The parties hereto understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101, et seq., C.R.S., as amended or as may be amended. Any provisions of this Agreement, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of the State to the above-cited laws.

d) In accordance with the provisions of Section 33-41-103(1)(e)(II.5), C.R.S., OCLI acknowledges that it has been advised of its right to bargain for indemnification from liability for injury resulting from use of the property by all persons or guests of persons on the property for recreational purposes, at the invitation or consent of the State, and all persons present on the property at the invitation of the State or OCLI for business or other purposes relating to or arising form the use of the property for recreational purposes. No such indemnification agreement has been entered into by the parties hereto.

**5. Rights to Terminate:**

This Agreement may be terminated without cause at any time by either party. In such case, the party wanting to terminate must give the other party written notice given in the manner provided in Paragraph 7. Termination shall be effective sixty (60) days from the date of receipt of notice of termination.

**6. Condemnation:**

If the OCLI Property shall be taken by right of eminent domain, in whole or in part, for public purposes, then this Agreement, at the option of either OCLI or the State, shall forthwith cease and terminate, and in such event the entire damages which may be awarded for such taking shall be apportioned between OCLI and the State, as their interests appear.

**7. Miscellaneous:**

a) Notices. All notices required to be given by the parties shall be mailed to the addresses set forth below, United States mail, postage prepaid, certified, return receipt requested, and shall be effective upon receipt thereof. Either party may change its official address by giving notice to the other party in the manner aforesaid. Such change shall be effective upon receipt of notice.

To the State:

Colorado Division of Wildlife
Real Estate Unit
6060 Broadway
Denver, CO 80216

To OCLI:

Otero County Landfill, Inc.
P. O. Box 511
La Junta, CO 81050

b) Complete Agreement. This Agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever, unless signed by both parties in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved by both parties.

c) Request for Approvals. Whenever consent or approval of either party is required under the terms of this Agreement, such consent or approval shall not be unreasonably withheld. If either party withholds any consent or approval, such party shall on written request deliver to the other party a written statement giving the reasons therefor.

d) Terms are Severable. To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be constructed as a waiver of any other term.

e) Laws of the State of Colorado. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Agreement. Any provisions of this Agreement, whether or not incorporated herein but otherwise in conflict with said laws, rules and regulations, shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Agreement to the extent that the Agreement is capable of execution.

f) Compliance with Laws. At all times during the performance of this Agreement, the parties shall strictly adhere to all applicable federal and state laws, rules and regulations that have been or may hereafter be established.

g) The signatories aver that, to their knowledge, no State employee has any personal or beneficial interest whatsoever in the service or property described herein.

h) The signatories hereto aver that they are familiar with Section 18-8-301, et seq., C.R.S. (Bribery and Corrupt Influences), and Section 18-8-401, et seq., C.R.S. (Abuse of Public Office), and that no violation of such provisions is present.

## ARTICLE 25

### Otero County Jail and Colorado Mental Health Institute at Pueblo

*Facility Provider Agreement*
*November 23, 2004*

PURPOSE

The Facility Provider Agreement "Agreement") is made and entered into as of this 23rd day of November, 2004, by and between Otero County Jail and Colorado Mental Health Institute at Pueblo ("CMHIP") ("Provider").

## RECITALS

WHEREAS, the Senate Bill 03-141 has stated that, "(1.5)(a) If economical, a County Sheriff may transport a person held in custody in a county jail to the Colorado Mental Health Institute at Pueblo for medical treatment. Within the bid and medical capacity of the facility, the Colorado Mental Health Institute at Pueblo shall provide medical care to a person held in custody in a county jail. The county in which the person was held shall be responsible for the payment to the Hospital for medical costs incurred by a person in custody, but, if such costs are not repaid to the county by the person in custody, such costs constitute a medical treatment charge that may be collected as provided in subsection (1) of this section.

"(b) Notwithstanding the provisions of paragraph (a) of this subsection (1.5), the Mental Health Institute at Pueblo shall charge a county the actual costs of the medical care provided to a person held in custody. The charges shall cover the full direct and indirect costs of the care provided as determined by generally accepted accounting principles. The General Assembly shall include within the appropriation for the General Medical Division of the Institute an amount equal to the estimated reimbursements to be received from counties pursuant to this paragraph (b)"; and

WHEREAS, Otero County Jail is the County Jail holding custody of inmates requiring medical and surgical care as outlined in Senate Bill 03-1412 above; and

WHEREAS, Provider is Colorado Mental Health Institute at Pueblo (CMHIP); and

WHEREAS, Otero County Jail and Provider mutually desire to enter into this Agreement whereby Provider shall render Covered Services to Inmates of Otero County Jail under Benefit Program as identified on Addendum A.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained and other valuable consideration, it is mutually agreed by and between the parties hereto as follows:

## A. DEFINITIONS

As used and capitalized in this Agreement, the following terms shall have the indicated meanings:

1. Benefit Program. Otero County Jail assumes the Payer's performance and fulfills obligations to reimburse for services rendered according to written agreement. The benefit programs covered under the Agreement are listed on Addendum A.

2. Benefit Program Requirements. the rules, procedures, policies, protocols and other conditions to be followed by Participating Providers, Practitioners, Members and Otero County Jail with respect to providing Covered Services under the Benefit Program.

3. Covered Services All Inpatient Services, Outpatient Services, Emergency Services or other Covered Services, except Excluded Services, to be rendered by Provider to a Member in accordance with this Agreement.

4. Coordination of Benefits. The allocation of financial responsibility between two (2) or more payers of health care services, each with a legal duty to pay for or provide Covered Services to a Member at the same time.

5. Emergency Services. Shall mean a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain), such that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

6. Excluded Services**.** Those health care services and supplies that are determined not to be Medically Necessary, or which otherwise are not Covered Services under the applicable Benefit Program. Those health care services which require intensive care monitoring and/or life-threatening cardiac conditions. The ability to provide services to jail inmates is triaged by a CMHIP physician, who evaluates resources, determines criteria for admission and evaluates bed availability. The Chief of Medicine, Chief of Surgery and/or designee will determine at the time of the referral whether services can be appropriately delivered within the confines of CMHIP's scope of services and resources.

7. Inpatient Services. Inpatient Services are those Covered Services rendered on an inpatient basis at a facility pursuant to the terms of an applicable Benefit Program. Inpatient Services include, but are not limited to: (a) bed and board; (b) medical, nursing, surgical, pharmacy and dietary services; (c) all diagnostic and therapeutic services required by a Member when ordered by an attending physician with appropriate medical and clinical staff privileges; (d) use of Facilities, and medical, mental health and social services furnished for the provision of Covered Services; (e) drugs while an inpatient; (f) transportation services subsequent to admission and prior to discharge required in providing Inpatient Services; *and* (g) allied health professional services.

8. Member. An Otero County Jail inmate.

9. Outpatient Services. Include, but are not limited to, observation, outpatient and short stay surgery, clinic care and related ancillary services.

10. Participating Practitioner. A physician, allied health professional or other health care professional who has been authorized to provide services to jail inmates.

11. Participating Provider. A hospital, physician organization or other organization which has a direct or indirect contractual relationship with Otero County Jail, a Payer or another Participating Provider to provide certain Covered Services.

12. Payer. Otero County Jail is responsible for paying Participating Providers and Participating Practitioners for Covered Services rendered to inmates under a Benefit Program covered under this Agreement.

13. Primary Care Physician (PCP). Physician who is responsible pursuant to the applicable Benefit Program for coordinating and managing the delivery of Covered Services to Members.

14. Prior Authorization. Prior authorization requires that preadmission discussion occur between Jail personnel and CMHIP designated medical/surgical provider. The prior authorization is required to ensure inmate needs can be adequately provided for at CMHIP, bed availability and criteria for medical/surgical conditions can adequately be managed at the levels of care provided according to benefit plan. No admissions shall be accepted without prior authorization from the Chief of Surgery and/or Chief of Medicine and/or their designee.

15. Referral. The written, verbal or electronic request by Otero County Jail requesting provision of services as outlined in this Agreement.

## B. PERFORMANCE PROVISIONS

**1. Representations of Provider.**

Provider represents and warrants that:

(a) Provider operates and provides Covered Services at the Facility in compliance with all applicable local, state and federal laws, rules, regulations, institutional and professional standards of care;

(b) Provider is licensed by the State to operate and provide Covered Services at the Facility;

(c) Facility is accredited by the Joint Commission on Accreditation of Healthcare Organizations;

(d) Provider shall maintain such licensure, compliance, certification and accreditation throughout the terms of the Agreement.

**2. Provision of Services.**

Provider agrees to render Covered Services to Members of the Benefit Programs covered under this Agreement, in accordance with:

(a) The terms and conditions of this Agreement.

(b) The same standard of care, skill and diligence as is customarily used by similar facilities in the community in which such services are rendered, and in the same manner, and with the same availability, as the Provider renders services to its other patients.

(c) Otero County Jail and Colorado Mental Health Institute at Pueblo and Practitioners shall maintain the confidentiality of medical records, as required by all applicable laws, policies and procedures.

**3. Subcontracting.**

Otero County Jail agrees to be solely responsible to pay any subcontractors, Payers and member claims for services unavailable at Colorado Mental Health Institute at Pueblo.

**4. Health Insurance Portability and Accountability Act of 1996 (HIPAA).**

Otero County Jail will ensure compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) concerning the Protected Health Information of all patients.

## COMPENSATION

**1. Levels of Care.**

The three-tiered reimbursement rate in this Agreement allows for varying levels of care to be utilized in an effort to contain acute care costs. High quality health care needs are met by multidisciplinary teams of professionals. The categories are based on differences in levels of acuity, severity of symptoms and complexity of associated factors.

(a) Medical/Surgical Acute Care. This category represents inpatient acute care services, which provides specialized acute hospital care for medically and surgically compromised patients. This level of care requires intense and continuous levels of service and monitoring.

- Daily physician visits or more.

- Skilled nursing care: IV's, Central Venous Lines, Telemetry, IV medications, feeding tubes, total care, bladder catheters, frequent observations and/or treatments.
- Medical and Surgical cases are followed by medical internists, surgeons and registered nurses on a daily basis on site 24/7.
- Continuous monitoring and allocation of professional services.
- Medical conditions characterized by a sudden onset, severe symptoms with an anticipated short course.

(b) Step-Down Days: Sub-Acute Care. This category represents those conditions that fall into a sub-acute category.

- Mid-level range of services that complement the continuum of care in a hospital setting.
- Care is rendered immediately after, or instead of, acute hospitalization to treat one (1) or more specific, active, complex medical conditions or to administer one (1) or more technically complex treatments in the context of an individual's underlying medical or surgical condition.
- This level of care is more intensive than infirmary care and less intensive than acute inpatient care.
- Review of the clinical course and progression of condition is monitored on a daily to weekly basis until stabilization or a predetermined treatment course is met.
- Can include restorative, rehabilitation provisions.
- Coordinated services through interdisciplinary team.

(c) Administrative Days: Observation. This category represents a standardized facility rate for bed occupancy and costs associated with running a facility. No physician services are included in this level of care.

- This category was designed to meet Otero County Jail's need to accommodate security of inmates who cannot be transported to designated destinations and who have formally been discharged from acute and/or sub-acute levels of care.
- The administrative day allows the inmate to remain in a secured environment until transportation arrangements can be made.
- Minimal nursing care (dispensing of medications) is performed.
- Security remains paramount.
- Inmates awaiting transportation to Otero County Jail, awaiting transportation for diagnostic and/or therapeutic procedures.

**2. Compensation Rates.**

Provider shall accept as payment in full for Covered Services and all other services rendered under this Agreement to members the amounts payable by Otero County Jail as set forth in Addendum A attached to this Agreement.

It is expressly understood that, if a member is receiving services at Colorado Mental Health Institute at Pueblo and the legal case is dropped, Otero County Jail remains responsible for compensation and disposition plans.

**3. Billing and Payment.**

(a) Billing. Provider shall submit to Otero County Jail a hard copy in a format approved by Otero County Jail for Covered Services rendered to a member.

(b) Payment. Otero County Jail shall make payment on, or settle each Provider's claims submitted for, Covered Services rendered to a member within thirty (30) days of receipt of such claims.

(c) As pursuant to Senate Bill 03-141. The County in which the person was held shall be responsible for the payment to the hospital for medical costs incurred by a person in custody.

**4. Third Party Recoveries.**

Provider will not be responsible for third party recoveries. When Otero County Jail or a Payer has compensated Provider for Covered Services, then Otero County Jail or a Payer retains the right to recover from applicable third party carriers covering a person in the Otero County Jail's custody, including self-insured plans and other third party sources, and to retain all such recoveries. Provider agrees to provide Otero County Jail with such information that may be required to pursue recoveries from such third party sources and to promptly remit to Otero County Jail any monies Provider may receive from, or with respect to, such sources of recovery. Otero County Jail shall bill all negligent third parties.

## D. TERM AND TERMINATION

**1. Term.**

The term of this Agreement shall commence on the date set forth on the first page of this Agreement and thereafter shall continue in effect from year to year unless terminated by either party pursuant to this Agreement. This Agreement shall automatically renew for successive annual periods, unless one (1) party notifies the other in writing of its intent not to renew this Agreement, at least one hundred twenty (120) days prior to the next scheduled renewal date. The renewal date of the term of this Agreement shall remain the same for all Benefit Programs covered hereunder, even if this Agreement becomes effective with respect to a particular Benefit Program after the initial or any renewal date of this Agreement, due to licensure, contract award or other reason.

**2. Termination Due to Material Breach.**

In the event that either Provider or Otero County Jail fails to cure a material breach of this Agreement within thirty (30) days of receipt of written notice to cure the other, the nondefaulting party may terminate this Agreement, effective as of the expiration of said thirty-day period. If the breach is one that cannot reasonably be corrected within thirty (30) days and the nondefaulting party determines that the defaulting party is making substantial and diligent progress toward correction during such thirty-day period, this Agreement shall remain in full force and effect.

**3. Termination Without Cause.**

Either party may terminate this Agreement without cause upon one hundred twenty (120) days' prior written notice to the other party.

**4. Right of Partial Termination.**

Either party may terminate this Agreement in accordance with D.3. above with respect to one (1) or more Benefit Programs as may be indicated in the notice of termination.

**5. Continuity of Care; Effect of Termination.**

In the event that a member is receiving Covered Services at the time the Agreement terminates, Otero County Jail shall remain liable for payment of services rendered.

## E. RECORDS AND REGULATORY REQUIREMENTS

**1. Medical Records.**

Provider warrants that it prepares and maintains medical records that fully disclose the extent of covered benefits provided to eligible members under this program.

**2. Access to Records.**

The records referred to in Section E.1. shall be and remain the property of Provider and/or any subcontractor(s) and shall not be removed or transferred from Provider or any subcontractor(s) except in accordance with applicable local, state and federal laws, rules and regulations. Subject to applicable state and federal confidentiality or privacy laws, Otero County Jail and Payers, or their designated representatives, of local, state and federal regulatory agencies having jurisdiction over Otero County Jail or any Payer, shall have access to Provider's records or the applicable records of any subcontractors with which Provider contracts, at Provider's or subcontractor's place of business on request during normal business hours, to inspect and review and make copies of such records. Such government agencies shall include the State Department of Public Health and Environment, the State Department of Health Care Policy and Financing, the State Division of Insurance and the United States Department of Health and Human Services. When requested by Otero County Jail, Payers or representatives of local, State or federal regulatory agencies, Provider and/or any subcontractor(s) shall produce copies of any such records at the state prevailing rate. Additionally, Provider agrees to permit Otero County Jail and its designated representatives, and designated representatives of local, State and federal regulatory agencies having jurisdiction over Otero County Jail or any Payer, to conduct site evaluations and inspections of Provider's and/or subcontractor's offices and service locations.

## F. GENERAL PROVISIONS

Provider (CMHIP) Responsibilities.

1. Provider shall provide Otero County Jail with access to the Medical/Surgical Services within the scope of available services and as permitted under the regulatory requirements and policies governing CMHIP General Hospital.

2. The Colorado Mental Health Institute at Pueblo shall charge a county jail actual costs for medical care provided to a person held in custody. The charges shall cover the full direct and indirect costs of the care provided as determined by generally accepted accounting principles as pursuant to S.B. 03-141 Section 3:17-26-104.5(b).

3. Provider has identified the Chief of Surgery and the Chief of Medicine or their designees who will be accessible twenty-four (24) hours, seven (7) days per week to provide contact for communications between the Otero County Jail and Colorado Mental Health Institute at Pueblo regarding health care concerns related to utilization of Medical/Surgical Unit beds, urgent care and any other specialty care provided by Provider. The

name of the person(s) in these positions will be communicated to Otero County Jail and updated as necessary. The ultimate goal is to facilitate accurate, timely and appropriate communication between agencies.

4. The Chief of Surgery or the Chief of Medicine and/or their designee will review all referrals to CMHIP. Criteria for acute hospitalization and appropriateness for admission will be reviewed. In the event the member requires services that are unavailable or outside of Colorado Mental Health Institute at Pueblo's current scope of services, an alternative facility will be recommended.

5. All admissions must have prior authorization and are based on bed and medical capacity of Provider.

6. Provider will notify Otero County Jail of the following:

(a) The necessity of any outside medical services before such services are performed.

(b) Emergency conditions requiring transfer to another facility.

7. In the event an Otero County Jail inmate is admitted to CMHIP and experiences a psychiatric crisis, a psychiatric referral would be conducted according to Colorado Mental Health Institute at Pueblo policy.

8. Provider will not be responsible for providing transport to and from court hearings, continuing hearings or court appearances.

9. Provider will not assume nor be responsible for case management, legal or social work.

10. Provider will not provide extended inpatient rehabilitation programs.

11. In the event an Otero County Jail inmate requires transfer to another facility, Provider agrees to provide security transport. Otero County Jail will be notified and expected to provide Security personnel to relieve CMHIP Security within four (4) hours of such notification.

County Jail Responsibilities.

1. Otero County Jail will contact the Chief of Surgery, Chief of Medicine or their designee on a 24/7 basis to determine whether Provider can provide urgent care, twenty-four-hour observation or inpatient services. Prior authorization must be obtained and the decision to admit will reside in the bed and medical capacity of CMHIP.

2. Otero County Jail will identify an individual, coordinator or officer who will be accessible twenty-four (24) hours, seven (7) days a week. This individual will serve as a primary contact for Provider and assist with security and/or health care concerns related to the member receiving services at CMHIP.

3. Otero County Jail shall assume all responsibility for transport and security of the inmate to Colorado Mental Health Institute at Pueblo.

4. Otero County Jail officers will remain with the inmate until physical transfer to the Medical/Surgical Unit is complete.

5. Otero County Jail officers will remain with the inmate in their custody for supervision and security during Ambulatory Care Clinic visits and other outpatient services.

6. In the event the inmate requires transfer to another facility, Otero County Jail will provide immediate relief (within four [4] hours of notification) for Provider's security personnel. Provider's security personnel

will remain with the inmate until such time as relief is provided. Otero County Jail shall pay all direct costs associated with a delay in relief of CMHIP security personnel.

7. The Otero County Jail will provide CMHIP with a list of any special security needs of inmates in their custody to be admitted to CMHIP.

8. It is the Otero County Jail's responsibility to notify the court of any postponement of hearings and court appearances while the inmate is admitted to Colorado Mental Health Institute at Pueblo.

9. The Otero County Jail will be responsible for all case management, legal and social work.

10. In the event the criminal case mandating incarceration of the transferred inmate is dismissed, Otero County Jail will assume responsibility for the release and transfer of the inmate. Physical custody of that inmate must be taken by Otero County Jail.

11. Otero County Jail will identify a continuity of care coordinator for follow-up of medical/surgical services provided by CMHIP.

This Agreement shall become effective as of the date indicated in this first sentence of this Agreement and shall not be considered executed until both parties have affixed their signatures below.

**ADDENDUM A**

**PARTICIPATING PROVIDER AGREEMENT BETWEEN COLORADO MENTAL HEALTH INSTITUTE AT PUEBLO and OTERO COUNTY JAIL**

The following rates will be applicable to all authorized services provided that fall within the scope of services available at CMHIP effective November 23, 2004, and will remain in effect until such time as parties request renegotiation. As provided in the terms of the Agreement, if it is determined the rates are not appropriate for continuation, a sixty-day prior written notice will be given for either termination or for agreement for mutually agreed-up renegotiated rates. If rates are renegotiated, a revised Exhibit A will be signed and executed by both parties.

INPATIENT SERVICES:

For all authorized covered inpatient services paid at the following per diem rates to later be determined in accordance to cost-optimizing volume, including obstetrics care, reimbursement will be defined as follows:

| | |
|---|---|
| Medical/Surgical: Acute Care | $1,400.00 per diem |
| Step Down Days: Sub-Acute Care | 775.00 per diem |
| Administrative Days: Observation | 285.00 per diem |

Administrative Days and Step Down Days shall be defined and mutually agreed upon by both parties.

OUTPATIENT SERVICES

Billed charges shall be based on the APC Fee Schedule.

SAME DAY SURGERY: 100% of Billed Charges from APC Payment Manual.

Same Day Surgery procedure will remain a separate charge from any subsequent required inpatient admission.

IMPLANTS: Orthopedic and ophthalmology implants will be reimbursed at 100% of routine billed charges (cost).

PROFESSIONAL SERVICES: Any professional services rendered to Pueblo County Jail inmates will be billed and reimbursed at 105% of the Resource Based Relative Value System (RBRVS) fee schedule. Once per year, on July 1 of each year, the reimbursement schedule will be updated to reflect changes in the RBRVS fee schedule. Any contracted Physicians shall bill MTS separately.

DME: All Durable Medical Equipment will be reimbursed at 100% of cost.

ALL OTHER OUTPATIENT SERVICES: Will be reimbursed at 80% of routine billed charges.

FACILITY FEE FOR CLINIC VISITS: $50.00 per visit.

LABORATORY: Will be reimbursed at 100% of cost.

Above rates agreed upon and effective November 23, 2004, by and between: Colorado Mental Health Institute at Pueblo and Otero County Jail.

## ARTICLE 26

## Otero County Landfill, Inc.

*Operating Agreement*
*December 27, 2004*

THIS OPERATING AGREEMENT, made, executed and entered into this 27th day of December, 2004, by and between OTERO COUNTY LANDFILL, INC., hereinafter referred to as "OCLI," and the COUNTY OF OTERO, hereinafter referred to as "County."

WHEREAS, Part 2 of Article 1 of Title 29, et seq., C.R.S., as amended, authorizes and encourages intergovernmental agreements and contracts for the purpose of governmental entities to cooperate and contract to provide functions, services or lawful facilities; and

WHEREAS, Part 108 of Article 20 of Title 30, et seq., C.R.S., as amended, authorizes municipal and county governments to enter in to agreement or associations to establish and operate an approved solid waste disposal site and facility under such terms and conditions as may be approved by the governing bodies of the governmental units involved; and

WHEREAS, the City of La Junta, City of Rocky Ford, Town of Cheraw, Town of Swink, Town of Manzanola, Town of Fowler and County of Otero did enter into an Intergovernmental Agreement to establish and operate an approved solid waste disposal site and facility; and

WHEREAS, Otero County Landfill, Inc., was formed as a result of actions authorized pursuant to the Intergovernmental Agreement; and

WHEREAS, Article 6, Section Three – Organization and Operation of the Entity of the Intergovernmental Agreements provides, "The Entity (subsequently named OCLI) may contract with any public or private organization for services and/or employees"; and

WHEREAS, it has been determined that it is in the best interest of the citizens of Otero County and the various entities who are members of OCLI to have the County continue to operate the sold waste disposal sites known as the Otero County Landfill No. 1, the Otero County Landfill No. 2, the Manzanola Landfill, and to monitor the Fowler Landfill.

NOW, THEREFORE, for and in consideration of the mutual covenants, stipulations, conditions and agreements herein contained the parties hereto agree and stipulate as follows:

**1. Purpose:**

The County agrees to operate the solid waste disposal sites known as the Otero County Landfill No. 1, the Otero County Landfill No. 2, the Manzanola Landfill, and to monitor the Fowler Landfill.

**2. Term of the Agreement:**

The term of this Agreement shall begin on January 1, 2005, and shall continue until December 31, 2005. The term of this Agreement shall be automatically extended for an additional calendar year upon the same terms, provided that neither party gives a notice of termination to the other by October 1 of each year.

**3. Contract Amount:**

The County will operate the facilities specified in this Agreement for 2.1475 mills, as applied to the County's assessed valuation.

**4. General Supervision:**

The Supervisor of the Public Works Department will oversee the operation of the landfill sites which are the subject of this Agreement. These duties and responsibilities include, but are not limited to, the task of arranging water sample collection and testing, serving as Otero County's liaison with the State Health Department, the responsibility of the placement of required water monitoring holes, etc.

**5. Hours of Operation:**

The Otero County Landfill No. 1 will be open from 8:00 a.m. through 4:00 p.m., Monday through Saturday. The Manzanola Landfill will be open from 8:00 a.m. through 4:00 p.m. on Monday/Wednesday/ Saturday. Authorized closures (exceptions to the operational hours) shall be for County-authorized holidays or high winds, except the Otero County Landfill No. 1 shall remain open on the Friday after Thanksgiving and on Good Friday of each year.

**6. Staffing:**

Two (2) full-time employees are assigned to the Otero County Landfill No. 1. One (1) Road and Bridge employee is assigned to the Manzanola Landfill on Monday and Wednesday. Manpower for Saturday is provided out of Road and Bridge, with the employee being paid at an overtime rate.

**7. Equipment:**

The County will purchase and provide the equipment that is set forth on Attachment 1.0 which is attached hereto and hereby incorporated by reference. OCLI agrees to make rental payments to County for the use of the machinery and equipment as agreed from time to time by the parties and as set forth on Attachment 2.0, which is attached hereto and hereby incorporated by reference.

**8. In-Kind Contribution:**

The County will make an "in-kind contribution" to the project and will assign a front-end loader, maintainer, dump truck, bulldozer, dragline and pickup to the Otero County Landfill No. 1 on an as-needed basis. The

County will receive credit for this in-kind contribution and any other in-kind contributions as agreed by the parties.

**9. Insurance:**

Insurance coverage will be extended to the landfills due to the contracted nature of the operation. This would include liability, property and casualty, workers' compensation, etc., subject to the underwriting and eligibility policies of the pool, carrier, etc. Any exclusions of coverage; i.e., pollution hazard, etc., would be the responsibility of OCLI.

**10. Financial Reports:**

The County shall provide the OCLI Board with monthly landfill expense reports, which reports shall itemize all monies expended by the County and OCLI for landfill operations. Such reports shall be provided to the Board within sixty (60) days of the end of each month. The County's administrative and indirect expenses will be estimated by the County staff upon request of the OCLI Board.

## ARTICLE 27

### Cheraw Historic Preservation Advisory Board

*Intergovernmental Agreement*
*2004*

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between the BOARD OF COUNTY COMMISSIONERS OF OTERO COUNTY, COLORADO, hereinafter referred to as "County," and the TOWN OF CHERAW, a Municipal corporation, hereinafter referred to as "Town."

WHEREAS, the Town is a political subdivision of the State of Colorado, incorporated as a statutory town pursuant to Title 31, C.R.S., and its boundaries are located wholly within the County of Otero, State of Colorado; and

WHEREAS, the County is a political subdivision of the State of Colorado, as organized, existing and operating pursuant to Title 30, C.R.S.; and

WHEREAS, the Colorado Constitution, Article 14, Section 18, and Section 29-1-201, et seq., C.R.S., authorize political subdivisions to enter into intergovernmental agreements for the mutual benefit of both parties; and

WHEREAS, the Board of County Commissioners of Otero County, Colorado, finds that the economic, cultural and aesthetic standing of Otero County cannot be maintained if the heritage of the County is disregarded; and

WHEREAS, the Board of County Commissioners of Otero County, Colorado, finds and declares that the protection, preservation and enhancement of the County's cultural historic and architectural heritage is essential to the public health, safety and welfare; and

WHEREAS, the Board of County Commissioners of Otero County, Colorado, is authorized, pursuant to Section 30-11-107(1)(bb), C.R.S., to provide for the preservation oaf the cultural historic and architectural history within the County.

NOW, THEREFORE, based upon good and valuable consideration, the receipt of which is acknowledged, the parties hereby agree as follows:

1. The Town of Cheraw authorizes Otero County to form a Historic Preservation Advisory Board, whose function it will be to designate historic buildings, landmarks and sites, located in the Town, and provide for the preservation thereof.

## ARTICLE 28

### City of Aurora Utility Enterprise

*Amendment to IGA*
*February 7, 2005*

This Amendment One to the Intergovernmental Agreement between Otero County, Colorado, and the City of Aurora, Colorado, acting by and through its Utility Enterprise ("Amendment Agreement") is made and entered into this 7th day of February, 2005, by and between the Board of County Commissioners of Otero County ("Otero County"), whose address is Third & Colorado, P. O. Box 511, La Junta, CO 81050, and the City of Aurora, Colorado, a municipal corporation of the counties of Adams, Arapahoe and Douglas, acting by and through its Utility Enterprise ("Aurora"), whose address is 15151 East Alameda Parkway, Suite 3600, Aurora, CO 80112.

WITNESSETH:

WHEREAS, Aurora has made certain agreements concerning payments to Otero County pursuant to an Intergovernmental Agreement with Otero County dated October 29, 2001, recorded at Book 1049, Page 140 in the Otero County, Colorado Clerk and Recorder's office ("Otero IGA"); and

WHEREAS, Otero County collects taxes on behalf of the Rocky Ford School District R-2 ("School District") and would pursuant to the Otero IGA transmit to the School District the appropriate portion of Aurora's Otero IGA payments ("School District Payments"); and

WHEREAS, pursuant to Paragraph 3 of the Otero IGA, Aurora has reached an agreement with the School District for payment of any funds that the School District would have received under the Otero IGA; and

WHEREAS, the School District has created the Foundation for Rocky Ford Schools ("Foundation") to receive and disburse funds, property and gifts of any kind exclusively for educational purposes for the benefit of the School District; and

WHEREAS, the School District desires to have funds that it would have been otherwise entitled to receive from Aurora pursuant to the Otero IGA and this Amendment Agreement assigned directly to the Foundation; and

WHEREAS, Aurora and the School District desire to enhance the effectiveness of the School District Payments by accelerating the payments from ninety (90) years to five (5) years; and

WHEREAS, Otero County is willing to accommodate the aforesaid desire of the School District to obtain direct and accelerated payments.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants, payments and agreements contained herein, and other good and valuable consideration, the adequacy, sufficiency in receipt of which is hereby acknowledged, the Parties hereto agree as follows:

**1. Otero IGA School District Payments.**

Aurora and the School District, pursuant to that certain Intergovernmental Agreement between them ("School District IGA"), executed contemporaneously with this Amendment Agreement, have agreed that, hereinafter, Aurora will make the School District payments which would have been made under the Otero IGA directly to the Foundation for Rocky Ford Schools ("Foundation"). Otero County agrees that, hereinafter, the School District Payments will be made directly to the Foundation and no longer to Otero County.

**2. Foundation Payments.**

Pursuant to the School District IGA, Aurora, the School District and the Foundation have agreed that, if Aurora would make five (5) consecutive annual payments of three hundred thousand dollars ($300,000.00) each to the Foundation, such payments would equal the full amount of any and all payments that would have been due or collected by the School District under the Otero IGA for the entire remaining term of that Otero IGA. Accordingly, pursuant to the School District IGA, Aurora has agreed to pay to the Foundation three hundred thousand dollars ($300,000.00) on or before April 15 of each year, from 2005 through 2009.

**3. Otero IGA Payment Reduction.**

Otero County agrees that payments from Aurora contemplated under Paragraph 1 of the Otero IGA will no longer be calculated to include any assessments on behalf of the School District whatsoever, unless payments to the Foundation are not made in accordance with the School District IGA. Pursuant to the School District IGA, the School District and the Foundation have agreed that they will no longer request that Otero County collect from Aurora or make payments to either the School District or the Foundation for the purposes set forth in Paragraph 1 of the Otero IGA unless payments to the Foundation are not made in accordance with the School District IGA.

**4. Notice.**

Any notices, demands or other communications required or desired to be given under any provision of this Amendment Agreement shall be given in writing, delivered personally or sent by certified mail, return receipt requested, postage prepaid, addressed as follows:

To Aurora:

Director of Utilities
City of Aurora
15151 East Alameda Parkway
Aurora, CO 80012

AND

To Otero County:

Chairman, Board of County Commissioners
Third & Colorado
P.O. Box 511
La Junta, CO 81050

or at any other such address as either party may hereinafter from time to time designate by written notice to the other party given in accordance with this Paragraph. Notice shall be effective upon receipt.

**5. Entire Agreement and Otero IGA Otherwise Unchanged.**

This Amendment Agreement represents the entire agreement of the Parties, and no Party has relied upon any fact or representation not expressly set forth herein. There are no promises, terms, conditions or obligations other than those contained herein; and this Amendment Agreement supersedes all previous communications, representations or agreements, written or oral, between the Parties concerning the subject of this Amendment Agreement. All provisions, terms and agreements of the Otero IGA not specifically modified by this Amendment Agreement remain as set forth in that Otero IGA.

**6. Headings for Convenience Only.**

Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Amendment Agreement.

**7. No limitation on Ability to Raise Funds.**

Nothing in this Amendment Agreement is intended to limit Aurora's ability to raise necessary funds to pay for the property that is the subject of this Amendment Agreement through any form of internal or external borrowing that may be available to Aurora.

**8. Nonwaiver of Governmental Immunity.**

The Parties hereto understand and agree that Otero County and Aurora, their officers and their employees, are relying on, and do not waive or intend to waive, by any provision of this Amendment Agreement, the monetary limitations (currently one hundred fifty thousand dollars [$150,000.00[ per person and six hundred thousand dollars [$600,000.00] per occurrence) or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as it is from time to time amended, or otherwise available to Otero County or Aurora, their officers or their employees.

## ARTICLE 29

## Otero County 4-H Livestock Building

*Amendment to Operating Agreement*
*February 21, 2005*

THIS AMENDMENT TO OPERATING AGREEMENT is made and entered into this 21st day of February, 2005, between BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM, acting by and through CSUCE for the benefit of OTERO COUNTY 4-H COUNCIL, hereinafter referred to as "Council," and the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF OTERO, STATE OF COLORADO, hereinafter referred to as the "County."

**WITNESSETH:**

WHEREAS, the Council and the County previously entered into an Operating Agreement dated July 6, 2004, as concerns the building known as the Otero County 4-H Livestock Building; and

WHEREAS, the parties desire to amend that Operating Agreement in certain respects; and

WHEREAS, the parties wish to memorialize their modification to the Operating Agreement in writing;

NOW, THEREFORE, it is hereby agreed as follows:

1. The parties agree that paragraph 4 in the Operating Agreement dated July 6, 2004, shall be amended as follows:

4. The County is currently providing insurance under its insurance policy and will continue to do so in the minimum amount of one hundred fifty thousand dollars ($150,00.00) per claim and six hundred thousand dollars ($600,000.00) in the aggregate on liability and an amount sufficient to cover the replacement costs of the building. The County shall further name the Association as an additional insured or loss payee on the policy, as well as the United States of America, acting through the Department of Agriculture, understanding that additional insured coverage will only cover for claims or losses related to County-sponsored functions and purposes. The County will provide no insurance for functions and purposes sponsored by other entities, and those entities will be responsible for obtaining their own liability and other insurance as concerns their operations. The County's insurance coverage only extends to County-sponsored functions and purposes.

2. The parties agree that all other terms and provisions of the Operating Agreement of July 6, 2004, shall remain in full force and effect except as amended by this Amendment.

## ARTICLE 30

### Las Animas County Jail Services

*Intergovernmental Agreement*
*March 1, 2005*

THIS AGREEMENT, made this 1st day of March, 2005, by and between the BOARD OF COUNTY COMMISSIONERS OF LAS ANIMAS COUNTY, hereinafter referred to as "Las Animas COUNTY," and BOARD OF COUNTY COMMISSIONERS OF OTERO COUNTY, hereinafter referred to as "Otero COUNTY."

**WITNESSETH:**

WHEREAS, Otero COUNTY does not have sufficient capacity to properly and sufficiently house prisoners which are being held for hearings or trails or are being detained following sentencing; and

WHEREAS, Las Animas COUNTY is willing to provide space in its County jail at various times to assist the Otero COUNTY in housing and detaining its prisoners; and

WHEREAS, Las Animas COUNTY is a political subdivision of the State of Colorado and is organized and existing and operating under the laws of the State of Colorado; and

WHEREAS, the Colorado Constitution, Article 14, Section 18, and Section 29-1-201, et seq., C.R.S. 1973, authorizes political subdivisions of the State of Colorado to enter into intergovernmental agreements for the mutual benefit of both parties.

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and stipulations hereinafter set forth, and for such other and further consideration, the receipt and sufficiency of which are hereby acknowledged, Las Animas COUNTY and Otero COUNTY mutually agree, covenant and stipulate as follows:

1. Las Animas COUNTY hereby agrees to provide detention in its County jail for prisoners and detainees of Otero COUNTY on space available basis; that is to say, Las Animas COUNTY shall only provide detention facilities, if any, when space is available in the Las Animas COUNTY jail based upon the sole discretion and determination of the Las Animas County Sheriff.

2. The term of the Agreement shall be indefinite, beginning March 1, 2005.

3. In the event Las Animas COUNTY accepts prisoners and detainees from Otero COUNTY, Las Animas COUNTY shall be responsible to confine and supervise the detainees and prisoners that are confined in the Las Animas COUNTY jail. Las Animas COUNTY shall provide detainees and prisoners such care and treatment, including subsistence, provide for their physical needs, make available such other programs of training and treatment which are consistent with Las Animas COUNTY's present programs offered to Las Animas COUNTY detainees and prisoners, retain them in a safe, supervised custody, maintain proper discipline and control, and to otherwise comply with applicable state and federal laws except as otherwise provided herein.

4. Otero COUNTY agrees to provide any and all ordinary and emergency medical treatment and agrees to indemnify and hold Las Animas COUNTY harmless for any and all such expenses.

5. For and in consideration of the detention services referred to above, Otero COUNTY agrees to pay Las Animas COUNTY at the rate of forty-five dollars ($45.00) per prisoner or detainee per day. In determining this per diem rate of reimbursement, Otero COUNTY shall be required to pay Las Animas COUNTY a full day rate of thirty dollars ($30.00) for any fraction of a day that a prisoner or detainee is present and housed in the Las Animas COUNTY jail. The payment as set forth hereinabove shall be paid on a monthly basis at the normal and customary times Otero COUNTY pays its monthly bills. Las Animas COUNTY hereby reserves the right, and Otero COUNTY stipulates and agrees, that Las Animas COUNTY may adjust or modify the rate hereinabove set forth at any time during this agreement based upon a cost allocation audit by Las Animas COUNTY. Las Animas COUNTY shall be required to give Otero COUNTY thirty (30) days' written notice of its intent to increase the per diem rate of reimbursement hereunder.

6. Las Animas COUNTY shall not be subject to the direct supervision or control of Otero COUNTY in terms of management and operation of the Las Animas COUNTY jail; however, Otero COUNTY shall have the right to inspect the Las Animas COUNTY jail upon a twenty-four-hour notice.

7. Otero COUNTY agrees to provide any and all transportation of a prisoner or detainee to or from the jail, to or from the Court, and to or from any other hearing and/or point as required by any Court.

8. A. Otero COUNTY shall save, and hold harmless and indemnify Las Animas COUNTY to the extent allowed by law against any and all liability claims, and costs of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any property occurring in connection with, or in any way incident to or arising out of the occupancy, use, service, operation or performance of work under the terms of this Agreement, resulting from the negligent acts or omissions of Otero COUNTY or any of its employees or agents. In so agreeing, Otero COUNTY does not waive any defenses, immunities or limits of liability available to it under State or Federal law.

B. Las Animas COUNTY shall save and hold harmless and indemnify Otero COUNTY to the extent allowed by law against any and all liability claims, and costs of whatsoever kind and nature for injury to or death of any person or persons and for loss or damage to any property occurring in connection with, or in any way incident to or arising out of the occupancy, use, service, operation or performance of work under the terms of this Agreement, resulting from the negligent acts of omissions of Las Animas COUNTY, or

any employee, or agent of Las Animas COUNTY. In so agreeing, Las Animas COUNTY does not waive any defenses, immunities or limits of liability available to it under State or Federal law.

9. Neither party shall be entitled to assign this Agreement or any right of obligation hereunder without the express written approval of the other party.

10. This Agreement contains the final and entire agreement between the parties hereto with respect to the use of the Las Animas COUNTY jail and is intended to be an integration of all prior understandings. The parties hereto shall not be bound by terms, conditions, statements or representations not contained herein. No change or modification of this Agreement shall be valid unless the same shall be in writing and signed by the parties hereto. All agreements and covenants contained herein are severable and, in the event any of them shall be held invalid by any competent court, this Agreement shall be interpreted as if the invalid agreements and covenants were not contained herein.

11. It is the intention of the parties hereto that this Agreement and performance hereunder, and all suits and special proceedings hereunder, be construed in accordance with and under and pursuant to the laws of the State of Colorado.

## ARTICLE 31

### Crowley County Road Maintenance

*Intergovernmental Agreement*
*May 16, 2005*

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between the BOARD OF COUNTY COMMISSIONERS OF CROWLEY COUNTY, COLORADO, hereinafter referred to as "Crowley County," and the BOARD OF COUNTY COMMISSIONERS OF OTERO COUNTY, COLORADO, hereinafter referred to as "Otero County."

WHEREAS, Section 29-1-203, C.R.S., authorizes and encourages intergovernmental agreements and contracts for the purpose of governmental entities to cooperate and contract to provide a function, service or a facility; and

WHEREAS, Colorado law governing intergovernmental agreements further provides that the contracting governments shall enter into a contract which sets forth fully the purposes, powers, rights, obligations and responsibilities of the contracting parties; and

WHEREAS, Colorado law dealing with intergovernmental agreements provides that the contracts between the governing entities must be authorized by the approval of the legislative body of the entities in question; and

WHEREAS, Otero County and Crowley County wish to enter into an intergovernmental agreement regarding the maintenance of County Road 25 and County Road 31.

NOW, THEREFORE, based upon good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Crowley County agrees to maintain County Road 25 from State Highway 266 north six and one-half (6½) miles. However, the bridges on County Road 25 will be the responsibility of Otero County.

2. Otero County agrees to maintain County Road 31 from State Highway 96 south six and one-half (6½) miles.

3. The roadways listed in paragraphs 1 and 2 above are set forth in the attached map, which is incorporated herein by reference.

4. Each County agrees that it will maintain the roads as listed in this Article. Maintenance shall include the proper maintenance of the driving surface, proper drainage, sanding and snowplowing, as well as other necessary and needed maintenance to make the roads useable by the public.

5. Each County agrees that, in the event future grant funding assistance is requested for County Road 31 improvements, both Counties will participate as partners in the multi-jurisdictional request. This partnership shall include financial commitments from each partner of cash and/or in-kind contributions to meet match requirements.

6. The term of this Agreement shall be three (3) years from the date of execution, May 16, 2005, to May 16, 2008.

7 Either party shall have the exclusive right to request an extension of this Agreement for an additional three-year term, provided that the party gives written notice of its intent to request this right of extension at least thirty (30) days prior to the date the initial term of this Agreement, as set forth above, is to terminate. Such renewal shall be subject to mutual consent of both Otero County and Crowley County, and should one (1) party refuse to consent, this Agreement shall terminate.

If the parties elect to renew or extend this Agreement, Otero County and Crowley County may renegotiate any or all terms of this Agreement prior to the commencement of the new term or at any other time agreed to by the parties.

8. This Agreement may be amended at any time by further agreement of the parties placed in writing.

## ARTICLE 32

### Master Software Licensing Program

*Intergovernmental Agreement*
*October 17, 2005*

THIS AGREEMENT, made this 17th day of October, 2005, by and between Otero County, hereinafter referred to as "Enrolling Entity," and the State of Colorado, acting through the Department of Personnel and Administration, hereinafter referred to as the "State."

WHEREAS, pursuant to Section 24-110-201, C.R.S. (1997), any public procurement unit may either participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any supplies or services with one (1) or more public procurement units; and

WHEREAS, the State has negotiated master software licensing terms and conditions to permit statewide orders by State agencies, departments, institutions and political subdivision from master licensing agreements with software manufacturers and publishers; and

WHEREAS, the State is agreeing to administer such master licensing programs in accordance with the terms of such programs; and

WHEREAS, the Enrolling Entity is an eligible agency, department, institution or political subdivision under such master software licensing agreements.

NOW, THEREFORE, it is hereby agreed that:

1. The Enrolling Entity acknowledges that it has received a copy of the program and licensing terms under:

a. SLG Microsoft Select Agreement (Standalone) v. 6.1 (North America) September 1, 2003, dated (03/04/04), as amended by the Microsoft State and Local Government Select Agreement-Amendment 001, dated (03/04/04); the Microsoft Academic Select Agreement v. 6.1 (US ONLY) September 1, 2003, dated (04/13/04), as amended by the Microsoft Academic Select Agreement-Amendment 001, dated (04/13/04); Product Use Rights (Addendum A) dated June 1, 1999; SLG Microsoft Enterprise Agreement v. 6.0 (LAR Standalone) (North America) July 1, 2002, dated (02/04/03), as amended by Microsoft Enterprise Agreement Amendment-1 dated (02/04/03);

b. Novell Master License Agreement, dated (11/01/99), as amended by the State of Colorado Amendment, dated (NA);

c. Corel CLP Universal Agreement, dated (11/24/97), as amended by the CLP Universal Agreement Amendment, dated (2/14/02);

d. Lotus Passport Program, Government Contract Option and Enterprise Option Terms, dated July 1, 2000, as amended by the Amendment to Lotus Passport Program Government Contract Option and Enterprise Terms, dated December 3, 1997; and the Lotus Software Agreement, dated June 8, 2000.

2. The Enrolling Entity acknowledges that these agreements contain confidentiality provisions and use restrictions on software ordered under such agreements, and the Enrolling Entity will disseminate such limits and restrictions on use to its employees. The agreements require that enrolling entities take reasonable steps to protect software and documentation from unauthorized copying or use. Enrolling entities may not disassemble or decompile the software. The agreements also contain specific use audit, self-audit and reporting, certification provisions to validate compliance with license restrictions. The parties agree that the Department of Personnel and Administration shall not be responsible for any liability arising out of orders placed by the Enrolling Entity or any costs associated with audits or purchases of additional license rights after audits under these agreements. Collection of and/or disagreements over payment are the sole responsibility of the reseller and the individual Enrolling Entity. In the event an Enrolling Entity is determined to be liable for the costs of an audit, the Enrolling Entity is responsible for any such costs under this agreements. Enrolling entities shall, at their own expense, satisfy reporting obligations under these agreements with respect to their own use of software ordered from these agreements.

3. The Enrolling Entity will comply with the terms in the then-current state award in placing orders under this program, through the reseller administering the program. The Enrolling Entity will furnish updated information concerning the identity of its program point of contact to the reseller. The Enrolling Entity's point of contact for the purposes of these programs is:

Deni Thompson
Office Manager – Otero County Administration
13 West Third
P.O. Box 511

La Junta, CO 81050
719-383-3005

4. The Enrolling Entity shall not distribute or redistribute or permit any of its employees to distribute or redistribute files, codes or software (as those terms are used in the Microsoft Product Use Rights, dated June 1, 1999, and as later revised). This prohibition shall apply to any use, distribution or redistribution of files, code or software that is subject to an express duty of indemnification by the State in the Microsoft Product Use Rights, as it may be amended from time to time.

5. No software product or licenses may be sublicensed, transferred or assigned (such as to an "Affiliate" entity as that term may be used in the Microsoft Select Agreements) to another entity except to the extent that such sublicense, transfer or assignment is permitted under the terms of the applicable program, and then only if such entity has executed an Intergovernmental Master Software Licensing Program Enrollment Agreement. The Enrolling Entity shall remain responsible for all acts and omissions of such entities to which it sublicenses, transfers or assigns such software products or licenses. Written notice of the terms of such sublicense, transfer or assignment shall be provided to the reseller in a form acceptable to the State Purchasing Office.

6. To the extent authorized by law, the Enrolling Entity shall indemnify, save and hold harmless the Department of Personnel, State of Colorado, against any and all claims, damages, liability and court awards, including costs, expenses and attorney fees, incurred as a result of breach of obligations under this Agreement or the program and/or licensing agreements referred to herein by the Enrolling Entity or its employees, agents or assignees.

## ARTICLE 33

### Allocation of Mineral Leasing Funds

*Resolution No. 2006-007*
*May 13, 2006*

WHEREAS, pursuant to Section 35 of the federal "Mineral Lands Leasing Act," the State Treasurer is directed to deposit and distribute funds received by the State of Colorado from the United States as the State's share of sales, bonuses, royalties and rentals of public lands within this State, for the benefit of public schools and political subdivisions of this State; and

WHEREAS, pursuant to Section 34-63-102, C.R.S., a mineral leasing fund is established per the provisions of the "the "Mineral Lands Leasing Act"; and

WHEREAS, Section 34-63-102, C.R.S., provides that at least twenty-five percent (25%) of the County share of the federal Mineral Lease distribution be paid to school districts within the County; and

WHEREAS, Colorado counties are required to report annually to the State Treasurer's office regarding the percentage breakdown of distribution for each school district within its County boundaries.

NOW, THEREFORE, BE IT RESOLVED:

1. The Board of Otero County Commissioners authorizes that twenty-five percent (25%) of Otero County's share of Federal Mineral Lease funds be distributed to the school districts situated within its boundaries.

2. The Board of Otero County Commissioners authorizes the distribution of such funds on the following percentages:

| *FY 2005–2006* | | | |
|---|---|---|---|
| ***School District*** | ***Funded Pupil Count*** | ***Factor*** | ***Percentage*** |
| East Otero R-1 | 1,615.5 | 0.4598 = | 45.98% |
| Rocky Ford R-2 | 829.4 | 0.2360 = | 23.60% |
| Manzanola 3-J | 192.5 | 0.0548 = | 5.48% |
| Fowler R-4J | 294.0 | 0.0837 = | 8.37% |
| Cheraw 31 | 206.0 | 0.0586 = | 5.86% |
| Swink 33 | 376.0 | 0.1071 = | 10.71% |
| **County Total** | **3,513.7** | **1.0000** | **100.00%** |

## ARTICLE 34

### Colorado Local Government Liquid Asset Trust

*Resolution No. 2006-08*
*June 12, 2006*

WHEREAS, pursuant to Part 7, Article 75 of Title 24, C.R.S., it is lawful for any local government to pool any moneys in its treasurer, which are not immediately required to be disbursed, with the same such moneys in the treasury of any other local government and to deposit such moneys in a local government investment pool trust fund in order to take advantage of short-term investments and maximize net interest earnings; and

WHEREAS, the Trust is a statutory trust formed under the laws of the State of Colorado in accordance with the provisions of Parts 6 and 7, Article 75 of Title 24 and Articles 10.5 and 47 of Title 11, C.R.S., regarding the investing, pooling for investment and protection of public funds; and

WHEREAS, Otero County desires to become a participant in the Trust.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of the County of Otero, Colorado, that:

1. Otero County hereby approves and adopts, and thereby joins as a Participant with other Local Governments, pursuant to Part 7, Article 75, Title 24, C.R.S., that certain Amended and Restated Indenture of Trust entitled the "Colorado Local Government Liquid Asset Trust dated October 3, 2003," as amended from time to time, the terms of which are incorporated herein by this reference, and a copy of which shall be filed with the minutes of the meeting at which this Resolution was adopted.

2. The Designee and Authorized Signatories are those persons listed on the Trust Registration Form attached hereto and incorporated herein. The Authorized Signatories are authorized by the Participant to direct the investment of such Participant's investment funds.

3. The Designee and Authorized signatories may be changed from time to time by written notice to COLOTRUST.

4. The Trust has two investment portfolios: COLOTRUST PRIME, comprised of U.S. Treasury securities, and COLOTRUST PLUS+, comprised of U.S. Treasury securities, U.S. Agency securities, and the highest rated commercial paper. The Designee is hereby authorized to invest in:

___ COLOTRUST PRIME

XX COLOTRUST PLUS+

___ Both

Adopted this 12th day of June, 2006.

**Colorado Local Government Liquid Asset Trust**

**Indenture of Trust**

**October 3, 2003**

RESTATED AND AMENDED INDENTURE OF TRUST is adopted to be effective October 3, 2003.

WHEREAS, the Colorado Local Government Liquid Asset Trust was originally created by an Indenture of Trust dated January 1, 1985; and

WHEREAS, that Indenture of Trust was amended on October 12, 1987, January 1, 1996, April 15, 1999, and December 6, 2002; and

WHEREAS, those Indentures of Trust were adopted pursuant to the provisions of Art 7 of Article 75 of Title 24, C.R.S., entitled "Investment Funds – Local Government Pooling" (the "Pooling Act"), whereby any county, city and county, city, town, school district or special district, or other political subdivision of the State, or any department, agency or instrumentality thereof, or any political or public corporation of the State (a "Local Government") is authorized to pool any moneys in the treasury of such Local Government which are not immediately required to be disbursed, with the same such moneys in the treasury of any other Local Government in order to take advantage of short-term investments and maximize net interest earnings; and

WHEREAS, pursuant to those Indentures of Trust, numerous Local Governments (the "Participants") have pooled such moneys and acquired beneficial interests in the assets of the Colorado Local Government Liquid Asset Trust (the "Trust"); and

WHEREAS, it is the intent and purpose of this Restated and Amendment Indenture of Trust (the "Indenture') to provide for the investment and deposit of the pooled funds in only those legal investments for Local Governments in accordance with Part 6 of Article 75 of Title 24, C.R.S., entitled "Funds – Legal Investments (the "Legal Investments Act"), and Articles 10.5 and 47 of Title 11, C.R.S., entitled the Public Deposits Protection Act (the "PDPA") and

WHEREAS, the beneficial interests in the assets of the trust fund created pursuant to the provisions of this Indenture shall be divided into nontransferable shares; and

WHEREAS, the Participants anticipate that other Local Governments of the State of Colorado may wish to become Participants by adopting this Indenture; and

WHEREAS, this Amended and Restated Indenture of Trust incorporates various amendments up to and including the amendments made by the Board of Trustees to be effective October 3, 2003.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the parties hereto, now and hereafter added pursuant to the provisions herein, mutually undertake, promise and agree for themselves, their respective representatives, successors and assigns, that all moneys, assets, securities, funds and property now or hereafter acquired by the Trust under this Indenture, shall be held and managed in trust for the equal and proportionate

benefit of the holders of record from time to time of shares of beneficial interests herein, without privilege, priority or distinction among such holders, and subject to the terms, covenants, conditions, purpose and provisions hereof.

*Article 1*
*The Trust*

**1.1. Name.**

The name of the Trust created by this Indenture shall be "Colorado Local Government Liquid Asset Trust," and the Board shall conduct the Trust's activities, execute all documents and sue or be sued under that name. The Board may use such other designations, including COLOTRUST, and they may adopt such other name or names for the Trust as they deem proper, and the Trust may hold property and conduct its activities under such designations or names. The Board shall take such action as they, acting with the advice of counsel, shall deem necessary or appropriate to file or register such names in accordance with the laws of the State of Colorado or the United States of America so as to protect and reserve the right of the Trust in and to such names.

**1.2. Purpose, Participant Requirements; and Changes of Incumbency.**

a. The purpose of the Trust is to provide a local government investment pool trust pursuant to the Pooling Act through which a Local Government may pool any moneys in its treasury which are not immediately required to be disbursed, with the same such moneys in the treasury of any other Local Government in order to take advantage of short-term investments and maximize net investment earnings in accordance with the provisions of the Legal Investments Act, with the PDPA and other laws of the State of Colorado, from time to time in effect, governing the investment of moneys in the treasury of a Local Government.

b. Only those Local Governments which have adopted this Indenture and have complied with its provisions may become Participants.

c. Each Local Government adopting and executing this Indenture and otherwise complying with the provisions hereof shall become a Participant only upon depositing into the Trust the minimum total investment as that amount is set, from time to time, by the Board.

**1.3. Location.**

The Trust shall maintain an office of record in the State of Colorado which shall be the repository for the primary records of the Trust, and may maintain such other offices or places of business as the Board may from time to time determine. The office of record may be changed from time to time by resolution of the Board, and notice of such change of the office of record shall be given to each Participant.

**1.4. Nature and Indenture of Trust.**

a. The Trust shall be a statutory trust organized and existing under the laws of the State of Colorado. The Trust is not intended to be, shall not be deemed to be and shall not be treated as a general partnership, limited partnership, joint venture, corporation, investment company or joint stock company. The Participants shall be beneficiaries of the Trust, and their relationship to the Trust shall be solely in their capacity as Participants and beneficiaries in accordance with the rights conferred upon them hereunder.

b. The Indenture is an agreement of indefinite term regarding deposit, redeposit, investment, reinvestment and withdrawal of Local Government funds in accordance with the Pooling Act, the Legal Investments Act and the PDPA.

c. The Board may authorize the creation of one (1) or more different portfolios; provided however, that each such portfolio shall conform in all respects to the requirements of this Indenture.

d. The Board may authorize the use of the names "Colorado Local Government Liquid Asset Trust" and "COLOTRUST" in conjunction with other products and services which provide investment, financial or other cash management services to Local Governments.

**1.5. Definitions.**

As used in this Indenture, the following terms shall have the following meanings. These definitions are intended to supplement the definitions contained in Part 7 of Article 75 of Title 24, C.R.S., and in the event of any conflicts, the more restrictive shall apply.

*Administrative Agreement* shall mean the agreement between the Board on behalf of the Trust and the Administrator.

*Administrator* shall mean the person or persons appointed, employed or contracted with by the Board on behalf of the Trust pursuant to Article IV hereof.

*Affiliate* shall mean, with respect to any person, another person directly or indirectly controlled, controlled by or under common control with such person, or any officer, director, partner or employee of such person.

*Board* shall mean the Board of Trustees elected by the Participants to administer and supervise the affairs of the Trust.

*Custodian* shall mean any person or persons appointed, employed or contracted with by the Board on behalf of the Trust pursuant to Article V hereof.

*Custodian Agreement* shall mean the agreement between the Board on behalf of the Trust and the Custodian.

*Designee* shall mean the individual designated as such by the Participant in writing. Such Designee shall be the legal representative to act for and on behalf of each Participant. Each Participant may designate Alternate Designees.

*Indenture* shall mean this Indenture of Trust as it may be amended from time to time.

*Information Statement* shall mean an information statement or other descriptive document adopted as such by the Board from time to time and distributed to Participants and potential Participants.

*Investment Advisor* shall mean any person or persons appointed, employed or contracted with by the Board on behalf of the Trust pursuant to Article VI hereof and shall include any Investment Advisor Representative.

*Investment Advisor Agreement* shall mean the agreement between the Board on behalf of the Trust and the Investment Advisor.

*Legal Investments Act* shall mean Part 6, Article 75, Title 24, C.R.S., as amended and as it may be amended from time to time.

*Local Government* shall mean any county, city and county, city, town, school district, special district or other political subdivision of the State of Colorado, or any department, agency or instrumentality thereof, or any political or public corporation of the State of Colorado.

*Participants* shall mean the Local Governments which are the Participants as of the date this Restated and Amended Indenture is adopted and the Local Governments which adopt and execute this Indenture and which comply with its terms.

*PDPA* shall mean Articles 10.5 and 47 of Title 11, C.R.S., as amended and as they may be amended from time to time.

*Permitted Investments* shall mean the investments referred to in Section 7.3.b.

*Person* shall mean and include individuals, corporations, limited partnerships, general partnerships, joint stock companies or associations, joint ventures, associations, companies, trusts, banks, trust companies, land trust, business trust or other entities (whether or not legal entities) and governments and agencies and political subdivisions thereof.

The *Pooling Act* shall mean Part 7 of Article 75 of Title 24, C.R.S., as amended and as it may be amended from time to time.

*Responsible Person* shall mean a person listed on the United States Treasury Department List of Primary Dealers or any equivalent successor to such list, or a savings and loan or a bank which is organized and existing under the laws of the United States of America or any state thereof and which has assets in excess of five hundred million dollars ($500,000,000.00).

*Share* shall mean the unit used to denominate and measure the respective pro rata beneficial interests of the Participants in the Trust Property as described in Article IX.

*Trust* shall mean the trust created by this Indenture of Trust.

*Trust Property* shall mean, as of any particular time, any and all property, real, personal or otherwise, tangible or intangible, which is transferred, conveyed or paid to the Trust, and all income, profits and gains therefrom and which, at such time, is owned or held by, or for the account of, the Trust.

*Trustee* shall mean any member of the Board.

*Article 2*
*The Participants*

**2.1. General Powers.**

The Participants shall have full, exclusive and absolute power of supervision over the Trust and the affairs of the Trust.

**2.2. Election of Board of Trustees.**

The Participants shall elect the members of the Board of Trustees.

**2.3. Exercise of Participants' Rights.**

All rights of the Participants as set forth in this Indenture shall be exercised by their respective Designee or Alternate Designee. Wherever in this Indenture action is required by or allowed to a Participant, such action shall be taken by the Designee or Alternate Designee on behalf of the Participant. All notices required to be sent to Participants shall be sent to the Designee.

**2.4. Voting.**

Each Participant through its Designee or an Alternate Designee shall be entitled to one (1) vote as a matter of right with respect to the following matters:

a. Election of the Board;

b. Amendment of this Indenture;

c. Termination of the Trust; and

d. Reorganization of the Trust.

It shall not be necessary for any minimum number of shares other than one (1) to be allocated to a Participant for the Participant to be entitled to vote.

**2.5. Annual Vote.**

The annual vote shall be completed by February 1 of each year. The vote shall include the election of the members of the Board and may include such other questions or consideration of such other matters as Participants may be entitled to vote upon as the Board may determine. The Board shall provide for the nomination of candidates, the mailing of the ballots and for such other matters deemed necessary or desirable for the conduct of the election.

**2.6. Right to Initiate a Vote of Participants.**

The Participants shall, by an instrument or concurrent instruments in writing delivered to the Board signed by the lesser of twenty-five (25) or ten percent (10%) of the Participants, have the right to initiate a vote of the Participants as to any matter described in Section 2.5. Within sixty (60) days of receipt of such instrument or instruments, the Board shall cause a ballot to be sent to each Designee, setting forth the matter to be voted on and the manner in which such ballots should be executed and delivered.

**2.7. Inspection of Records.**

The records of the Trust shall be open to inspection as provided by the Pooling Act.

**2.8. Meetings of the Participants.**

a. Meetings of the Participants may be called at any time by a majority of the Board and shall be called upon written request of the lesser of twenty-five (25) or ten percent (10%) of the Designees. Such request shall specify the purpose or purposes for which such meeting is to be called. Any such meeting shall be held within the State of Colorado at such place, on such day and at such time as the Board shall designate, provided that a meeting requested by the Designees shall be held within sixty (60) days of such request or on such other date contained in the request, but not less than thirty (30) days from the date of the request.

b. Ten percent (10%) of the Designees entitled to vote shall constitute a quorum. A Designee may vote in person or by proxy. Any Designee may attend by conference telephone or similar communication equipment if all persons participating are able to communicate with each other.

**2.9. Notice to Participants.**

a. Any notice required to be given to the Participants, including notice of all meetings of the Participants, shall be given by mailing the notice to the Designee of each Participant at the address shown in the records of the Trust.

b. In the case of a meeting of the Participants, any notice shall be mailed at least twenty (20) days before the meeting. The notice shall state the time, place and purposes of the meeting. Only business stated in the notice of a meeting shall be considered at such meeting. Any adjourned meeting may be held as adjourned without further notice.

c. Any notice required by Part 4, Article 6, Title 24, shall also be given. Any publication or posting deemed necessary or advisable shall be made in such newspapers and posted at such places as designated by the Board.

**2.10. Proxies.**

At any meeting of the Participants, any Designee entitled to vote may vote by proxy, provided that no proxy shall be voted at any meeting unless it shall have been placed on file with the Secretary of the Trust, or with such other officer or agent of the Trust as the Secretary of the Trust may direct. Pursuant to a resolution of a majority of the Board, proxies may be solicited in the name of one (1) or more of the officers of the Trust. All proxies shall be revocable at the option of the Designee at any time prior to the vote.

**2.11. Record Date of Meetings and Votes.**

For the purposes of determining the Participants that are entitled to vote or act at any meeting or any adjournment thereof, or for the purpose of any other action, the Board may fix a date no more than thirty (30) days prior to the date of any

meeting or vote of the Participants or other action as a record date for mailing notice to the Participants. No Participant shall be entitled to vote at such meeting or any adjournment thereof, or to cast a ballot in such vote, unless it has shares allocated to it at the time of the meeting. Any Participant becoming such prior to the meeting shall be entitled to vote at such meeting or any adjournment thereof or to cast a ballot in such vote and to be treated as a Participant for all purposes.

**2.12 Number of Votes.**

Only Participants of record shall be entitled to vote, and each Participant shall be entitled to one (1) vote without regard to the number of shares allocated to it. A proxy purporting to be executed by or on behalf of a Participant shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger. Those Participants not involved in the challenge shall determine any such challenge and their decision shall be final. The approval of a simple majority of those voting shall be sufficient to approve any action at a meeting or other election of the Participants except as provided in Sections 7.8 and 14.1.

## *Article 3*
## *The Board of Trustees*

**3.1. General Powers.**

Subject to the rights of the Participants as provided herein, the Board shall have, without other or further authorization, power to administer the Trust and the affairs of the Trust. The Board may do and perform such acts and things as in their sole judgment and discretion are necessary and proper for the administration of the Trust and the investment of the Trust Property, but shall invest with the degree of judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of the property of another, not in regard to speculation, but in regard to the permanent disposition of funds, considering the probable income as well as the probable safety of capital.

**3.2. Annual Report.**

a. The Board shall cause to be prepared at least annually:

i. A report of operations containing a statement of assets and liabilities and statements of operations and of changes in net assets of the Trust prepared in conformity with United States generally accepted accounting principles;

ii. An opinion of an independent certified public accountant on such financial statements based on an examination of the books and records of the Trust made in accordance with United States generally accepted auditing standards;

iii. Sufficient information to establish compliance with the investment policy established in this Indenture; and

iv. Such other information as may be required by the Pooling Act or by regulations promulgated by the Securities Commissioner of the State of Colorado.

b. The Board shall cause copies of the annual report to be mailed to all Participants of record within five (5) business days from the receipt thereof.

**3.3. Other Reports.**

The Board shall also furnish to the Participants, at least quarterly, a report of operations, including a statement of assets and liabilities and statements of operations and of changes in net assets of the Trust and such other information as the Board may include or as may be required by the Pooling Act or by regulations promulgated by the Securities Commissioner of the State of Colorado.

**3.4. Legal Title.**

Title to all of the Trust Property shall be vested in the Trust on behalf of the Participants who shall be the beneficial owners. The Trust shall have full and complete power to cause legal title to any Trust property to be held, on behalf of the Participants, by or in the name of the Trust, or in the name of any other person as nominee, on such terms, in such manner and with such powers as the Board may determine, so long as in its judgment the interest of the Trust is adequately protected.

**3.5. Execution of Documents.**

All documents or instruments which require a signature shall be signed by the Chairman or by such other person as so designated by resolution of the Board. The Board may authorize the use of facsimile signatures.

**3.6. Delegation; Committees; Bylaws; Policies; Procedures.**

The Board shall have full and complete power to delegate from time to time to one (1) or more of their number (who may be designated as constituting a Committee of the Board) or to officers, employees or agents of the Trust (including without limitation, the Administrator, the Custodian or the Investment Advisor) the doing of such acts and things and the execution of such instruments as the Board may from time to time deem expedient and appropriate in the furtherance of the business affairs and purposes of the Trust. The Board may adopt and, from time to time, amend or repeal bylaws, policies or procedures for the conduct of the business of the Trust. Such bylaws, policies or procedures may, among other things, define the duties of the respective officers, agents, employees and representatives of the Trust.

**3.7. Payment of Expenses.**

a. The Board shall have full and complete power:

i. To incur and pay any charges or expenses which, in the opinion of the Board, are necessary or incidental to or proper for carrying out any of the purposes of this Indenture;

ii. To reimburse others for the payment therefor; and

iii. To pay appropriate compensation or fees from the funds of the Trust to persons with whom the Board has contracted or transacted business.

b. The Board shall fix the compensation, if any, of all officers and employees of the Trust. The members of the Board shall not be paid compensation for their general services as such. Board members may be reimbursed for expenses reasonably incurred on behalf of the Board and for attendance at Board meetings and other Trust-related activities.

**3.8. Fiscal Year; Accounts.**

The Board shall have full and complete power to determine the fiscal year of the Trust and the method or form in which its accounts shall be kept and from time to time to change the fiscal year or method or form of accounts. Unless otherwise determined by the Board, the fiscal year of the Trust shall commence on January 1 and terminate on December 31.

**3.9. Power to Contract, Appoint, Retain and Employ.**

a. The Board is responsible for the investments of the Trust consistent with the investment policy established in this Indenture and for the general administration of the business and affairs of the Trust conducted by officers, agents, employees, administrators, investment advisors, distributors or independent contractors of the Trust. However, members of the Board are not required to devote their entire time to the business and affairs of the Trust or to personally conduct the routine business of the Trust. Consistent with their responsibilities, the Board may appoint, employ, retain or contract on behalf of the Trust with any persons the Board may deem necessary or desirable for the transaction of the affairs of the Trust, to:

i. Serve as Investment Advisor to the Trust;

ii. Serve as Administrator of the Trust;

iii. Serve as Custodian for the Trust;

iv. Furnish reports to the Trust and provide research, economic and statistical data in connection with the Trust's investments;

v. Act as consultants, accountants, technical advisors, attorneys, brokers, underwriters, corporate fiduciaries, escrow agents, depositories, custodians, agents for collection, insurers or insurance agents, or in any other capacity deemed by the Board to be necessary or desirable;

vi. Act as attorney-in-fact or agent in the purchase or sale or other disposition of investments, and in the handling, prosecuting or other enforcement of any lien or security securing investments; or

vii. Assist in the performance of such other functions necessary in the management of the Trust.

b. The same person may serve simultaneously as the Administrator and as the Investment Advisor, but no person serving as the Administrator or the Investment Advisor may serve as the Custodian.

**3.10. Insurance.**

The Board shall have full and complete power to purchase and pay for, entirely out of Trust property, insurance policies insuring the Trust, the Trustees, officers, employees and agents of the Trust individually against all claims and liabilities of every nature arising by reason of holding or having held any such office or position, or by reason of any action alleged to have been taken or omitted by the Trust or any such person, officer, employee and agent, including any action taken or omitted that may be determined to constitute negligence, whether or not the Trust would have the power to indemnify such person against such liability.

**3.11. Seal.**

The Board shall have full and complete power to adopt and use a seal for the Trust, but, unless otherwise required by the Board, it shall not be necessary for the seal to be placed on, and its absence shall not impair the validity of, any document, instrument or other paper executed and delivered by or on behalf of the Trust.

**3.12. Remedies.**

Notwithstanding any provision in this Indenture, when the Board deems that there is a significant risk that an obligor to the Trust may default or is in default under the terms of any obligation to the Trust, the Board shall have full and complete power to pursue any remedies permitted by law which, in their sole judgment, are in the interests of the Trust, and the Board shall have full and complete power to enter into any investment, commitment or obligation of the Trust resulting from the pursuit of such remedies as are necessary or desirable to dispose of property acquired in the pursuit of such remedies.

**3.13. Information Statement.**

The Board shall have full and complete power to prepare, publish and distribute an Information Statement regarding the Trust and to amend or supplement the same from time to time. The Information Statement shall include, but not be limited to, the following:

i. Credit standards for Trust investments.

ii. The portfolio concentrations permitted for each type of security owned by the Trust.

iii. The safekeeping practices utilized for the Trust.

iv. Maximum and minimum account sizes.

v. Maximum and minimum transaction sizes for deposits to and withdrawals from Participants' accounts.

vi. Instructions for establishing accounts and making deposits to and withdrawals from Participants' accounts.

vii. The method for disclosure of administrative and associated costs incurred by the Trust.

viii. Information regarding the purchase of surety or other bonds necessary to protect the Trust.

**3.14. Further Powers.**

The Board shall have full and complete power to take all such actions, do all such matters and things and execute all such instruments as they deem necessary, proper or desirable in order to carry out, promote or advance the interests and purposes of the Trust, although such actions, matters or things are not herein specifically mentioned. Any determination as to what is in the best interests of the Trust made by the Board in good faith shall be conclusive. In construing the provisions of this Indenture, the presumption shall be in favor of a grant of power to the Board.

*Article 4*
*Administrator*

**4.1. Appointment.**

The Board may appoint one (1) or more persons to serve as the Administrator of the Trust.

**4.2. Duties of Administrator.**

The duties of the Administrator shall be those set forth in an Agreement to be entered into between the Board on behalf of the Trust and the Administrator. Such duties may be modified by the Board from time to time. Any such Agreement may authorize the Administrator to employ other persons to assist in the performance of its duties. Any such Agreement shall provide that it may be terminated without cause and without the payment of any penalty on forty-five (45) days' written notice.

**4.3. Successors.**

In the event that, at any time, the position of Administrator shall become vacant for any reason, the Board may appoint, employ or contract with a successor.

*Article 5*
*Custodian*

**5.1. Appointment.**

The Board on behalf of the Trust shall employ a bank or trust company organized under the laws of the United States of America or the State of Colorado having an office in the State of Colorado and having a capital and surplus aggregating at least two hundred fifty million dollars ($250,000,000.00) (or such other amount as set by the Board) as Custodian subject to such restrictions, limitations and other requirements set forth in a Custodian Agreement to be entered into between the Board and the Custodian. Such Custodian must be certified as a qualified "public depository" as defined by the PDPA.

**5.3. Duties of Custodian.**

The Custodian shall have such duties as are set forth in the Custodian Agreement and the Pooling Act. Such Agreement shall also provide that it may be terminated at any time without cause and without the payment of any penalty on forty-five (45) days' written notice.

**5.3. Successors.**

In the event that, at any time, the Custodian shall resign or shall be terminated, the Board shall appoint a successor.

*Article 6*
*Investment Advisor*

**6.1. Appointment.**

The Board may appoint one (1) or more persons to serve as the Investment Advisor of the Trust.

**6.2. Duties of Investment Advisor.**

The duties of the Investment Advisor shall be those set forth in an Agreement to be entered into between the Board on behalf of the Trust and the Investment Advisor. Such duties may be modified by the Board from time to time. The Board may authorize the Investment Advisor to effect purchases, sales or exchanges of Trust Property on behalf of the Board or may authorize any officer, employee, agent or member of the Board to effect such purchases, sales or exchanges pursuant to recommendations of the Investment Advisor, all without further action by the Board. Any and all of such purchases, sales and exchanges shall be deemed to be authorized by the Board. Any such Agreement may authorize the Investment Advisor to employ other persons to assist in the performance of the duties set forth in the Agreement. Any such Agreement shall also provide that it may be terminated without cause and without the payment of any penalty on forty-five (45) days' written notice.

**6.3. Successors.**

In the event that, at any time, the position of Investment Advisor shall become vacant for any reason, the Board may appoint, employ or contract with a successor.

*Article 7*
*Investments*

**7.1. Statement of Investment Policy and Objective.**

The Trust is the original Local Government investment pool trust and was established to provide safety, liquidity, service and income to Colorado Local Governments.

**7.2. Restrictions Fundamental to Trust.**

Notwithstanding anything in this Indenture which may be deemed to authorize the contrary, the Board:

a. May not make any investment other than investments authorized by this Indenture, the Pooling Act, the Legal Investments Act, the PDPA or any other applicable provisions of law, as the same may be amended from time to time; provided, however, the Board and the Trust shall not be responsible for ensuring compliance with any investment restrictions provided for in a Participant's home rule charter or elsewhere;

b. May not purchase any Permitted Investment which has a maturity date more than one (1) year from the date of such purchase; provided, however, such a purchase may be made if, at the time of purchase, it is subject to an irrevocable agreement by a Responsible Person to repurchase such Permitted Investment from the Trust within one (1) year. For purposes of this clause, a Permitted Investment shall be deemed to mature on the day on which the Trust is obligated to sell such Permitted Investment to the Responsible Person or on the day on which the Trust may exercise its rights under the agreement to require the purchase of such Permitted Investment by the Responsible Person;

c. May not borrow money or incur indebtedness, whether or not the proceeds thereof are intended to be used to purchase Permitted Investments, except as a temporary measure to facilitate withdrawal requests which might otherwise require unscheduled dispositions of portfolio investments and only as and to the extent permitted by law;

d. May not hold or provide for the custody of any Trust Property in a manner not authorized by law or by any institution or person not authorized by law;

e. May not purchase securities or shares of investment companies or any entities similar to the Trust; and

f. May not buy securities from or sell securities to the Administrator, the Investment Advisor, the Custodian or any member of the Board, or any affiliate, officer, director, employee or agent of any of them.

**7.3. Permitted Investments.**

The Board shall have full and complete power:

a. To conduct, operate and provide investment programs for the pooling of surplus funds of Local Governments to take advantage of short-term investments and maximize net interest earnings; and

b. For such consideration as they may deem proper and, as may be required by law, to subscribe for, invest in, assign, transfer, exchange, distribute and otherwise deal in or dispose of investment instruments which are permitted under the Legal Investments Act;

c. To contract for, and enter into agreements with respect to, the purchase and sale of Permitted Investments;

d. To provide for the portfolio concentrations permitted for each type of security.

**7.4. Disposition of Assets.**

The Board shall have full and complete power to sell, exchange or otherwise dispose of any and all Trust Property free and clear of any and all trusts and restrictions, at public or private sale, for cash or on terms, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as they shall deem proper, and to execute and deliver any deed, power, assignment, bill of sale or other instrument in connection with the foregoing, including giving consents and making contracts relating to Trust Property or its use.

**7.5. Collection.**

The Board shall have full and complete power:

i. To collect, sue for, receive and receipt for all sums of money or other property due to the Trust;

ii. To consent to extensions of the time for payment, or to the renewal of any securities, investments or obligations;

iii. To engage or intervene in, prosecute, defend, compromise, abandon or adjust by arbitration or otherwise any actions, suits, proceedings, disputes, claims, demands or things relating to the Trust Property;

iv. To foreclose any collateral, security or instrument securing any investments, notes, bills, bonds, obligations or contracts by virtue of which any sums of money are owed to the Trust;

v. To exercise any power of sale held by them, and to convey good title thereunder, free of any and all trusts, and in connection with any such foreclosure or sale, to purchase or otherwise acquire title to any property;

vi. To be parties to reorganization and to transfer to and deposit with any corporation, committee, voting trustee or other person, any securities, investments or obligations of any person which form a part of the Trust Property, for the purpose of such reorganization or otherwise;

vii. To participate in any arrangement for enforcing or protecting the interests of the Trust as the owner or holder of such securities, investments or obligations, and to pay any assessment levied in connection with such reorganization or arrangement;

viii. To extend the time (with or without security) for payment or delivery of any debts or property and to execute and enter into release, agreements and other instruments; and

ix. To pay or satisfy any debts or claims upon any evidence that the Board shall deem sufficient.

**7.6. Deposits.**

The Board shall have full and complete power to deposit, subject to the provisions of the PDPA, any moneys or funds included in the Trust Property, and intended to be used for the payment of expenses of the Trust, with one (1) or more banks, trust companies or other banking institutions, whether or not such deposits will draw interest. Such deposits are to be subject to withdrawal in such manner as the Board may determine, and the Board shall have no responsibility for any loss which may occur by reason of the failure of the bank, trust company or other banking institution with which the moneys, investments or securities have been deposited. During the term of any such deposit, each such bank, trust company or other banking institution shall comply, with respect to such deposit, with all applicable requirements of all applicable laws, including but not limited to the PDPA.

**7.7. Valuation.**

The Board shall have full and complete power to determine in good faith conclusively the value of any of the Trust Property and to revalue the Trust Property.

**7.8. Amendments of Restrictions.**

The restrictions set forth in Sections 7.2 and 7.3 hereof are fundamental to the operation and activities of the Trust and may not be changed without the affirmative vote of a majority of the Participants, except that such restrictions may be changed by the Board so as to make them more restrictive when necessary to conform the investment program and activities of the Trust to the laws of the State of Colorado and the United States of American as they may from time to time be amended.

*Division 8*
*Limitations of Liability*

**8.1. Liability to the Trust or the Participants.**

No Trustee, officer, employee, advisor, consultant or agent of the Trust shall be liable to the Trust or to any Participant, member of the Board, officer, employee, advisor, consultant or agent of the Trust for any action or failure to act (including, without limitation, the failure to compel in any way any former or acting member of the Board to redress any breach of trust) except for bad faith, willful misfeasance, gross negligence or reckless disregard of his duties. Any agreements with the Administrator, the Custodian or the Investment Advisor shall provide for the personal liability of the Administrator, the Custodian and the Investment Advisor, as the case may be, for a willful or negligent failure to take reasonable measures to restrict investments of Trust Property to those permitted by law and this Indenture of Trust. The provisions of this Section shall not limit the liability of any agent (including, without limitation, the Administrator, the Custodian or the Investment Advisor) with respect to any breach of any contract between the agent and the Board.

**8.2. Indemnification.**

a. The Trust shall indemnify, to the extent of the earnings of the Trust and the proceeds of any insurance policies, each of the Trustees, and such officers, employees, advisors, consultants and agents as designated by the Board, to receive such indemnification, against all liabilities and expenses (including, without limitation, amounts paid in satisfaction of judgments, in compromise or as fines and penalties, and counsel fees) reasonably incurred in connection with the defense or disposition of any action, suit or other proceeding, whether civil or criminal, in which the indemnified person may be involved or with which the indemnified person may be threatened, while in office or thereafter, by reason of being or having been a Trustee, officer, employee, advisor, consultant or agent, except as to any matter as to which the indemnified person shall have been adjudicated to have acted in bad faith or with willful misfeasance or reckless disregard of his

duties or gross negligence or, in the case of the Investment Advisor or the Administrator, in willful or negligent violation of the restrictions on investments of the Trust Property.

b. The provisions of this Section shall not be construed to permit the indemnification of any agent of the Trust with respect to any breach of a contract between the agent and the Board.

c. As to any matter disposed of by a compromise payment by the Board, or any Trustee, officer, employee, advisor, consultant or agent, pursuant to a consent decree or otherwise, no indemnification either for said payment or for any other expense shall be provided unless the Board, after consultation with counsel and other experts deemed necessary, has determined that such compromise payment is or was in the best interests of the Trust.

d. No Participant shall be liable to any person with respect to any claim for indemnity or reimbursement and any Trustee, officer, employee, advisor, consultant or agent may satisfy any right to indemnity or reimbursement granted herein or to which they may be otherwise entitled only out of the earnings on the Trust. The Board may make advance payments in connection with indemnification, provided that the person indemnified shall have given a written undertaking to reimburse the Trust in the event that it is subsequently determined that the person is not entitled to such indemnification.

e. The Board shall also have full and complete power, to the extent permitted by applicable laws, to indemnify or enter into agreements with respect to indemnification with any other person with whom the Trust has dealings.

**8.3. Surety Bonds.**

No Trustee shall, as such, be obligated to give any bond or surety or other security for the performance of any of his duties.

**8.4. Recitals.**

Any written instrument creating an obligation of the Trust shall be conclusively taken to have been executed by the Trustee, officer, employee or agent of the Trust only in his capacity as Trustee, officer, employee or agent of the Trust. Any written instrument creating an obligation of the Trust is not personally binding upon, nor shall resort be had to the property of, any Trustee, Participant, Designee, officer, employee or agent of the Trust, and only the Trust Property or a specific portion thereof shall be bound.

**8.5. Reliance on Experts.**

Each Trustee and each officer, employee or agent of the Trust shall, in the performance of his duties, be fully and completely justified and protected with regard to any act or failure to act resulting from reliance in good faith upon the records of the Trust, upon an opinion of counsel or upon reports made to the Trust by any of its officers or employees or by the Administrator, the Custodian, the Investment Advisor, accountants, appraisers or other experts or consultants selected by the Board or officers of the Trust.

**8.6. Liability Insurance.**

The Board shall, at all times, maintain insurance for the protection of the Trust Property, the Trustees, Participants, Designees, officers, employees and agents of the Trust in such amount as the Board shall deem adequate to cover all foreseeable tort and contract liability to the extent available at reasonable rates.

*Article 9*
*Interests of Participants*

**9.1. General.**

The beneficial interests of the Participants hereunder in the Trust Property and the earnings thereon shall, for convenience of reference, be divided into shares. Shares shall be used as units to measure the proportionate allocation to the

respective Participants of the beneficial interests hereunder. The number of shares that may be used to measure and represent the proportionate allocation of beneficial interests among the Participants is unlimited. All shares shall be of one (1) class representing equal distribution, liquidation and other rights. The beneficial interests measured by the shares shall not entitle a Participant to preference, preemptive, appraisal, conversion or exchange rights of any kind with respect to the Trust or the Trust Property. Title to the Trust Property of every description is vested in the Trust on behalf, and for the beneficial interests, of the Participants. The Participants shall have no interest in the Trust Property other than the beneficial interests conferred hereby and measured by their shares, and they shall have no right to call for any partition or division of any property, profits, rights or interests of the Trust nor can they be called upon to share or assume any losses of the Trust or suffer an assessment of any kind by virtue of the allocation of shares to them.

**9.2. Allocation of Shares.**

a. The Board, in their discretion, may, from time to time, allocate shares, in addition to the then-allocated shares, to such Participant for such amount and such type of consideration (including, without limitation, income from the investment of Trust Property), at such time or times (including, without limitation, each business day in accordance with the maintenance of a constant net asset value per share as set forth in this Indenture), and on such terms as the Board may deem best. In connection with any allocation of shares, the Board may allocate fractional shares. The Board may from time to time adjust the total number of shares allocated without thereby changing the proportionate beneficial interests in the Trust. Reductions or increases in the number of allocated shares may be made in order to maintain a constant net asset value per share as set forth in Section 12.2. Shares shall be allocated and redeemed as one hundredths ($^{1}/_{100}$) of a share or any multiple thereof.

b. Shares may be allocated only to a Participant of the Trust in accordance with this Indenture. Any Participant may establish more than one (1) account within the Trust for such Participant's convenience.

c. The minimum amount of funds which may be maintained in an account in the Trust by a Participant at any one (1) time shall be one dollar ($1.00), and there shall be no limit on the maximum which may be maintained by a Participant in any account; provided that the Board may, by resolution, change the minimum or set a maximum.

d. Whenever the balance in a Participant's account is less than the minimum, the Board may redeem the shares and close the account, provided that thirty (30) days' prior notice is given to the Participant. If the Board changes the minimum total investment to an amount greater than the investment of any Participant at the time that such change becomes effective, the investment of such Participant shall not be redeemed without such Participant's consent.

**9.3. Evidence of Share Allocation.**

Evidence of share allocation shall be reflected in the records of the Trust, and the Trust shall not be required to issue certificates as evidence of share allocation.

**9.4. Redemption to Maintain Constant Net Asset Value.**

The shares of the Trust shall be subject to redemption pursuant to the procedure for reduction of outstanding shares in order to maintain the constant net asset value per share.

**9.5. Redemptions.**

Payments by the Trust to Participants, and the reduction of shares resulting therefrom, are, for convenience, referred to in this Indenture as "redemptions." Any and all allocated shares may be redeemed at the option of the Participant upon and subject to the terms and conditions provided in this Indenture. The Trust shall, upon application of any Participant, promptly redeem from such Participant allocated shares for an amount per share equivalent to the proportional interest in the net assets of the Trust at the time of the redemption. The procedures for effecting redemption shall be prescribed by the Board; provided, however, that such procedures shall not be structured so as to substantially and materially restrict the ability of the Participants to withdraw funds from the Trust.

**9.6. Suspension of Redemption; Postponement of Payment.**

a. Each Participant, by its adoption of this Indenture, agrees that the Board may, without the necessity of a formal meeting of the Board, temporarily suspend the right of redemption or postpone the date of payment for redeemed shares for the whole or any part of any period:

i. During which there shall have occurred any state of war, national emergency, banking moratorium or suspension of payments by banks in the State of Colorado or any general suspension of trading or limitation of prices on the New York Stock Exchange or American Stock Exchange (other than customary weekend and holiday closing); or

ii. During which any financial emergency when or if disposal by the Trust of Trust Property is not reasonably practicable because of the substantial losses which might be incurred or it is not reasonably practicable for the Trust fairly to determine the value of its assets.

b. Such suspension or postponement shall not alter or affect a Participant's beneficial interests hereunder.

c. Such suspension of payment shall take effect at such time as the Board shall specify, and thereafter there shall be no right of redemption or payment until the Board shall declare the suspension or postponement at an end.

d. The suspension or postponement shall terminate on the first day on which the period specified in a. above shall have expired (as to which, the determination of the Board shall be conclusive).

e. In the case of a suspension of the right of redemption or a postponement of payment for redeemed shares, a Participant may either:

i. Withdraw its request for redemption; or

ii. Receive payment based on the net asset value existing after the termination of the suspension.

**9.7. Minimum Redemption.**

There shall be a minimum of one (1) share which may be redeemed at any one (1) time at the option of a Participant.

**9.8. Defective Redemption Requests.**

In the event that a Participant shall submit a request for the redemption of a greater number of shares than are then allocated to such Participant, such request shall not be honored.

*Article 10*
*Record of Shares*

**10.1. Share Records.**

The Trust shall maintain records which shall contain:

i. The names and addresses of the Participants;

ii. The number of shares representing their respective beneficial interests hereunder; and

iii. A record of all allocations and redemptions.

Such records shall be conclusive as to the identity of the Participants to which shares are allocated. Only Participants whose allocation of shares is recorded in the Trust records shall be entitled to receive distributions with respect to shares or otherwise to exercise or enjoy the rights and benefits related to the beneficial interests represented by the shares. No Participant shall be entitled to receive any distribution, nor to have notices given to it, until it has given its appropriate address to the Trust.

**10.2. Maintenance of Records.**

The Administrator, or such other person appointed by the Board, shall record the allocations of shares in the records of the Trust.

**10.3. Owner of Record.**

No person becoming entitled to any shares in consequence of the bankruptcy or insolvency of any Participant or otherwise by operation of law shall be recorded as the Participant to which such shares are allocated unless such person is otherwise qualified to become a Participant. If not qualified, such person shall, after presenting such proof of entitlement as the Board, in its sole discretion, deems appropriate, be entitled to the redemption value of the shares.

**10.4. No Transfer of Shares.**

The beneficial interests measured by the shares shall not be transferable, in whole or in part, other than to the Trust itself for purposes of redemption. However, shares may be redeemed from one (1) Participant's account and the proceeds deposited directly into another Participant's account upon instructions from the Designees of the respective Participants.

**10.5. Limitation of Responsibility.**

The Board shall not, nor shall the Participants or any officer or other agent of the Trust, be bound to determine the existence of any trust, express, implied or constructive, or of any charge, pledge or equity to which any of the shares or any interest therein are subject, or to ascertain or inquire whether any redemption of any such shares by any Participant or its representatives is authorized by such trust, charge, pledge or equity, or to recognize any person as having any interest therein except the Participant recorded as the Participant to which such shares are allocated. The receipt of moneys by the Participant in whose name any share is recorded or by the duly authorized agent of such Participant shall be a sufficient discharge for all moneys payable or deliverable in respect of such shares and from all responsibility to see the proper application thereof.

**10.6. Notices.**

Any and all notices to which Participants hereunder may be entitled and any and all communications shall be deemed duly served or given if mailed, postage prepaid, addressed to Participants of record at the addresses recorded in the records of the Trust.

*Article 11*
*Trustees and Officers*

**11.1. Number; Qualification.**

a. The number of Trustees shall be twelve (12). Each Trustee shall be a Designee of Participant. In the event of a vacancy, the Trustees continuing in office, regardless of their number, shall have all the powers granted to the Board and shall discharge all the duties imposed upon the Board by this Indenture. Trustees may succeed themselves in office. The election of any Trustee (other than an individual who was serving as a Trustee immediately prior to such election) shall not become effective unless and until such person has agreed in writing to serve as a Trustee and to be bound by the terms of this Indenture.

b. At least one (1), but no more than four (4), Trustees shall be a Designee from the following categories of Local Governments:

i. Counties;

ii. Cities and Towns;

iii. School Districts;

iv. Special Districts;

v. Other public entities.

c. The Board shall be the sole judge of the election and qualification of its members.

d. No Trustee shall be disqualified merely because of a change of status which results in the Trustee being the Designee of a different category of Local Government.

e. The Board may, at any time and from time to time, increase the number of members of the Board by up to three (3) Trustees. In the event the Board approves such an increase, the Board shall appoint qualified Designees to a term not to exceed three (3) years. For purposes of any such appointment, the maximums imposed by Section 11.1.a. and 11.1.b. of the Trust Indenture shall not apply.

**11.2. Term.**

The term of office for a Trustee shall be three (3) years and shall begin at the meeting following the election. The terms shall be fixed so that four (4) terms expire annually.

**11.3. Election.**

a. Prior to the annual vote of the Participants for the election of Trustees, the Board shall prepare a ballot. The ballot shall contain sufficient candidates to assure that each category of Local Government will be represented by at least one (1) but no more than four (4) Trustees immediately following the election.

b. The ballot shall be prepared in such a manner as to encourage the Participants to vote for a candidate from any unrepresented category.

c. The ballot shall inform the Participants that the candidate from any unrepresented category receiving the highest number of votes will be elected and that the remaining positions will be filled by the candidates receiving the highest number of votes, regardless of category unless the vote would result in any category having more than four (4) Trustees.

d. The Board shall, at the next meeting following the election, review the election returns and declare the appropriate candidates elected.

**11.4. Resignation and Removal.**

Any Trustee may resign by tendering a signed or oral resignation to any officer. The resignation shall be effective upon tender, or at a later date according to the terms of the notice. Any Trustee may be removed for good cause, by the action of at least two-thirds (⅔) of the remaining Trustees.

**11.5. Vacancies.**

a. A vacancy shall occur in the event of death, resignation, bankruptcy, adjudicated incompetence or other incapacity to exercise the duties of the office, or removal of a Trustee. If a Trustee shall no longer be the Designee of a Participant, such person shall no longer be a Trustee and a vacancy will be deemed to have occurred. If a Local Government fails to qualify as a Participant for a period of thirty (30) days, any Designee of that Local Government who is a Trustee shall no longer qualify as a Trustee and a vacancy will be deemed to have occurred.

b. No vacancy shall operate to annul this Indenture or to revoke any existing agency created pursuant to the terms of this Indenture. In the case of a vacancy, a majority of the Board continuing in office, acting by resolution, may fill such vacancy. Any such appointment shall not become effective, however, until the individual named in the resolution of appointment shall have agreed in writing to serve as a Trustee and to be bound by the terms of this Indenture.

**11.6. Officers.**

The Board shall annually elect, from among its members, a Chairman, a Vice Chairman, a Secretary and a Treasurer, who shall have such duties as the Board shall deem advisable and appropriate. The Board may also elect or appoint one (1) or more Assistant Secretaries and Assistant Treasurers and such other officers or agents, who shall have such powers, duties and responsibilities as the Board may deem to be advisable and appropriate. No person may hold more than one (1) office at any one (1) time.

**11.7. Meetings.**

a. Meetings of the Board shall be held from time to time upon the call of the Chairman, the Vice Chairman, the Secretary or any five (5) Trustees. Regular meetings of the Board may be held at a time and place fixed by the bylaws or by resolution of the Board, but shall be held at least semi-annually. Notice of any other meeting shall be mailed or otherwise given not less than forty-eight (48) hours before the meeting but may be waived in writing by any Trustee either before or after such meeting. Any notice required by Part 4, Article 6, Title 72, C.R.S., shall also be given. The attendance of a Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Trustee attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

b. Any notice required by Part 4, Article 6, Title 72, C.R.S., shall also be given.

c. A quorum for all meetings of the Board shall be a majority of the Trustees.

d. Any action of the Board may be taken at a meeting by vote of a majority of the Trustees present providing that a quorum is present. The Board may also meet by telephone or by computer conferencing if each Trustee is able to communicate with each of the other Trustees present. The Board may also act by polling the Trustees, by telephone or telefax, concerning any specific matter *upon* which any three (3) Trustees request a vote of the Board. Any action taken by telephone or telefax poll of the Board shall be by a majority of the Board and shall become final upon completion of the poll, and the Secretary shall record the ayes and nays in the records of the Trust.

e. With respect to actions of the Board and any committee thereof, Trustees who have an interest in any matter before the Board or any committee may be counted for quorum purposes. Such Trustee shall not be entitled to vote on any such matter.

*Article 12*
*Determination of Net Asset Value and Net Income; Distributions to Participants*

**12.1. Net asset value.**

The net asset value of each allocated share of the Trust shall be determined once on each business day at such time as the Board by resolution may determine. The method of determining net asset value shall be established by the Board and may be set forth in the Information Statement.

**12.2. Constant Net Asset Value; Reduction of Allocated Shares.**

a. The Board shall determine the net income (loss) of the Trust once on each business day, and such net income (loss) shall be credited proportionately to the accounts of the Participants in such manner that the net asset value per share of the Trust shall remain at one dollar ($1.00). Any change in the constant dollar value shall be made on a pro rata basis by increasing or reducing the number of each Participant's shares. The method used for the determination of the net income of the Trust and the crediting thereof proportionately to the respective accounts of the Participants shall be determined by the Board and may be set forth in the Information Statement. The duty to make the daily calculations may be delegated by the Board to the Administrator, the Custodian, the Investment Advisor or such other person as the Board by resolution may designate. Fluctuations in value will be reflected in the number of shares allocated to each Participant. Each Participant will be deemed to have agreed to such reduction by its investment in the Trust and its adoption of this

Indenture. The purpose of the foregoing procedure is to permit the net asset value per share of the Trust to be maintained at one dollar ($1.00).

b. The Board may discontinue or amend the practice of attempting to maintain the net asset value per share at a constant dollar amount at any time, and such modification shall be evidenced by notice to the Participants.

**12.3. Retained Reserves.**

The Board may retain from earnings and profits such amounts as they may deem necessary to pay the debts and expenses of the Trust and to meet other obligations of the Trust, and the Board shall also have the power to establish from earnings and profits such reasonable reserves as they believe may be necessary or desirable.

*Article 13*
*Recording of Indenture*

**13.1. Recording.**

This Indenture and any amendment hereto may be filed, recorded or lodged as a document of public record in such place or places and with such official or officials as the Board may deem appropriate. Each amendment so filed, recorded or lodged shall be accompanied by a resolution of the Board reflecting the amendment and its effective date.

*Article 14*
*Amendment or Termination of Trust; Duration of Trust*

**14.1. Amendment or Termination.**

a. The provisions of this Indenture may be amended or altered, or the Trust may be terminated, by a vote of the Participants pursuant to Article 11 hereof. The Board may, from time to time by a two-thirds vote of the Trustees, and after forty-five (45) days' prior written notice to the Participants, amend or alter the provisions of the Indenture, without the vote or assent of the Participants, which the Board, in good faith deems necessary or convenient for the administration and operation of the Trust or to the extent deemed by the Board in good faith to be necessary to conform this Indenture to the requirements of applicable laws or regulations or any interpretation thereof by a court or other governmental agency of competent jurisdiction, but the Board shall not be liable for failing so to do. Notwithstanding the foregoing, no amendment may be made pursuant to this Section which would:

i. Change any rights with respect to any allocated shares of the Trust by reducing the amount payable thereon upon liquidation of the Trust or which would diminish or eliminate any voting rights of the Participants, except with the vote or written consent of two-thirds (⅔) of the Participants entitled to vote thereon;

ii. Cause any of the investment restrictions contained herein to be less restrictive without the affirmative vote of a majority of the Participants;

iii. Change the limitations on personal liability of the Participants and Trustees; or

iv. Change the prohibition of assessments upon Participants.

b. A certification signed by a majority of the Board setting forth an amendment and reciting that it was duly adopted by the Participants or by the Board, or a copy of the Indenture, as amended, executed by a majority of the Board, shall be conclusive evidence of such amendment.

c. Upon the termination of the Trust:

i. The Trust shall carry on no business except for the purpose of terminating the Trust;

ii. The Board shall proceed to terminate the Trust, and all of the powers of the Board under this Indenture shall continue until the affairs of the Trust shall have been terminated, including, without limitation, the power to fulfill or discharge the contracts of the Trust, collect its assets, sell, convey, assign, exchange, transfer or otherwise dispose of all or any part of the remaining Trust Property to one (1) or more persons at public or private sale for consideration which may consist in whole or in part of cash, securities or other property of any kind, discharge or pay its liabilities, and do all other acts appropriate to liquidate its assets; provided, however, that any sale, conveyance, assignment, exchange, transfer or other disposition of all or substantially all of the Trust Property shall require approval of the principal terms of the transaction and the nature and amount of the consideration by affirmative vote of not less than a majority of the Board; and

iii. After paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and refunding agreements as they deem necessary for their protection, the Board may distribute the remaining Trust Property, in cash or in kind or partly in each, among the Participants according to their respective proportionate allocation of shares.

d. Upon termination of the Trust and distribution to the Participants as herein provided, a majority of the Board shall execute and lodge among the records of the Trust an instrument in writing setting forth the fact of such termination, and the Board shall thereupon be discharged from all further liabilities and duties hereunder, and the right, title and interest of all Participants shall cease and be cancelled and discharged.

**14.2. Power to Effect Reorganization.**

If permitted by applicable law, including without limitation, the Pooling Act, the Legal Investments Act and the PDPA, the Board, by vote or written approval of a majority of the Board, may select or direct the organization of a corporation, association, trust or other person with which the Trust may merge, or which shall take over the Trust Property and carry on the affairs of the Trust, and, after receiving an affirmative vote of not less than a majority of the Participants, the Board may effect such merger or may sell, convey and transfer the Trust Property to any such corporation, association, trust or other person in exchange for cash or shares or securities thereof, or beneficial interests therein with the assumption by such transferee of the liabilities of the Trust; and, thereupon, the Board shall terminate the Trust and deliver such cash, shares, securities or beneficial interests ratably among the Participants of this Trust in redemption of their shares.

**14.3. Duration.**

The Trust shall continue in existence in perpetuity, subject in all respects to the provisions of this Indenture.

*Article 15*
*Miscellaneous*

**15.1. Governing Law.**

This Indenture is executed and delivered in the State of Colorado and with reference to the laws thereof, and the rights of all parties and the validity, construction and effect of every provision hereof shall be subject to and construed according to the laws of the State of Colorado.

**15.2. Counterparts.**

This Indenture may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

**15.3. Reliance by Third Parties.**

Any certificate executed by an individual who, according to the records of the Trust, appears to be a Trustee hereunder or the Chairman, Vice-Chairman, Secretary or Treasurer of the Trust, certifying to:

a. The number or identity of the Board or Participants;

b. The due authorization of the execution of any instrument or writing;

c. The form of any vote passed at a meeting of the Board or by the Participants;

d. The fact that the number of the Board or Participants present at any meeting or executing any written instruments satisfies the requirements of this Indenture;

e. The form of any bylaws, policies or procedures adopted by the Board;

f. The identity of any officers elected by the Board; or

g. The existence of any fact or facts which in any manner relate to the affairs of the Trust;

shall be conclusive evidence as to the matters so certified in favor of any person dealing with the Board or the Trust and their successors.

**15.4. Provisions in Conflict with Law.**

The provisions of this Indenture are severable, and, if the Board shall determine, with the advice of counsel, that any one (1) or more of such provisions (the "Conflicting Provisions") are in conflict with applicable federal or Colorado laws, the Conflicting Provisions shall be deemed never to have constituted a part of this Indenture. Such a determination by the Board shall not affect or impair any of the remaining provisions of this Indenture or render invalid or improper any action taken or omitted (including but not limited to the election of the Board) prior to such determination.

**15.5. Adoption by Local Governments; Election to Become a Participant; Resignation of Participants.**

a. Any Local Government may become a Participant of this Trust by:

i. Taking any appropriate official action to adopt this Indenture; and

ii. Furnishing the Board with satisfactory evidence that such official action has been taken.

b. A copy of this Indenture may be adopted by executing a written instrument of adoption in such form as may be prescribed by the Board. Delivering an acknowledged copy of such instrument shall constitute satisfactory evidence of the adoption.

c. Any Participant may resign and withdraw from the Trust by requesting the redemption of all shares then held by it. Such resignation and withdrawal shall become effective upon withdrawal of the funds. No resignation and withdrawal by a Participant shall operate to annul this Indenture or terminate the existence of the Trust.

IN WITNESS WHEREOF, pursuant to the full authority granted by the Pooling Act, this Amended and Restated Indenture of Trust shall take, and come into, full force and effect as of the day first above written.

## ARTICLE 35

## Emergency Management

*Intergovernmental Agreement*
*July 3, 2006*

WITNESSETH THAT:

WHEREAS, intergovernmental agreements to provide functions or services, including the sharing of costs of such services or functions, by political subdivisions of the State of Colorado are specifically authorized by Section 29-1-203, C.R.S. (1986), and other sections of the C.R.S.; and

WHEREAS, establishment of an intergovernmental agreement will serve a public purpose and will promote the safety, security and general welfare of the inhabitants of the jurisdictions; and

WHEREAS, the jurisdictions hereto are each authorized to provide, establish and maintain disaster emergency services as defined by each jurisdiction; and

WHEREAS, disaster emergencies may arise in one (1) or more of the jurisdictions, resulting in greater demands than the personnel and equipment of that jurisdiction can handle; and

WHEREAS, it is in the best interest of each of the jurisdictions that it may have service of and from the other jurisdictions to assist it in reacting to disaster emergencies; and

WHEREAS, other jurisdictions who provide similar resources may in the future desire to be included in this Agreement; and

WHEREAS, it is in the best interests of each of the jurisdictions to have access to emergency resources to supplement their own during an emergency; and

WHEREAS, to receive the resources cited above, it is cost-effective for each of the jurisdictions to make available during disaster emergencies, its own resources to other affected jurisdictions.

NOW, THEREFORE, IT IS MUTUALLY AGREED by and between each of the signatory jurisdictions as follows:

1.a. This Intergovernmental Agreement is promulgated under the provisions of Article 1, the relevant portions of Articles 5 and 22, Title 29 and Section 24-32-2105, C.R.S. The statute shall control in case of conflict between this Agreement and the statute. Each and every term, provision or condition herein is subject to and shall be construed in accordance with the provisions of Colorado law, the charters of the various jurisdictions and the ordinances and regulations enacted pursuant thereto.

b. It is understood and agreed by the jurisdictions hereto that, if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado or the United States of America, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the jurisdictions shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

c. All terms and words herein shall have the same definitions as provided in Titles 24 and 29, C.R.S., except as herein otherwise indicated. *Disaster emergency* shall have the same definition as provided for "Disaster" at Section 24-32-2103(1), C.R.S. Where terms and words herein are not so defined, they shall have the commonly accepted definitions.

2. This Agreement provides for the joint exercise by the jurisdictions of the function or service provided herein, but does not establish a separate legal entity to do so, nor does it constitute any jurisdiction as an agent of any other jurisdiction for any purpose whatsoever. This Agreement shall provide only for sharing of in-kind resources by the jurisdiction.

3. For and in consideration of the promises of each participating jurisdiction, each agrees with the others that, in the event there are disaster emergencies in the territory served by one (1) jurisdiction which are beyond

the capabilities of that jurisdiction, subject to the limitations herein set forth, will assist the other, by causing and permitting its resources to be used in responding to each disaster emergencies in the other jurisdiction. The need for such assistance will be determined by the jurisdiction requesting assistance; subject, however, to the following limitations:

a. Any of the signatory jurisdictions shall be excused from making their resources available or continuing to make their resources available to any of the other jurisdictions, in the event of the need of the resources of such jurisdiction within the territorial area of such jurisdiction or any other jurisdiction, or their prior use at any other place. Such decision of availability shall be made by the jurisdiction requested to give mutual aid, and such decision shall be conclusive and in the providing jurisdiction's sole discretion.

b. Mutual aid response by any jurisdiction beyond the political boundary of the responding jurisdiction is hereby deemed to be approved by the respective Executive and Legislative governing bodies of the jurisdictions, and such response shall require no further approval by responsible officials of any jurisdiction, except as provided by the limitations in Article 3 a (above).

4. Each jurisdiction shall, at all times, be responsible for its own costs incurred in the performance of this Agreement, and shall not receive any reimbursement from any other jurisdiction, except for third party reimbursement under Article 7, and except as may be negotiated and agreed to separately in writing by both the requesting and receiving jurisdictions.

5. Each jurisdiction waives all claims and causes of action against all of the other jurisdictions for compensation, damage, personal injury or death occurring as a consequence, direct or indirect, of the performance of this Agreement, to the extent permitted by, and without waiving any protections or other provisions of, the Colorado Governmental Immunity Act.

6. Each jurisdiction agrees to allow any other governmental jurisdiction defined under Colorado law to join in this Mutual Aid Agreement after formal approval by its governing body and notification by the depository cited in Article 13 of such action to each of the other signatory jurisdictions to this Agreement. Each party who initially executes this Agreement delegates to the office of the person executing this Agreement, or such other parties as they may further designate in writing, the authority to execute such amendments as may be necessary in the future to accommodate the joinder of new jurisdictions to this Agreement, without change of any other terms or conditions of the Agreement.

7. Each jurisdiction agrees that it will reasonably pursue any legal reimbursement possible, pursuant to state or federal law, for incidents, including but not limited to hazardous materials incidents, occurring within its jurisdiction, on behalf of all assisting jurisdictions. Upon payment by the responsible entity, and after subtracting the reasonable costs of pursuing and collecting the reimbursement, the receiving jurisdiction will distribute the received funds in a fair and equitable manner to assisting jurisdictions, based upon a pro rata share of their documented expenses for the involved incident.

8. Nothing contained in this Agreement, and no performance under this Agreement by personnel of the jurisdictions hereto, shall in any respect alter or modify the status of officers, agents or employees of the respective jurisdictions for purposes of workers' compensation or their benefits or entitlements, pension, levels or types of training, internal discipline, certification or rank procedures, methods or categories, or for any other purpose, or condition or requirement of employment. Workers' Compensation Coverage shall be as structured in Section 29-5-109, C.R.S., if the request meets the requirements of Sections 29-5-103 through 29-5-108, C.R.S.; otherwise, the claim shall be processed as if it were generated by any other work assignment within the providing jurisdiction. The providing jurisdiction shall remain responsible for processing any workers' compensation claims filed by its own resources.

9. This Agreement shall be binding upon the successors and assigns of each of the jurisdictions hereto, except that no jurisdiction may assign any of its rights or obligations hereunder, without the prior written consent of two-thirds (⅔) of the other signatory jurisdictions.

10. It is expressly understood and agreed that enforcement of the terms and conditions of the Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the named jurisdictions hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the named jurisdictions that any person other than the named jurisdictions receiving services or benefits under the Agreement shall be deemed to be an incidental beneficiary only.

11. Amendments to this Agreement may be made only upon unanimous consent by all then-current signatory jurisdictions. Such consent shall become effective upon its receipt in writing at the depository cited below in Article 13.

12. Any jurisdiction hereto may terminate this Agreement, with or without cause, upon thirty (30) days' prior written notice to the signature depository provided below.

13. This Agreement shall be executed by each jurisdiction on a separate signatory page. Original signature pages shall be held by the Colorado Division of Emergency Management ("DEM") or its successor agency, at its offices at 9195 East Mineral Avenue, Suite 200, Centennial CO 80112, or at such other place as DEM shall determine. Copies of signature pages shall be provided and certified by DEM to each party jurisdiction, and such copies shall have the full force and effect as if they were originals. DEM shall provide timely notice to all party jurisdictions of any additions to and withdrawals of party jurisdictions, as well as timely notice of the effective date of any amendment to this Agreement.

## ARTICLE 36

### Highway/Railroad Grade Crossing Warning Devices Under Federal Section 130 Program

*Contract*
*2006*

THIS CONTRACT, made this _____ day of _____, 2006, by and between the STATE OF COLORADO for the use and benefit of the STATE DEPARTMENT OF TRANSPORTATION, DIVISION OF ENGINEERING, DESIGN AND CONSTRUCTION, herein after referred to as the "State," and COUNTY OF OTERO, COLORADO, hereinafter referred to as "Local Agency," and the BNSF RAILWAY COMPANY, formerly known as the "Burlington Northern and Santa Fe Railway Company," hereinafter referred to as "BNSF" or "Railroad Company" or the "Contractor."

WHEREAS, authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment in Fund No. 400, Appropriation Code 010, Function 3987, Object 2311 1 P, Program 2000, Originating Unit 9991, Reporting Category 4280, Phase C, Contract Encumbrance Number 15437, Contract Encumbrance Amount $226,843.00; and

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, this contract is executed by the State under authority of Section 43-1-110, C.R.S., by both the State and Local Agency under the authority of Sections 29-1-203 and 42-4-144, C.R.S., and by the Local Agency pursuant to an appropriate ordinance or resolution duly passed and adopted by the Local Agency; and

WHEREAS, pursuant to Title I, Part A, Section 1007 of the Intermodal Surface Transportation Efficiency Act of 1991, specifically Section 130 of Title 23, United States Code, and the regulations promulgated thereunder, certain federal funds have been and will in the future be made available for the elimination of hazards at certain highway/railroad grade crossings on the Federal-aid Urban System and on roads not on any Federal-aid System, by the installation of warning devices, such projects being hereinafter referred to as the "Section 130 Program"; and

WHEREAS, this project is selected under the Section 130 Program and is eligible for funding at the rate of one hundred percent (100%) Federal-aid funds, provided the project costs are incurred in accordance with the conditions set forth herein, all without cost to the BNSF, it being understood that such ratio applies only to such costs as are eligible for Federal participation; and

WHEREAS, Federal regulations (23 CFR, Part 646, Subpart B) require the State to contract with railroad companies on Federal-aid projects involving use of railroad property or adjustment to railroad facilities; and

WHEREAS, the State is responsible for the administration of the Section 130 Program and will act in the relative position of the Federal Highway Administration (FHWA) in reviewing and approving highway/railway projects and in authorizing expenditure of Federal-aid funds on said projects; and

WHEREAS, the FHWA has determined that the use of a three-party contract is required in order for the State to fulfill its administrative responsibilities, including the responsibility of assuring that work is not performed prior to authorization by the State; and

WHEREAS, the Local Agency and the BNSF understand that, pursuant to paragraph 646.220 of 23 CFR, the State is responsible for issuing written authorization for all phases of the work described herein, and that the costs for such work will be eligible for reimbursement only if the work is performed after written authorization by the State; and

WHEREAS, the State may authorize advance preliminary engineering and/or the early purchasing of materials for the crossing, upon receipt of the BNSF's cost estimate for the Railroad Work, in the form of authorization letters, attached hereto as Exhibits D and E; and

WHEREAS, the State has initiated this Section 130 Program project numbered SRP M296-007, 15372, by submittal to the State of a completed CDOT Form No. 463; and

WHEREAS, the project is not located on the State Highway System and is under the legal jurisdiction of the Local Agency; and

WHEREAS, this contract provides for highway/railroad grade crossing improvements that consist of installing: flashing light signals, gates, bells and constant warning devices, as more specifically described on CDOT Form No. 463; and

WHEREAS, the proposed improvements provided for herein are located on County Road 18, Otero County, Colorado, and the BNSF tracks, National Inventory Crossing No. 003-395J, BNSF milepost 567.25, Raton Subdivision; and

WHEREAS, the Local Agency is responsible for complying with all terms and conditions of this contract for project SRH C090-007, 15437; and

WHEREAS, the BNSF has provided an estimate Exhibit C-1 and has agreed to participate in fifty percent (50%) of the cost of the concrete crossing pads in participation with Section 130 funding; and

WHEREAS, the BNSF has agreed to be responsible for the installation and operation of the crossing warning devices installed hereunder; and

WHEREAS, the BNSF is adequately staffed and suitable equipped to undertake and satisfactorily complete the proposed improvements, and can perform the Railroad Work more advantageously and more cost effectively than the State; and

WHEREAS, it is in the public interest that the Railroad Work be performed by the BNSF's forces, on a Force Account basis.

NOW, THEREFORE, it is hereby agreed that:

ARTICLE I
GENERAL PROVISIONS

**Section A. Definitions**

1. ***FHWA*** – U.S. Department of Transportation Federal Highway Administration.

2. ***CFR*** – Code of Federal Regulations.

3. ***MUTCD*** – the Manual on Uniform Traffic Control Devices for Streets and Highways, Year 2003 Edition.

4. ***PUC*** – Public Utilities Commission of Colorado.

5. ***C.R.S.*** – Colorado Revised Statutes.

6. The term "Eligible Charges" shall include only those actual incurred costs, as provided in 71 CFR Part 140, which are directly attributable to Project No SRH C090-007, 15437, and which are incurred following written authorization by the State for the various work functions, except as provided in Article II, Section A.

7. The term "Railroad Work" shall consist of work done by BNSF forces and shall include the following: furnish and install flashing LED lights, gates, bell, CWT, bungalow and concrete crossing pads.

**Section B. Exhibits**

The exhibits listed below are attached hereto and made a part of this Contract:

Exhibit A – Order Deeming PUC Application Complete.

Exhibit B – Print Showing Crossing Location.

Exhibit C – Railroad Signal Estimate and Plan.

Exhibit C-1 – Railroad Cost Estimate Concrete Crossing Surface.

Exhibit D – Preliminary Engineering Authorization Letter (example).

Exhibit E – Materials Purchase Authorization Letter.

Exhibit F – Contract Funding Letter Format.

Exhibit G – Civil Rights Exhibit.

**Section C. Reference Documents**

The following are made a part of this Contract by reference the same as if attached hereto, including any supplements or amendments thereto dated prior to date of this Contract:

23 CFR Part 140, Subpart I.

23 CFR Part 646, Subpart B.

MUTCD dated 2003.

**Section D. Design Data**

The highway/railroad improvement project provided herein, identified as Project No. SRH C090-007, 15437, consists generally of installing highway/railroad grade crossing improvements consisting of installation flashers with gates, LED lights, CWT, bungalow and install concrete crossing pads at County Road 18, Otero County, Colorado, and the BNSF tracks, National Inventory Crossing No. 003-395J, BNSF milepost 567.25, as more fully described in CDOT Form No. 463 which the State has developed. Said CDOT Form No. 463 shall be part of this Contract by reference. Only those crossing warning device improvements provided in the final CDOT Form No. 463 for this project are eligible for federal aid participation under this Contract.

ARTICLE II
COMMITMENT ON THE PART OF THE LOCAL AGENCY

**Section A. Pre-Contract Administrative Tasks**

Certain administrative tasks are necessary to be performed prior to execution of this Contract, and the Local Agency agrees that the costs of those tasks, whether incurred by the Local Agency or the State, shall be eligible for reimbursement from project funds. Said tasks include, but are not limited to, preparation of CDOT Form No. 463, attending pre-design meetings, obtaining FHWA approvals and preparation of this Contract. In the event Federal-aid funds are not made available or are withdrawn for the project, the Local Agency shall reimburse the State for costs incurred by the State, subject to the limits provided in Article IV, Section B, in administering this Contract.

**Section B. PUC Applications**

The Local Agency has made application to the Public Utilities Commission requesting a PUC order providing for the improvement provided for herein. The Local Agency shall include a copy of this fully executed contract and will submit it to the PUC as a late-filed exhibit. The State shall participate in any hearing before the PUC in this matter.

**Section C. Utilities**

The Local Agency shall be responsible for obtaining proper clearance or approval, in writing, or formal agreement if utility adjustments are required, from utility companies which may be involved in the project.

The Local Agency shall furnish the State with documentation of such clearance or approval prior to installation of the proposed improvements.

**Section D. Right-of-Way**

The Local Agency shall provide written certification to the State that the proposed project will be constructed on existing right-of-way or that, if right-of-way is acquired for the completion of the project, that such acquisition was made in accordance with FHWA and State regulations.

**Section E. Crossing Improvement Work**

The Local Agency shall coordinate crossing improvement work and shall inspect the Railroad Work performed by BNSF forces. The Local Agency shall not initiate or authorize any crossing improvement work, including the railroad work, until the State has issued the Notice to Proceed, Article IV, Section A, to the Local Agency and the BNSF. In the event that such work is initiated by the Local Agency prior to issuance of the Notice to Proceed, other than advance preliminary engineering or the early ordering of material as authorized in writing by the State when applicable (Exhibits D and E), the Local Agency shall be solely responsible for all costs incurred for work performed prior to such issuance. The Local Agency shall be responsible for providing a traffic control *device* during project work that meets the criteria of the most current edition of the MUTCD.

**Section F. Railroad Company Reimbursement**

Upon receipt of the Railroad Company's billings from the State's Railroad Coordinator, the Local Agency shall review and verify the billings for the Railroad Work performed hereunder to ensure that the billings are for Eligible Charges for work actually performed. After Local Agency verification, the designated representative from the Local Agency shall send written confirmation to the Region 2 Project Engineer that the work has been accomplished. The Region 2 Project Engineer will approve the bill for payment by the State to the Railroad Company.

**Section G. Inspection and Audit**

The Local Agency shall, during all phases of the work, permit duly authorized agents and employees of the State and the FHWA to inspect the project and to inspect, review and audit the project records. The Local Agency shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at all reasonable times during the construction of the project and for three (3) years from the date of final payment. Copies of such records shall be furnished by the Local Agency if requested.

ARTICLE III
COMMITMENTS ON THE PART OF THE RAILROAD COMPANY

**Section A. Crossing at Grade**

1. Warning Devices. The BNSF agrees to accomplish by force account all the Railroad Work defined in Article I, Section A, as provided hereunder, provided that the BNSF shall obtain written Notice to Proceed from the State before it starts to perform or authorizes the performance of such railroad force account work. In the event that such work is initiated prior to the issuance by the State of the written Notice to Proceed, other than advance preliminary engineering and early ordering of materials as may be authorized in writing by the State's Chief Engineer (Exhibits D and E), the BNSF shall be solely responsible for all costs incurred for such work.

2. Concrete Crossing Surface. The BNSF has provided a cost estimate (Exhibit C-1) and has agreed to pay fifty percent (50%) of the costs for materials and installation of concrete surface crossing pads by its forces.

3. Plans and Force Account Estimate. Prior to execution of this Contract, the BNSF shall submit a general plan showing the crossing, the types and location of crossing warning devices to be installed, and the approximate approach lengths and/or warning time for the devices, along with an itemized cost estimate (Exhibit C) for the proposed Railroad Work, to the Local Agency and the State. Said estimate shall take into account the value of all existing material that can be salvaged. The Local Agency shall be afforded the opportunity to inspect salvaged material. The cost estimate shall conform to the requirements of 23 CFR Part 140, Subpart I, and shall be of the form prescribed in 23 CFR Part 646, Subpart B.

4. Changes in the Railroad Work. No change shall be made in the Railroad Work which will alter the character or scope of the Railroad Work without the prior written concurrence from the Local Agency and prior written authorization by the State. The BNSF shall be responsible for cost increases resulting from unauthorized changes in the Railroad Work.

**Section B. Coordination**

After receipt of the Notice to Proceed from the State, the Railroad Company shall notify the Local Agency and the State at least ten (10) working days in advance of beginning the Railroad Work so that the Local Agency and the State can arrange for construction zone traffic control and inspection. The Railroad Company shall also furnish the Local Agency and the State a copy of the completion notice the Railroad Company furnishes to the PUC.

**Section C. Railroad Company's Billings to the State**

Progress billings for Eligible Charges for the Railroad Work shall be acceptable in minimum amounts of five hundred dollars ($500.00) for each billing. The Railroad Company shall provide its final and complete billings of all incurred costs to the State's Railroad Program Manager within one (1) year following completion of the railroad work as described in Article I, Section C. The billing for such work shall reference the Project No. SRH C090-007, 15437. EACH INVOICE SHALL SPECIFICALLY STATE THE WORK PERFORMED AND SHALL BE THE SAME AS THE WORK AUTHORIZED. IF PAYMENT IS NOT MADE WITHIN FORTY-FIVE (45) DAYS OF THE STATE'S RECEIPT OF AN INVOICE, THE STATE SHALL PAY INTEREST TO THE RAILROAD COMPANY NOT TO EXCEED ONE PERCENT (1%) PER MONTH UNTIL PAYMENT IS MADE, SUBJECT TO THE TERMS AND CONDITIONS OF SECTION 24-30-202(24), C.R.S. The State shall provide the Railroad Company with written notice of the completion of the work, thus marking the beginning of the one-year period. If the Railroad Company does not present the final bill to the State's Railroad Program Manager within that one-year time period, as required by paragraph 140.922 of 23 CFR, then previous payments to the Railroad Company for the Railroad Work may be considered as final and complete reimbursement for that work, and the State may close out the project with no further financial obligation. The Railroad Company's billings for incurred costs for the Railroad Work shall be audited by the State for compliance with 23 CFR Part 140, Subpart 1.

**Section D. Civil Rights**

The Railroad Company, in the prosecution of the work herein prescribed, will adhere to the requirements of the Civil Rights, Exhibit G, and will include the provisions of the said Civil Rights Exhibit in every subcontract, including procurement of materials and leases of equipment, unless exempt by the regulations, orders or instructions issued pursuant thereto.

ARTICLE IV
COMMITMENTS ON THE PART OF THE STATE

**Section A. Project Administration**

1. Approvals by the State. The State, acting in the relative position of the FHWA, shall be responsible for approving the various work functions relative to this project. The work functions include, but are not limited to, preliminary engineering, right-of-way, utility adjustments, Railroad Work and work by the Local Agency.

2. Notice to Proceed. The State's Project Engineer, Region 2, shall issue written Notice to Proceed for the various work functions as may be required. The State's issuance of authorization to proceed with the Railroad Work shall be contingent upon the PUC approval. Any work function performed by the Local Agency for the Railroad Company prior to the issuance of the Notices to Proceed shall not be eligible for reimbursement from Federal-aid funds other than advance preliminary engineering and early ordering of material as may be authorized in writing by the State's Chief Engineer (Exhibits D and E).

**Section B. State's Support Services and Charges**

The State shall perform the support services necessary for the approval and administration of this Contract. These services may be performed in preparation for any conditions or requirements of this Contract, including prior FHWA approval of project work. At the request of the Local Agency, the State may also provide other assistance under this Contract as agreed in writing. However, in the event that Federal funding is either not made available or is withdrawn for this Contract, or if the Local Agency terminates this Contract prior to project completion for any reason, then all actual incurred costs of such services and assistance provided by the State shall be at the sole expense of the Local Agency. At the request of the Local Agency, the State may provide other assistance as agreed to in writing. The Local Agency shall reimburse the State the actual costs incurred by the State in performing such assistance.

ARTICLE V
ADDITIONAL PROVISIONS

**Section A. Financial Provisions**

The total encumbrance for project number SRH C090-007, 15437, is two hundred twenty-six thousand eight hundred forty-three dollars ($226,843.00). Federal funds are one hundred percent (100%) of the amount of the crossing protection devices and fifty percent (50%) of the amount for the concrete crossing surface. The State's maximum financial obligation for all Eligible Charges and other work costs under this Contract is currently limited to that total encumbrance amount. If, during the performance of the project, the Local Agency or the Railroad determine and notify the State that the eligible charges of the project will exceed that total encumbrance amount, the State will make all reasonable efforts to timely amend this Contract to increase total encumbrance amount to cover the added costs, and until the State does so, the Local Agency and/or the Railroad may stop performance of project work and/or Railroad Work which, if performed, would exceed that current total encumbrance amount. The State may also allocate more funds available on this Contract using a Funding Letter substantially equivalent to Exhibit F and bearing the approval of the State Controller or his designee. The Funding Letter shall not be deemed valid until it shall have been approved by the State Controller or his designee. If actual project costs exceed the total budget, such costs shall be borne exclusively by the Local Agency. The Local Agency shall not be responsible for any unauthorized railroad work pursuant to Article III, Section A. If project costs under-run the estimated total budget, the Federal portion of such under-run shall be reallocated within the framework of the State's Section 130 Program, as mutually agreed upon by the State and the FHWA.

**Section B. Representatives**

1. To Local Agency:

   Darryl L. Schulz
   Director, Public Works
   Otero County
   P.O. Box 511
   La Junta, CO 81050-0511
   Phone: 719-383-3035
   Fax: 719-383-3935

2. To Railroad Company:

   Andy Amparan
   Manager, Public Projects
   BNSF Railway Company
   4515 Kansas Avenue
   Kansas City, KS 66106
   Phone: 913-551-4964
   Fax: 913-551-4794

3. To State:

   Ajin Hu, P.E.
   Project Engineer, Region 2
   Colorado Department of Transportation
   905 Erie Avenue
   Pueblo, CO 81002-8017
   Phone: 719-546-5751

4. Billings sent to:

   Hayne Hutchinson
   Railroad Coordinator
   Safety and Traffic Engineering Branch
   Colorado Department of Transportation
   4201 East Arkansas Avenue, EP 700
   Denver, CO 80222
   Phone: 303-757-9268
   Fax: 303-757-9219

**Section C. Maintenance**

1. Local Agency. Upon completion of this project, the Local Agency shall maintain the roadway approaches of County Road 18 to the crossing described in Article I, Section D. Roadway approaches shall be considered that section of roadway in the vicinity of the crossing beginning at the railroad crossing advance warning signs and extending to the edge of the concrete crossing surface and the transition between the roadway and the crossing surface. The Local Agency shall also be responsible for maintaining advance warning signs and pavement markings. The Local Agency shall not be responsible for maintaining the Railroad Company's facilities.

2. Railroad Company. Upon completion of this project, the Railroad Company shall thereafter operate, maintain, repair and keep its roadbed, track and appurtenances, including the railroad grade crossing warning devices installed hereunder, in a proper working condition. In the event that Federal or State funds or other funds become available for use in the operation, maintenance or repair of the crossing warning devices installed hereunder, the Railroad Company shall be free to apply for such funds. The Railroad Company shall not be responsible for maintaining the roadway approaches.

3. Crossing Surface. Upon completion of this project, the Railroad Company and Local Agency shall jointly maintain the crossing surface as follows: in the event the crossing surface shall need repairing or replacing, the Local Agency shall bear the cost of the materials to repair or replace the crossing surface, and the Railroad Company shall bear the cost of the labor to repair or replace the crossing surface. The Railroad will select the material to be used subject to the approval of the agency, which approval will not be unreasonably withheld. Financial obligations of the Local Agency payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available.

**Section D. No Benefits to the Railroad Company**

In accordance with Paragraph 646.210(b)(1) of 23 CFR Part 646, Subpart B, it is determined that the improvements herein provided will not result in ascertainable benefits to the BNSF and, consequently, liability for the cost thereof shall not be required of the BNSF.

**Section E. Cancellation**

In the event delays or difficulties arise in securing necessary approvals, or in acquiring necessary right-of-way, or in settling damages or damage claims or for any other reason, which, in the opinion of the State, render it impracticable to utilize funds from the current appropriation for the construction of the project, then at any time before actual construction is started pursuant to proper approval or authority, the State may serve formal notice of cancellation upon the BNSF, and this Contract shall thereupon become null and void. In the event of any such cancellation, the State shall reimburse the BNSF for all related preliminary engineering costs incurred by the BNSF prior to the effective cancellation date.

**Section F. Future Use of Warning Devices**

If, hereafter, by agreement, negotiation or order of competent public authority, the grade crossing warning devices are rendered unnecessary, undesirable or improper by closing of said crossing, by relocation, by separation of grades or by developments or improvements in crossing protection or otherwise, such devices shall be removed; and if, by mutual agreement, the grade crossing warning devices are deemed suitable for reuse at another location, they shall be reinstalled at that location by the BNSF under a separate agreement for relocation between the State, the Local Agency and the BNSF, as approved by the PUC. If the Local Agency widens the highway or makes any changes therein which require relocation of said devices, the Local Agency will bear the entire cost of making such changes. Whenever, by reason of Railroad Company changes, said devices are removed, relocated or replaced, the entire cost thereof shall be borne by the BNSF.

**Section G. Term**

The covenants of this Contract, except for the provisions regarding roadway maintenance and maintenance and future use of warning devices, shall continue through completion and final acceptance of this project by the State and the FHWA. The covenants regarding roadway maintenance and maintenance and future use of warning devices constructed under this Contract shall remain in effect in perpetuity or until such time as the Local Agency or the BNSF is, by law or otherwise, relieved of such responsibility.

**Section H. Federal Aid Projects**

It is understood that the project herein contemplated shall be financed from funds made available by the federal government and expended under federal regulations; that all plans, estimates of cost, specifications, authorizations, awards of contracts, acceptances of work and procedures in general are subject at all times to all federal laws, rules, regulations, orders and approvals applying to federal projects.

**Section I. Successors and Assigns**

All of the covenants and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

**Section J. Signature Authority**

The BNSF represents and warrants that it has taken all actions that are necessary or that are required by its procedures, bylaw, or applicable law, to legally authorize the undersigned signatory to execute the Contract on behalf of the BNSF and to bind the BNSF to its terms.

**Section K. Exceptions to Special Provisions**

The parties hereto agree that paragraph 3, INDEMNIFICATION, of the Special Provisions, is hereby waived and shall not apply to the Railroad Company for the Contract.

The parties hereto agree that the final sentence of paragraph 4, INDEPENDENT CONTRACTOR. 4 CCR 801-2, is replaced with the following:

> Contractor shall provide and keep in force such types of Workers' Compensation Insurance in the amounts required by law (and provide proof of such insurance, if such insurance is required by law, when requested by the State) and Unemployment Compensation Insurance, if required by law, in the amounts required by law, and shall be solely responsible for the acts of the Contractor, its employees and agents.

The parties hereto agree that the first sentence of paragraph 6, CHOICE OF LAW, of the Special Provisions, is replaced with the following:

> The laws of the State of Colorado and rules and regulations issued pursuant thereto, to the extent not preempted by federal law, shall be applied in the interpretation, execution and enforcement of the Contract.

The parties hereto agree that paragraph 7, VENDOR OFFSET, Sections 24-30-202(1) and 24-30-202.4, C.R.S., shall apply to this Contract, to the extent not preempted by federal law.

**Section L. Special Provisions (For Use With Intergovernmental Contracts)**

**1. Controller's Approval, Section 24-30-202(1), C.R.S.**

Thus Contract shall not be deemed valid until it has been approved by the Controller of the State of Colorado or such assistant as he may designate.

**2. Fund Availability, Section 24-30-202(5.5), C.R.S.**

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

**3. Indemnification.**

The Contractor shall indemnify, save and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards, including costs, expenses and attorney fees incurred as a result of any act or omission by the Contractor or its employees, agents, subcontractors or assignees pursuant to the terms of this Contract.

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, protection or other provisions for the parties, of the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., or the Federal Tort Claims Act, 28 USC 2671, et seq., as applicable, as now or hereafter amended.

**4. Independent Contractor, 4 CCR 801-2.**

The Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither the Contractor nor any agent or employee of the Contractor shall be or shall be deemed to be an agent or employee of the State. The Contractor shall pay when due all required employment taxes, and income tax and local head tax on any monies paid by the State pursuant to this Contract. The Contractor acknowledges that the Contractor and its employees are not entitled to unemployment insurance benefits unless the Contractor or third party provides such coverage and that the State does not pay for or otherwise provide such coverage. The Contractor shall have no authorization, express or implied, to bind the State to any agreements, liability or understanding except as expressly set forth herein. The Contractor shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by the State) and unemployment compensation insurance in the amounts required by law, and shall be solely responsible for the acts of the Contractor, its employees and agents.

**5. Nondiscrimination.**

The Contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

**6. Choice of Law.**

The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Contract. Any provision of this Contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations, shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Contract to the extent that this Contract is capable of execution.

At all times during the performance of this Contract, the Contractor shall strictly adhere to all applicable federal and State laws, rules and regulations that have been or may hereafter be established.

**7. Software Piracy Prohibition, Governor's Executive Order D 002 00.**

No State or other public funds payable under this Contract shall be used for the acquisition, operation or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Contractor hereby certifies that, for the term of this Contract and any extensions, the Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines

that the Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with United States copyright laws or applicable licensing restrictions.

**8. Employee Financial Interest, Sections 24-18-201 and 24-50-507, C.R.S.**

The signatories aver that, to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

**9. Illegal Aliens – Public Contracts for Services. Section 8-17.5-101, C.R.S., and Public Law 208, 104th Congress, as Amended and Expanded in Public Law 156, 108th Congress, as Amended.**

The Contractor certifies that the Contractor shall comply with the provisions of Section 8-17.5-101, et seq., C.R.S. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien. The Contractor represents, warrants and agrees that it: (i) has verified that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security; or (ii) otherwise will comply with the requirements of Section 8-17.5-101(2)(b)(I), C.R.S. The Contractor shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision or Section 8-17.5-101, et seq., C.R.S., the State may terminate this Contract for breach and the Contractor shall be liable for actual and consequential damages to the State.

## ARTICLE 37

## Emergency Management Grant Funds

*Contract Amendment No. 1*
*April 23, 2007*

THIS AMENDMENT, made this 23rd day of March, 2007, by and between the State of Colorado for the use and benefit of the Department of Local Affairs, Division of Emergency Management 9195 E Mineral Ave., Ste. 200, Centennial, CO 80112, hereinafter referred to as the "State," and Otero County, 222 E. 2nd St., La Junta, CO 81050, hereinafter referred to as the "Contractor."

### FACTUAL RECITALS

Authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment; and

Required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

The parties entered into a contract dated May 24, 2006, to authorize the State to award and pay grant funds to the Contractor using unilateral award letters and amendments issued by the Division of Emergency Management, and to state the general terms and conditions that apply to all grants issued under the master contract. The purpose for this amendment is described below.

The parties previously entered into a one-year umbrella/master contract where grant awards are made to the Contractor through Award Letters issued by the State.

The State is in the process of modifying its form contract from the current umbrella/master contract to individual grant contract and is anticipating such transition to occur no later than March 31, 2008.

In the interim, the parties desire to continue the grant award arrangement in its current form.

The State will discontinue the general use of the current umbrella/master contracts and unilateral award letters after the end of this Contractor, or upon approval of new waived bilateral contract for emergency management grants, whichever is sooner.

NOW, THEREFORE, it is hereby agreed that:

1. Consideration for this amendment to the original contract, 6EM46, Contract Routing No. 01526, dated May 24, 2006, consists of the payments which shall be made pursuant to this amendment and the promises and agreements herein set forth.

2. It is expressly agreed by the parties that this amendment is supplemental to the original contract, referred to as the "original contract," which is, by this reference, incorporated herein, that all terms, conditions and provisions thereof, unless specifically modified herein, are to apply to this amendment as though they were expressly rewritten, incorporated and included herein.

3. It is agreed the original contract is and shall be modified, altered and changed in the following respects only:

a. Replace the existing page 2 of the Contract, which is attached as Exhibit A-1, with the revised page 2, which is attached as Exhibit A-2. This modification deletes the third "Whereas" from the top of the page 2, and modifies the Time of Performance provision #2.

b. Replace the existing Special Provisions, page 8 of the contract, which is attached as Exhibit A-3, with the new Special Provisions, which is attached as Exhibit A-4.

4. The effective date of this amendment is upon approval of the State Controller.

5. Except for the "Special Provisions," in the event of any conflict, inconsistency, variance or contradiction between the provisions of this amendment and any of the provisions of the original contract, the provisions of this amendment shall in all respects supersede, govern and control. The "Special Provisions" shall always be controlling over other provisions in the contract or amendments. The representations in the Special Provisions concerning the absence of bribery or corrupt influences and personal interest of State employees are presently reaffirmed.

6. FINANCIAL OBLIGATIONS OF THE STATE PAYABLE AFTER THE CURRENT FISCAL YEAR ARE CONTINGENT UPON FUNDS FOR THAT PURPOSE BEING APPROPRIATED, BUDGETED AND OTHERWISE MADE AVAILABLE.

IN WITNESS WHEREOF, the parties hereto have executed this amendment on the day first above written.

**EXHIBIT A-1**

WHEREAS, the State annually or periodically distributes funds received to existing contractors, determined to be eligible by the State using state and/or federal eligibility criteria and which are in good standing, using State developed application process, and allocation procedure; and

WHEREAS, State fiscal rules require a State agency to enter into a contractual agreement in order to pass funds to either a local governmental entity, a quasi-governmental entity such as an LEPC or COG, or a private vendor; and

WHEREAS, the Contractor has been advised and agrees that the State periodically reviews and amends its contract forms and will submit a substitute contract form to Contractor within one (1) year of the approval of this contract; and

WHEREAS, the Contractor has been included as a potential funding recipient to the State for emergency management related funding, to enter into this agreement and to undertake the services desired by the State and federal government; and

WHEREAS, the Contractor is capable and desires to perform the services.

NOW, THEREFORE, it is agreed that:

1. Scope of Work. The Contractor agrees to carry out the scope of work described in each of its application packages for emergency management related activities, as approved by the State in its grant award letter, and to do so in conformance with this Contract and applicable federal and state laws, rules and regulations pertaining to each specific grant. Upon acceptance of an award by the Contractor, such award letters and grant applications will become a part of this contract until such time as the grant is closed out.

2. Time of Performance; Contract Substitution. This Contract shall become effective upon the date of proper execution of this Contract by the State Controller or designee and shall continue for a period of one (1) year. Grant award letters and any amendments to the award letters for each specific grant will identify the performance period for that grant. The parties agree that the State will submit a substitute contract form to the Contractor during the one-year period following the approval of this Contract. For grants awarded prior to the one-year expiration of this Contract, the terms of this Contract shall continue to apply until completion of the grant award, or until termination of the award pursuant to the Contract and Grant Award terms.

3. Authority to Enter into Contract. The Contractor assures and warrants that it possesses the legal authority to enter into this Contract. The person signing and executing this Contract on behalf of the Contractor does hereby warrant and guarantee that he/she has full authorization to execute this Contract.

4. Compensation and Method of Payment.

Compensation – Grant award letters issued by the State under this Contract will authorize the Contractor to expend funds and initiate requests for reimbursement based on the amount of the grant award in accordance with program policies. The State may allocate more or less funds available on this Contract using Grant Award Letters, substantially equivalent to Exhibit 1 and bearing the approval of the State Controller or his designee. The Grant Award Letter shall not be deemed valid until it shall have been approved by the State Controller or his designee.

Method of Payment – Based upon receipt of requests from the Contractor for reimbursement of funds expended under a grant award authorized under this Contract, and provision by the Contractor of the reports, and summary of documentation required under the grant, the State will reimburse the Contractor for those eligible program costs incurred. Original documentation will be kept on file with the Contractor. Payment and interest is subject to State Fiscal Rule 2-5 and Section 24-30-202(24), C.R.S. (1999). The State warrant or Electronic Funds Transfer (EFT) will be issued for reimbursement of eligible expenses. In those cases where a Contractor may have a cash flow problem verified by the State, the State may reimburse the Contractor based upon unpaid vendor invoices or Purchase Orders.

**EXHIBIT A-2**

WHEREAS, the State annually or periodically distributes funds received to existing contractors, determined to be eligible by the State using state and/or federal eligibility criteria and which are in good standing, using State developed application process, and allocation procedure; and

WHEREAS, State fiscal rules require a State agency to enter into a contractual agreement in order to pass funds to either a local governmental entity, a quasi-governmental entity such as an LEPC or COG, or a private vendor; and

WHEREAS, the Contractor has been included as a potential funding recipient to the State for emergency management related funding, to enter into this agreement and to undertake the services desired by the State and federal government; and

WHEREAS, the Contractor is capable and desires to perform the services.

NOW, THEREFORE, it is agreed that:

1. Scope of Work. The Contractor agrees to carry out the scope of work described in each of its application packages for emergency management related activities, as approved by the State in its grant award letter, and to do so in conformance with this Contract and applicable federal and state laws, rules and regulations pertaining to each specific grant. Upon acceptance of an award by the Contractor, such award letters and grant applications will become a part of this contract until such time as the grant is closed out.

2. Time of Performance. This Contract shall become effective upon the date of proper execution of this Contract by the State Controller or designee and shall expire on March 31, 2008. Grant award letters and any amendments to the award letters for each specific grant will identify the performance period for that grant. For grants awarded prior to the expiration of this Contract, the terms of this Contract shall continue to apply until completion of the grant award, or until termination of the award pursuant to the Contract and Grant Award terms.

3. Authority to Enter into Contract. The Contractor assures and warrants that it possesses the legal authority to enter into this Contract. The person signing and executing this Contract on behalf of the Contractor does hereby warrant and guarantee that he/she has full authorization to execute this Contract.

4. Compensation and Method of Payment.

Compensation – Grant award letters issued by the State under this Contract will authorize the Contractor to expend funds and initiate requests for reimbursement based on the amount of the grant award in accordance with program policies. The State may allocate more or less funds available on this Contract using Grant Award Letters, substantially equivalent to Exhibit 1 and bearing the approval of the State Controller or his designee. The Grant Award Letter shall not be deemed valid until it shall have been approved by the State Controller or his designee.

Method of Payment – Based upon receipt of requests from the Contractor for reimbursement of funds expended under a grant award authorized under this Contract, and provision by the Contractor of the reports, and summary of documentation required under the grant, the State will reimburse the Contractor for those eligible program costs incurred. Original documentation will be kept on file with the Contractor. Payment and interest is subject to State Fiscal Rule 2-5 and Section 24-30-202(24), C.R.S. (1999). The State warrant or Electronic Funds Transfer (EFT) will be issued for reimbursement of eligible expenses. In those cases where a Contractor may have a cash flow problem verified by the State, the State may reimburse the Contractor based upon unpaid vendor invoices or Purchase Orders.

**Exhibit A-3**

**SPECIAL PROVISIONS**

**(For Use Only With Inter-Governmental Contracts)**

**1. Controller's Approval. Section 24-30-202(1), C.R.S.**

This Contract shall not be deemed valid until it has been approved by the Controller of the State of Colorado or such assistant as he may designate.

**2. Fund Availability. Section 24-30-202(5.5), C.R.S.**

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

**3. Indemnification.**

To the extent authorized by law, the Contractor shall indemnify, save and hold harmless the State against any and all claims, damages, liability and court awards, including costs, expenses and attorney fees, incurred as a result of any act or omission by the Contractor or its employees, agents, subcontractors or assignees pursuant to the terms of this Contract.

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, protection or other provisions for the parties, of the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., or the Federal Tort Claims Act, 28 USC 2671, et seq., as applicable, as now or hereafter amended.

**4. Independent Contractor. 4 CCR 801-2**

THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. THE CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID BY THE STATE PURSUANT TO THIS CONTRACT. THE CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. THE CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. THE CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION (AND PROVIDE PROOF OF SUCH INSURANCE WHEN REQUESTED BY THE STATE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

**5. Nondiscrimination.**

The Contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

**6. Choice of Law.**

The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Contract. Any provision of this Contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Contract to the extent that the Contract is capable of execution.

At all times during the performance of this Contract, the Contractor shall strictly adhere to all applicable federal and state laws, rules and regulations that have been or may hereafter be established.

**7. Software Piracy Prohibition. Governor's Executive Order D 002 00**

No State or other public funds payable under this Contract shall be used for the acquisition, operation or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Contractor hereby certifies that, for the term of this Contract and any extensions, the Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this Contract, including, without limita-

tion, immediate termination of the Contract and any remedy consistent with United States copyright laws or applicable licensing restrictions.

**8. Employee Financial Interest. Sections 24-18-201 and 24-50-507, C.R.S.**

The signatories aver that, to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

**Exhibit A-4**

**SPECIAL PROVISIONS**

**(For Use Only With Inter-Governmental Contracts)**

1. **Controller's Approval. Section 24-30-202(1), C.R.S**. This Contract shall not be deemed valid until it has been approved by the Controller of the State of Colorado or such assistant as he may designate.

2. **Fund Availability. Section 24-30-202(5.5), C.R.S.** Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available.

3. **Indemnification**. The Contractor shall indemnify, save and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards, including costs, expenses and attorney fees and related costs, incurred as a result of any act or omission by the Contractor or its employees, agents, subcontractors or assignees pursuant to the terms of this Contract.

***[Applicable Only to Intergovernmental Contracts]*** 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, protection or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., or the Federal Tort Claims Act, 28 USC 2671, et seq., as applicable, as now or hereafter amended.

4. **Independent Contractor**. 4 CCR 801-2. The Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither the Contractor nor any agent or employee of the Contractor shall be or shall be deemed to be an agent or employee of the State. The Contractor shall pay when due all required employment taxes and income tax and local head taxes on any monies paid by the State pursuant to this Contract. The Contractor acknowledges that the Contractor and its employees are not entitled to unemployment insurance benefits unless the Contractor or third party provides such coverage and that the State does not pay for or otherwise provide such coverage. The Contractor shall have no authorization, express or implied, to bind the State to any agreements, liability or understanding, except as expressly set forth herein. The Contractor shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by the State) and unemployment compensation insurance in the amounts required by law, and shall be solely responsible for the acts of the Contractor, its employees and agents.

5. **Nondiscrimination**. The Contractor agrees to comply with the letter and the spirit of all applicable State and federal laws respecting discrimination and unfair employment practices.

6. **Choice of Law**. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Contract. Any provision of this Contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Contract to the extent that the Contract is capable of execution. At all times during the performance of this Contract, the Contractor shall strictly adhere to all applicable federal and State laws, rules and regulations that have been or may hereafter be established.

7. ***[Not Applicable to Intergovernmental Contracts]*** **Vendor Offset. Sections 24-30-202(1) and 24-30-202.4, C.R.S**. The State Controller may withhold payment of certain debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balances of tax, accrued interest or other charges specified in Article 21, Title 39, C.R.S.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or its agencies, as a result of final agency determination or reduced to judgment, as certified by the State Controller.

8. **Software Piracy Prohibition. Governor's Executive Order D 002 00**. No State or other public funds payable under this Contract shall be used for the acquisition, operation or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. The Contractor hereby certifies that, for the term of this Contract and any extensions, the Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Contractor is in violation of this paragraph, the State may exercise any remedy available at law or 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.

9. **Employee Financial Interest**. **Sections 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 herein.

10. ***[Not Applicable to Intergovernmental Contracts]*** **Illegal Aliens – Public Contracts for Services and Restrictions on Public Benefits, Sections 8-17.5-101 and 24-76.5-101, C.R.S.** The Contractor certifies that it shall comply with the provisions of Section 8-17.5-101, et seq., C.R.S. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. The Contractor represents, warrants and agrees that it (i) has verified that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security; and (ii) otherwise shall comply with the requirements of Section 8-17.5-102(22)(b), C.R.S. The Contractor shall comply with all reasonable requests made in the course of an investigation under Section 8-17.5-102, C.R.S., by the Colorado Department of Labor and Employment. Failure to comply with any requirement of this provision or Section 8-17.5-101, et seq., C.R.S., shall be cause for termination for breach and the Contractor shall be liable for actual and consequential damages.

The Contractor, if a natural person eighteen (18) years of age or older, hereby swears or affirms under penalty of perjury that he (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of Section 24-76.5-101, et seq., C.R.S., and (iii) shall produce one (1) form of identification required by Section 24-76.5-103, C.R.S., prior to the effective date of this Contract.

## ARTICLE 38

### Wildlife Damage Management Program

*Work and Financial Plan*
*November 5, 2007*

Cooperator: Otero County Commissioners
Tax Identification No.: 84-6000789
Cooperative Agreement No.: 08-7308-5273-RA
Account No.: 87373-08404
Location: Otero County, Colorado
Dates: January 1 — December 1, 2008

Pursuant to Cooperative Service Agreement No. 08-7308-5273-RA between the United States Department of Agriculture, Animal and Plant Health Inspection Services, Wildlife Services (APHIS-WS) and the Otero County Commissioners, Otero County, Colorado; this Work Plan defines the objectives, plan of action and budget for the Wildlife Services program to be conducted during CY 2008.

**OBJECTIVES/GOALS:**

To conduct a cooperatively funded wildlife damage management program for the citizens of Otero County in Colorado.

**PLAN OF ACTION:**

APHIS-WS will provide direct control or technical assistance at times and places throughout Otero County where it is determined there is a need to resolve problems caused by wildlife. Work will primarily involve control of livestock predation, along with other wildlife issues. Lethal control efforts will be directed towards specific offending individuals or local populations. Method selection will be based on an evaluation of selectivity, humaneness, human safety, effectiveness, legality and practicality.

Damage Control Strategies:

1) Technical Assistance: Wildlife Services personnel may provide verbal or written advice, recommendations, information, demonstrations or training to others to use in managing wildlife damage problems. Generally, implementation of technical assistance recommendations is the responsibility of the resource/property owner.

2) Direct Control: Direct control is usually provided when the resource/property owner's efforts have proven ineffective and technical assistance alone is inadequate. Direct control methods/techniques include: traps, ground shooting, aerial shooting, snaring, M-44s, denning and dogs. (Due to the passage of Amendment 14 in November of 1996 and subsequent implementing legislation in 1997, the use of leghold and body gripping traps, neck and foot snares, and toxicants has been severely restricted. The use of these methods is no longer legal on public lands and limited to one (1) thirty-day period per calendar year, per parcel, on private land. Prior to any use of these methods by APHIS-WS personnel, cooperating property/resource owners must have received an authorization to use these methods from the Colorado Division of Wildlife.)

**REPORTS:**

APHIS-WS will be responsible for the preparation of periodic reports as specified in the Cooperative Agreement.

**STIPULATIONS AND RESTRICTIONS:**

a. All operations shall have the joint concurrence of APHIS-WS and the Otero County Commissioners and shall be under the direct supervision of APHIS-WS. APHIS-WS will conduct the program in accordance with its established operating policies and all applicable state and federal laws and regulations.

b. Control on Private Lands: An agreement for Control of Animal Damage on Private Property (ADC Form 12A) will be executed between APHIS-WS and the landowner, lessee or administrator before any APHIS-WS work is conducted.

c. Control of Public Lands: An Agreement for Control of Animal Damage on Non-Private Property (ADC Form 12C) or an appropriate NEPA document will be executed between APHIS-WS and the public land administrator(s)/manager(s) before any APHIS-WS work is conducted.

**COST ESTIMATE FOR SERVICES:**

Equipment, field personnel and supervision will be provided by APHIS-WS (aerial hunting operations are funded separately through an Aerial Hunting Agreement). One full-time, twelve-month, Wildlife Services Specialist will be employed by APHIS-WS. Funding for this position is shared between Otero County, Crowley County, Bent County, City of La Junta, and U.S. Army-John Martin Reservoir. He will be assigned the primary responsibility for conducting the Wildlife Services work in these locations.

Estimated total cost for services of one (1) full-time, twelve-month Wildlife Specialist is seventy-two thousand eight hundred dollars ($72,800.00). Fifty-four percent (54%) of the funding for this position is shared between cooperators, and the remaining forty-six percent (46%) is funded by Wildlife Services. Total cooperative funding for this work plan is eight thousand five hundred fifty dollars ($8,550.00), total Wildlife Services funding for this work plan is seven thousand six hundred dollars ($7,600.00), for a total of sixteen thousand one hundred fifty dollars ($16,150.00). Such costs include, but are not limited to, salary/benefits, vehicle use, travel costs and supplies/equipment. An estimated itemization of expenses is listed below; however, funds may be distributed between itemized categories at the discretion of APHIS-WS if required. Any equipment and supplies purchased under the terms of this agreement will remain the property of APHIS-WS.

| ***Estimated Cost for Services*** | |
|---|---|
| Salaries and Benefits | $11,951.00 |
| Travel and Vehicle | 2,746.00 |
| Supplies and Equipment | 1,453.00 |
| **Total** | **$16,150.00** |

NOTE: In accordance with the Debt Collection Improvement Act (DCIA) of 1996, bills issued by WS are due and payable within thirty (30) days of receipt. The DCIA requires that all debts older than one hundred twenty (120) days be forwarded to debt collection centers or commercial collection agencies for more aggressive action. Debtors have the option to verify, challenge and compromise claims, and have access to administrative appeals procedures which are both reasonable and protect the interests of the United States.

## ARTICLE 39

## Fowler Master Plan

*Intergovernmental Agreement for Services*
*January 7, 2008*

AGREEMENT made this 7th day of January, 2008, between the Town of Fowler ("Town"), State of Colorado, a municipal corporation, and the County or Otero ("County"), State of Colorado.

### RECITALS

The Town of Fowler is a municipal corporation wholly located in Otero County, State of Colorado; and

The County of Otero is a subdivision of the State of Colorado; and

Section 29-1-203, C.R.S., provides that Colorado governments are authorized to contract with one another to provide any function, service or facility lawfully authorized to each of the governmental entities with the approval of each respective legislative body.

A Colorado municipality may lawfully develop a master plan for areas within its corporate limits and all land that lies within three (3) miles of the boundary of the municipality not located in any other municipality. Sections 31-23-212, 31-12-105(1)(e)(I), C.R.S.

No other towns lie within three (3) miles of the boundary of the Town.

Colorado law requires that, prior to annexation of land within said three-mile area, the municipality must have in place a plan for that area that generally describes the proposed location, character and extent of streets, bridges, waterways, parkways, playgrounds, squares, parks, aviation fields, other public ways, grounds, open spaces, public utilities and terminals for water, light, sanitation, transportation and power to be provided by the municipality and the proposed land uses for the area. Said plan must be updated at least once annually. Section 31-12-105(1)(e)(I), C.R.S.

The Town anticipates that, at various times in the future, the Town will annex parcels contained within said three-mile area.

The County may lawfully develop a master plan for the County which includes that unincorporated area extending beyond the municipal limits of the Town of Fowler by three (3) miles. Section 30-28-106, C.R.S.

Cooperating in the planning process in the area that extends beyond the municipal limits of the Town by three (3) miles is mutually beneficial.

### AGREEMENT

**1. Purpose.**

a. The Agreement provides that the Town and County shall cooperatively review development outside the Town but within the three-mile area that extends beyond the municipal limits of the Town and cooperate in the development of a master plan for the areas contained in this three-mile area that constitutes the urban growth area for the Town.

**2. Powers and Authority.**

a. Each entity and each entities' planning commission shall retain all its powers without any degradation or diminution to said powers, including the power of the respective entity to direct and supervise its own employees.

**3. Rights.**

a. Effective Date. The Agreement shall become effective upon approval of the Agreement the Town's Board of Trustees and the County's Board of Commissioners pursuant to Colorado law.

b. Termination. The Agreement shall continue without further action of the entities. Either party may terminate the Agreement by providing the other party thirty (30) days' written notice of intent to terminate the Agreement on a date certain.

c. Modification. Either party may request a modification of the Agreement. The request shall be in writing and delivered to the Mayor of the Town or to the Chairman of the Board of Commissioners by first-class mail. Any modification shall be in writing and approved by the Town's Board of Trustees and the County's Board of Commissioners.

d. Communications. All communication regarding the Agreement shall be delivered to the following addresses:

Town of Fowler
Attention: Mayor
200 South Main Street
Fowler, CO 81039
Telephone: 719-263-4461

County of Otero
Attention: Chairman of Commissioners
P.O. Box 511
La Junta, CO 81050
Telephone: 719-383-3000

Where the address or phone number of either party changes, that party shall notify the other party in writing as soon as practicable of the new address or phone number, after which all communications regarding the Agreement shall be delivered to the new address.

**4. Obligations.**

a. Obligations of County.

i. The County shall provide to the Town, at the Town's expense, a copy of prints of any complete preliminary plan submission to the County for development within three (3) miles of the boundary of the Town, notwithstanding Section 30-28-136, C.R.S., requiring notice to the municipality of any plan submission to the County within a two-mile radius of any portion of the proposed subdivision.

ii. The County shall notify the Town of any proposed changes to the County's master plan or zoning plan affecting the unincorporated area lying within three (3) miles of the Town.

iii. The County shall coordinate with the Town on the Town's development of any plans the Town may develop that impact the area lying within three (3) miles of the Town.

b. Obligations of the Town.

i. The Town shall notify and coordinate with the County prior to the Town's development of any plans the Town may develop that impact the area lying within three (3) miles of the Town.

**5. Joint County and Town obligations.**

a. Development applications that impact the area lying within three (3) miles of the Town shall be reviewed by a Technical Advisory Committee comprised of staff representatives from the County and Town planning departments, the regional building department, fire protection districts and utility departments.

This Agreement was approved by a majority of the members of the Board of Trustees of the Town of Fowler during an open meeting held on the ____ day of _____, 2008.

THIS AGREEMENT was approved by a majority of the members of the Otero County Board of Commissioners during an open meeting held on the 7th day of January, 2008.

## ARTICLE 40

## Colorado Community Services Block Grant

*Agreement*
*July 13, 2009*

**State of Colorado**
**Department of Local Affairs**
**American Recovery and Reinvestment Act**
**Community Services Block Grant Agreement**
**with Otero County**

**1. PARTIES,**

THIS GRANT AGREEMENT ("Grant") is entered into by and between Otero County ("Grantee"), and the STATE OF COLORADO (the "State") acting by and through the Colorado Department of Local Affairs (the "Department") for the benefit of the Division of Local Government ("DLG").

**2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY**

This Grant shall not be effective or enforceable until approved and signed by the Colorado State Controller or authorized delegate ("Effective Date"), but shall be effective and enforceable thereafter in accordance with its provisions. The Department shall not be obligated to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision of this Grant prior to: [select one of the following options A-B by checking the box next to selected option].

A. Option

☐ The Effective Date.

B. Option

X The Effective Date; provided, however, that all Project costs, if specifically authorized by the funding authority, incurred on or after July 1, 2009, may be submitted for reimbursement as if incurred after the Effective Date.

**3. RECITALS**

A. Authority, Appropriation, And Approval. Authority for this Grant arises from § 24-32-106, C.R.S. Authority exists in the law; funds have been budgeted, appropriated and otherwise made available; a sufficient unencumbered balance thereof remains available for payment; and the required approval, clearance and coordination have been accomplished from and with appropriate agencies.

B. Grantee. Grantee is an eligible recipient of Grant Funds made available by the Program, as defined below, and awarded by this Grant. Grantee is aware of, willing and able to comply with all provisions specific to the Program, as set forth in Exhibit A, and to complete the Project described in Exhibit B.

C. Purpose and Department's Role. The Department administers funds made available to the Department for the purpose of reducing poverty, revitalizing low-income communities, and empowering low-income families and individuals in rural and urban areas to become fully self-sufficient. The purpose of this agreement is detailed in Exhibit B.

**4. DEFINITIONS**

The following terms as used herein shall be construed and interpreted as follows:

A. **Effective Date**. Effective Date means the date this Grant is effective and enforceable in accordance with §2 above.

B. **Exhibits and Other Attachments**. Exhibit means the following are attached hereto and incorporated by reference herein: Exhibit A (Applicable Law), Exhibit B (Statement of Project), Exhibit C (Terms and Conditions for ARRA Funded Contract), and Form 1 (Affidavit of Residency).

C. **Goods**. Goods means any physical item produced or manufactured and acquired by Grantee either separately or in conjunction with the Services rendered hereunder that are required by the provisions hereof.

D. **Grant Funds**. Grant Funds means the American Recovery and Reinvestment Act, Community Services Block Grant funds available for distribution by the Department to Grantee for use in connection with the Project, as set forth in the Recitals and Statement of Project sections hereof.

E. **Party or Parties**. Party or Parties means one or both of the Department and Grantee.

F. **Program**. Program means the federal or state funding for this Grant.

G. **Project**. Project means the Project described in the Recitals and Exhibit B.

H. **Project Budget**. Project Budget means the Project Budget described in Exhibit B.

I. **Services**. Services means services performed or tangible material produced or delivered in completing the Project and in performance of Grantee's other obligations hereunder.

J. **Termination Date**. Termination Date means the date this Grant terminates as described in §5(A) below.

K. **Work Product**. Work Product means software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts, prepared by Grantee in completing the Project and in performance of Grantee's other obligations hereunder.

**5. TERM and EARLY TERMINATION**

A. Initial Term-Work Commencement. The term of this Grant shall commence on the later of the Effective Date or July 1, 2009, and terminate on September 30, 2010, unless terminated earlier as provided below. Grantee's obligations under this Grant shall be undertaken and performed in the sequence and manner set forth in Exhibit B. Performance of this Grant shall commence as soon as practicable after the Effective Date.

B. Department's Option to Extend. The Department, in its sole discretion and upon written notice to Grantee, may unilaterally extend the term of this Grant for a period of up to three months under the same provisions as the original Grant if the Parties are negotiating a replacement contract (and not merely seeking a term extension) at or near the end of any initial term or an extension thereof. This extension shall terminate at the earlier of either the end of the three-month period or when a replacement Grant is signed by the Parties and approved by the State Controller or authorized designee. Any other extension of the term of this Grant requires an amendment made in accordance with the Modification subsection of the General Provisions below.

C. Early Termination. This Grant is subject to early termination in accordance with the general remedies provisions of §17 below and as specifically otherwise provided for herein.

**6. STATEMENT of PROJECT**

Grantee shall complete the Project and perform its other obligations as described herein and in Exhibit B. Grantee shall prosecute its obligations hereunder and in Exhibit B with due diligence to completion. The Department may, in its sole discretion, but in accordance with limitations imposed by the Office of the State Controller, change budgetary lines in the Project Budget section of Exhibit B. The Department shall send notice of such changes within 60 days in accordance with §18 below.

**7. MATCHING FUNDS**

A. Amount. Grantee shall provide matching funds as provided in Exhibit B. Grantee shall raise the full amount of matching funds during the term of this Grant and shall report to the Department regarding the status of such funds as required in Exhibit B.

B. Breach. Grantee's failure to raise matching funds, to keep records, and/or to report may affect its continued participation in the Program under whichthis Grant operates. In addition, the Department may terminate this Grant under the Termination for Cause subsection of §17 below, if the Department has reasonable evidence that Grantee will be unable to raise such matching funds during the term hereof.

**8. GRANTEE FINANCIAL MANAGEMENT**

A. Accounts. Grantee shall maintain properly segregated accounts of Grant funds, matching funds, and other funds associated with the Project and make those records available to the Department on request. All receipts and expenditures associated with the Project shall be documented in a detailed and specific manner, in accordance with the Project Budget.

B. Project Budget Line Item Adjustments. Regarding budget lines within the Project Budget, Grantee may: [check one]

i. X not adjust individual budget line amounts without approval of the Department. Such approval shall be in the form of:

a) notice issued by the Department in accordance with §18 below; or

b) an amendment in accordance with the Modification subsection of the General Provisions below.

ii. □ adjust individual budget line amounts without the Department's approval if:

a) there are no transfers to or between administration budget lines; and

b) the cumulative budgetary line item changes do not exceed the lesser of fifteen percent of the total budgeted amount or $20,000.

**9. PAYMENTS TO GRANTEE**

Grantee shall be paid in the following amounts and manner, subject to return of any unexpended Grant Funds:

A. Maximum Amount. The maximum amount payable under this Grant to Grantee by the Department shall be $82,076.00, as determined by the Department from available funds. The Department shall reimburse Grantee for costs approved in the Grant budget, set forth in Exhibit B. Satisfactory performance under the terms of this Grant shall be a condition precedent to the Department's obligation to reimburse Grantee. The maximum amount of Grant Funds payable as reimbursement under this Grant, and any extension hereof, shall include all Grantee's fees, costs and expenses.

B. Payment. All payments are subject to §17 below.

i. Method and Time. Grantee shall periodically submit invoices to the Department in the form and manner set forth in Exhibit B, and shall attach timesheets, receipts and other requested documentation in the form and manner approved by the Department. Grantee shall submit a request for reimbursements/ invoices within 30 days after the end of the period for which payment is requested, and final billings under this Grant shall be received by the Department within 30 days after termination hereof. Untimely requests for payment may be accepted at the sole discretion of the Department.

ii. Electronic Funds Transfer. Payments shall be made by one of the following methods:

a) by mutually agreeable method including in-person pickup;

b) electronic funds transfer (EFT) if Grantee provides written EFT instructions to the Department on a form acceptable to the Department; or

c) via the U.S. Postal Service or other delivery service to the address specified by Grantee in the remittance address section of Exhibit B.

iii. Erroneous Payments, Unexpended and Excess Funds. Grantee shall refund payments made by the State in error for any reason, including, but not limited to overpayments or improper payments, within 15 days of discovering or receiving notice of such error. Any funds paid to Grantee hereunder not expended in connection with this Grant by the termination date shall be refunded by Grantee within 15 days of such date. Any funds not required to complete Grantee's obligations hereunder shall be deobligated by the State. If Grantee receives funds hereunder during any fiscal year in excess of its spending limit for such fiscal year, Grantee shall refund all excess funds to the State within 15 days of

the later of discovering or receiving notice of such excess. Erroneous, unexpended, and excess funds received by Grantee under this Grant shall not be refunded or paid to any party other than the State

iv. Available Funds – Contingency – Termination. The Department is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Grantee's compensation is contingent upon the continuing availability of State appropriations as provided in §2 of the Colorado Special Provisions set forth below. If federal funds are used with this Grant in whole or in part, the Department's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant, and the Department's liability for such payments shall be limited to the amount remaining of such encumbered funds.

C. Additional Funds. Grantee shall provide any additional or matching funds necessary to perform its obligations in accordance with the budget in Exhibit B.

D. Remedies. If state or federal funds are not appropriated, or otherwise become unavailable to fund this Grant, the State may immediately terminate the Grant in whole or in part without further liability in accordance with §17(B) below. If additional funds under §9(C) are unavailable in whole or part, the State may, in its sole discretion, reduce its total funding commitment hereunder in proportion to the reduction in additional funds. If Grantee fails to refund payments as set forth in §9(B)(iii) above, the State may offset the amount not returned against any other unpaid funds the State owes Grantee under any other grant, agreement, or obligation between the Parties.

**10. REPORTING AND NOTIFICATION**

Reports and analyses required under this section shall be made in accordance with procedures and in such form as prescribed by the Department.

A. Performance, Progress, Personnel, and Funds. Grantee shall comply with all reporting requirements set forth in Exhibit B.

B. Litigation. Within 10 days after being served with any pleading related to this Grant or the Project, in a legal action filed with a court or administrative agency, Grantee shall notify the Department of such action and deliver copies of such pleadings to the Department's principal representative in accordance with §18 below. If a Department principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of the Department.

C. Noncompliance. Grantee's failure to provide reports and notify the Department in a timely manner in accordance with this section may result in the delay of payment of funds and/or termination under §17 below.

**11. GRANTEE RECORDS**

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

A. Maintenance. Grantee shall maintain a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Project or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records (the "Record Retention Period") until the last to occur of the following:

i. a period of five years after the date this Grant is completed or terminated, or

ii. final payment is made hereunder, whichever is later, or

iii. for such further period as may be necessary to resolve any pending matters, or

iv. if an audit is occurring, or Grantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved.

B. Inspection. Grantee shall permit the State, the federal government or any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Records Retention Period to assure compliance with the terms hereof or to evaluate Grantee's performance. The Department reserves the right to inspect the Project at all reasonable times and places during the term of this Grant, including any extension. The provisions of §14(E), §16, and/or §17 below shall apply if the project performance does not conform to Grant requirements.

C. Monitoring. Grantee shall also permit the State, the federal government or any other duly authorized agent of a governmental agency, in the sole discretion of such governmental agency, to monitor all activities conducted by Grantee pursuant to this Grant, using any reasonable procedure, at the discretion of such governmental agency, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, and formal audit examinations. All such monitoring shall be performed in a manner that will not unduly interfere with Grantee's performance hereunder.

D. Final Audit Report. If an audit is performed on Grantee's records for any fiscal year covering a portion of the term of this Grant, Grantee shall submit one copy of the final audit report to the Department's principal representative at the address specified in §18 below.

**12. CONFIDENTIAL INFORMATION – STATE RECORDS**

Grantee acknowledges that it may become privy to confidential information in connection with its performance hereunder, including but not limited to State records, personnel records, and information concerning individuals ("Confidential Information"). The following applies if Grantee receives confidential information:

A. Confidentiality. Grantee shall keep all Confidential Information confidential at all times and comply with all laws and regulations concerning confidentiality of information to the same extent applicable to the Department. Any request or demand for information in the possession of Grantee made by a third party shall be forwarded immediately to the Department's principal representative for resolution.

B. Notification. Grantee shall notify each of its agents, employees, sub-grantees, subcontractors and assigns (each a "Related Party") who may come into contact with Confidential Information that such party is subject to the confidentiality requirements set forth herein, and shall provide each Related Party with a written explanation of such requirements before permitting such party to access any information of the Department.

C. Use, Security, and Retention. No Confidential Information of any kind shall be distributed or sold to any third party or used by Grantee or a Related Party in any way, except as authorized by this Grant and as approved by the Department. Grantee shall provide and maintain a secure environment that ensures confidentiality of all State records and other Confidential Information wherever located. Confidential Information shall not be retained in any files or otherwise by Grantee or a Related Party, except as set forth in this Grant and approved by the Department.

D. Disclosure-Liability. Disclosure of State records or other Confidential Information by Grantee or a Related Party for any reason may be cause for legal action against Grantee or such Related Party by the State or third parties and defense of any such action shall be Grantee's sole responsibility.

E. Health Insurance Portability & Accountability Act of 1996 ("HIPAA"). This HIPAA section [check one] ☐ applies to or X does not apply to this Grant Federal law and regulations governing the privacy of certain health information requires a "Business Associate Contract" between the Department and Grantee. 45 C.F.R. Section 164.504(e). Attached and incorporated herein by reference and agreed to by the Parties is a HIPAA Business Associate Addendum for HIPAA compliance. Terms of the Addendum shall be considered binding upon execution of this Grant and shall remain in effect during the term of this Grant, including any extension.

## 13. CONFLICT OF INTEREST

A. Definition and Appearance. Grantee shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Grantee's obligations hereunder. Grantee acknowledges that with respect to this Grant, even the appearance of a conflict of interest is harmful to the Department's interests. Absent the Department's prior written approval, Grantee shall refrain from any practices, activities or relationships which reasonably appear to be in conflict with the full performance of Grantee's obligations to the Department hereunder. Grantee shall comply with the provisions of §18-8-308, C.R.S., and §§24-18-101-109, C.R.S.

B. Specific Prohibitions. Grantee's and sub-grantee's respective officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from Grantee's potential sub-grantees, or parties to subcontracts. Grantee's employees, officers, agents or any permitted sub-grantees shall not participate in the selection, award, or administration of this Grant or any sub-grant or sub-contract, if an actual or apparent conflict of interest would occur. Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

i. an employee, officer, agent or board member;

ii. any member of the employee's immediate family;

iii. an employee's partner; or

iv an organization that employs, or is about to employ, any of the aforementioned.

C. Determination by Department – Default. If Grantee is uncertain as to the existence of a conflict of interest, Grantee shall submit to the Department a disclosure statement setting forth the relevant details for the Department's consideration. Failure to promptly submit a disclosure statement or to follow the Department's direction in regard to the apparent conflict shall be considered a material default of this Grant and grounds for termination under the Termination for Cause subsection of §17 below.

D. Code of Performance. Grantee, and sub-grantees and subcontractors, if any, shall maintain a written code of standards governing the performance of their respective employees, agents, and contractors engaged in the award and administration of this Grant, or sub-contract or sub-grant, if any. Grantee shall provide a copy of such code to the Department within 10 days of the Department's written request therefor.

## 14. REPRESENTATIONS AND WARRANTIES

The Parties make the following specific representations and warranties to each other, upon which each is relying in entering into this Grant:

A. Standard and Manner of Performance. Grantee shall perform its obligations hereunder, including in accordance with the highest professional standard of care, skill and diligence. Grantee shall perform its obligations hereunder in the sequence and manner set forth in Exhibit B.

B. Inspection and Verification. The Department reserves the right to inspect and monitor Grantee's performance hereunder at all reasonable times and places to verify that it conforms to the requirements of Exhibit B. The provisions of §14(E), §16, and/or §17 below shall apply if Grantee's performance does not conform to Grant requirements.

C. Legal Authority-Grantee and Grantees Signatory. Grantee warrants that it possesses the legal authority to enter into this Grant and has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Grant and to bind Grantee to its terms. The person signing and executing this Grant on behalf of Grantee hereby represents and warrants and guarantees that they have full authorization to do so. If requested by the Department, Grantee shall provide the Department the basis for Grantee's authority to enter into this Grant within 15 days of receiving such request.

D. Licenses, Permits, etc. Grantee represents and warrants that as of the Effective Date it has, and that at all times during the term hereof, it will have, at its sole expense, all licenses, certifications, approval, insurance, permits, and other authorization required by law to perform its obligations hereunder. Additionally, all employees of Grantee performing services under this Grant shall hold the required licenses or certifications, if any, to perform their duties. Grantee, if a foreign corporation or other entity transacting business in the State of Colorado, further certifies that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform this Grant, shall be deemed to be a default by Grantee and grounds for termination under §17(A) below.

E. Breach. If Grantee breaches any of its representations or warranties, the Department may require Grantee to promptly perform its obligations again in conformity with Grant requirements, at no additional cost to the Department. If such breaches cannot be, or are not cured, the Department may, in addition to any other remedies provided for in this Grant, require Grantee to take necessary action to ensure that future performance conforms to the provisions of this Grant; and equitably reduce the payment due to Grantee to reflect the reduced value of the Project. Any reduction, delay or denial of payment under this provision shall not constitute a breach of Grant or default by the Department.

**15. INSURANCE**

Grantee and its sub-grantees and subcontractors shall obtain and maintain insurance as specified in this section at all times during the term of this Grant: All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to Grantee and the State.

A. Grantee.

i. Public Entities. If Grantee is a public entity within the meaning of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S., as amended (the Governmental Immunity Act"), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self- insurance, as is necessary to meet its liabilities under such Act. Grantee shall show proof of such insurance satisfactory to the Department, if requested by the Department. Grantee shall require each grant or contract with a sub-grantee or subcontractor which is a public entity, providing Goods or Ser-

vices in connection with this Grant, to include the insurance requirements necessary to meet sub-grantees' liabilities under the Act.

ii. Non-Public Entities. If Grantee is not a public entity within the meaning of the Governmental Immunity Act, Grantee shall obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in subsection B of this section with respect to sub-grantees and subcontractors that are not public entities.

B. Sub-grantees and Subcontractors. Grantee shall require each contract with a sub-grantee or subcontractor providing Goods or Services in connection with this Grant, other than those that are public entities, to include insurance requirements substantially similar to the following:

i. Worker's Compensation. Worker's Compensation Insurance, as required by State statute, and Employer's Liability Insurance covering all sub-grantee or subcontractor employees acting within the course and scope of their employment.

ii. General Liability. Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

a) $1,000,000 each occurrence;

b) $1,000,000 general aggregate;

c) $1,000,000 products and completed operations aggregate; and

d) $50,000 any one fire.

If any aggregate limit is reduced below $1,000,000 because of claims made or paid, sub-grantee or subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to Grantee a certificate or other document satisfactory to Grantee showing compliance with this provision.

iii. Automobile Liability. Automobile Liability Insurance covering any automobile (including owned, hired and non-owned automobiles) with a minimum limit of $1,000,000 each accident, combined single limit.

iv. Additional Insured. Grantee and the State shall be named as additional insureds on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts require additional insurance coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. Primacy of Coverage. Coverage required of the sub-grantee or subcontractor shall be primary over any insurance or self-insurance program carried by Grantee or the State.

vi. Cancellation. The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days' prior notice to the Grantee and the State by certified mail.

vii. Subrogation Waiver. All insurance policies in any way related to the Grant and secured and maintained by Grantee's sub-grantees or subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation, or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates. Each of Grantee's subcontractors and sub-grantees shall provide certificates showing insurance coverage required hereunder to Grantee within seven business days of the Effective Date, but in no event later than the commencement of the Services or delivery of the Goods under the subcontract or sub-grant. No later than 15 days prior to the expiration date of any such coverage, each subcontractor or sub-grantee shall deliver to Grantee certificates of insurance evidencing renewals thereof upon request by the Department or at any other time during the term of a subcontract or sub-grant, Grantee may request in writing, and the subcontractor or sub-grantee shall thereupon within 10 days supply to Grantee, evidence satisfactory to Grantee and the Department of compliance with the provisions of this section.

**16. DEFAULT-BREACH**

A. Defined. In addition to any breaches or defaults specified in other sections of this Grant, including, but not limited to the Colorado Special Provisions below, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a default or breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar legislation, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof; shall also constitute a default.

B. Notice and Cure Period. In the event of a default or breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §18 below. If such default or breach is not cured within 30 days of receipt of written notice or, if a cure cannot be completed within 30 days, cure of the default or breach has not begun within said period and pursued with due diligence, the aggrieved Party may terminate this Grant by providing written notice thereof, as provided for in §18 below, specifying the effective date of the termination. Notwithstanding anything to the contrary herein, the Department, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

**17. REMEDIES**

If Grantee is in default or breach under any provision of this Grant, the Department shall have all of the remedies listed in this section in addition to all other remedies set forth in other sections of this Grant. The Department may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Default. If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the Department may notify Grantee of such non-performance in accordance with the §16 above and §18 below. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the Department, at its option, may terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the Department of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

i. Obligations and Rights. To the extent specified in the termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall also terminate outstanding orders and subcontracts with third parties. However, Grantee shall complete and deliver to the Department all Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within the Grant terms. In the sole discretion of the Department, Grantee shall assign to the Department all of Grantee's right, title, and interest under such

terminated orders or subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the Department has an interest. All materials owned by the Department in the possession of Grantee shall be immediately returned to the Department. All Work Product, at the option of the Department, shall be delivered by Grantee to the Department and shall become the Department's property.

ii. Payments. The Department shall pay Grantee only for accepted Services and Goods received up to the date of termination. If, after termination by the Department, it is determined that Grantee was not in default or that Grantee'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 the same as if this Grant had been terminated in the public interest, as described in §17(B) below.

iii. Damages and Withholding. Notwithstanding any other remedial action by the Department, Grantee shall also remain liable to the Department for any damages sustained by the Department by virtue of any default under this section by Grantee, and the Department may withhold any payment to Grantee for the purpose of mitigating the Department's damages, until such time as the exact amount of damages due to the Department from Grantee is determined. Further, the Department may withhold amounts due to Grantee as the Department deems necessary to protect the Department against loss because of outstanding liens or claims of former lien holders and to reimburse the Department for excess costs incurred in procuring similar goods or services. Grantee shall be liable for excess costs incurred by the Department in procuring from third parties replacement Services or substitute Goods as cover.

B. Early Termination for the Public Interest. The Department is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and Courts. If this Grant ceases to further the public policy of the State, the Department, in its sole discretion, may terminate this Grant in whole or in part. Exercise by the Department of this right shall not be deemed a breach of the Department's obligations hereunder. This subsection shall not apply to a termination of this Grant by the Department for cause or default by Grantee, which shall be governed by §17(B) above.

i. Method and Content. The Department shall notify Grantee of the termination in accordance with §16 above and §18 below, specifying the effective date of the termination and whether it affects all or a portion if this Grant.

ii. Obligations and Rights. Upon receipt of a termination notice, Grantee shall be subject to and comply with §17(A)(i) above.

iii. Payments. If this Grant is terminated by the Department in furtherance of the public interest of the State of Colorado, Grantee shall be paid for satisfactory performance up to the date of termination less payments previously made.

C. Remedies Not Involving Termination. The Department, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to the Department:

i. Suspend Performance. Suspend Grantee's performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the Department without entitling Grantee to an adjustment in price/cost or performance schedule. Grantee shall promptly cease performance and incurring costs in accordance with the Department's directive, and the Department shall not be liable for costs incurred by Grantee after the suspension of performance under this provision.

ii. Withhold Payment. Withhold payment to Grantee until corrections in services are satisfactorily completed and /or acceptable goods are provided.

iii. Deny Payment. Deny payment for those Services not performed and/or Goods not provided and which due to circumstances caused by the Grantee cannot be performed or provided or, if performed or provided, would be of no value to the Department; provided, that any denial of payment must be reasonably related to the value of work, performance or Goods lost to the Department.

iv. Removal. Demand removal of any of Grantee's employees, agents, or subcontractors whom the Department deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the Department's best interest. Replacement of any key personnel hereunder shall be done in accordance with the relevant provisions of Exhibit B.

**18. NOTICES AND REPRESENTATIVES**

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of hard-copy notice, notice may also be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. Department:

Tony Hernandez, Director
Division of Local Government
Colorado Department of Local Affairs
1313 Sherman Street, #521
Denver, CO 80203
E-mail: tony.hernandez@state.co.us

B. Grantee:

Jean Hinkle, County Administrator
Otero County
P. O. Box 511
La Junta, CO 81050
E-mail: jhinkle@oterogov.org

**19. GOVERNMENTAL IMMUNITY**

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S., as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, §24-30-1501, et seq., C.R.S., as amended.

## 20. LEGAL RESIDENT

This legal resident section [check one] X applies to or ☐ does not apply to this Grant. Grantee must confirm that any individual natural person eighteen years of age or older is lawfully present in the United States pursuant to §24-76.5-101, et seq., C.R.S., when such individual applies for public benefits provided under this Grant by requiring the following:

A. Identification: The applicant shall produce one of the following personal identifications:

i. A valid Colorado driver's license or a Colorado identification card, issued pursuant to article 2 of title 42, C.R.S.; or

ii. United States military card or a military dependent's identification card; or

iii. United States Coast Guard Merchant Mariner card; or

iv. Native American tribal document.

B. Affidavit. The applicant shall execute an affidavit herein attached as Form 1, Affidavit of Legal Residency, stating:

i. That they are United States citizen or legal permanent resident; or

ii. That they are otherwise lawfully present in the United States pursuant to federal law.

## 21. SOLE SOURCE GOVERNMENT CONTRACTS, AS DEFINED IN COLORADO CONSTITUTION ARTICLE XXVIII

*[This provision applies only to sole source government contracts and does not apply to contracts between governmental entities or any contract that used a public and competitive bidding process in which the State agency or institution of higher education solicited at least three bids prior to awarding the contract.]* Contractor certifies, warrants, and agrees that it has complied and will comply with Colorado Constitution Article XXVIII, including but not necessarily limited to the following prohibitions and obligations:

A. If during the term of the contract, contractor holds sole source government contracts with the State of Colorado and any of its political subdivisions cumulatively totaling more than $100,000 in a calendar year, then for the duration of this contract and for two years after, contractor will not make, cause to be made, or induce by any means a contribution, directly or indirectly, on behalf of contractor or contractor's immediate family member(s) for the benefit of any political party or for the benefit of any candidate or any elected office of the State or any of its political subdivisions; and

B. Contractor represents that contractor has not previously made or caused to be made, and will not in the future make or cause to be made, any contribution intended to promote or influence the result of a ballot issue election related to the subject matter of this contract; and

C. Contractor will satisfy contractor's obligations to promptly report to the Colorado Department of Personnel & Administration information included in the Government Contract Summary and the Contract Holder Information, regarding this contract and any other sole source government contracts to which contractor is a party; and

D. Contractor understands that any breach of this section or of contractor's responsibilities under Colorado Constitution Article XXVIII may result in either contractual or constitutionally mandated penalties and remedies; and

E. A Contractor that intentionally violates Colorado Constitution Article XXVIII, Section 15 or 17(2), 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; and

F. By execution of this contract, Contractor hereby confirms it is qualified and eligible under such provisions to enter into this contract.

For purposes of this clause, the term contractor shall include persons that control ten percent or more shares or interest in contractor, as well as contractor's officers, directors, and trustees. The term immediate family member shall include a spouse, child, spouse's child, son-in-law, daughter-in-law, parent, sibling, grandparent, grandchild, stepbrother, stepsister, stepparent, parent-in-law, brother-in-law, sister-in-law, aunt, niece, nephew, guardian, or domestic partner.

**22. STATEWIDE CONTRACT MANAGEMENT SYSTEM**

*[This section shall apply when the maximum amount payable in §9(A) is $100,000 or higher.]*

By entering into this Grant, the Grantee agrees to be governed, and to abide, by the provisions of §§24-102-205, 206, C.R.S., §24-103-601, C.R.S., §24-103.5-101, C.R.S., and §24-105-102, C.R.S., concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

The Grantee's performance shall be evaluated in accordance with the terms and conditions of this Grant, State law, including §24-103.5-101, C.R.S., and State Fiscal Rules, Policies and Guidance. Evaluation of the Grantee's performance shall be part of the normal contract administration process, and the Grantee's performance will be systematically recorded in the statewide Contract Management System. Areas of review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of the Statement of Project of this Grant. Such performance information shall be entered into the statewide Contract Management System at intervals established in the Statement of Project and at intervals established in the Statement of Project, and a final review and rating shall be rendered within 30 days of the end of the Grant term. The Grantee shall be notified following each performance and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance evaluation determine that the Grantee demonstrated a gross failure to meet the performance measures established under the Statement of Project, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the DOLA, and showing of good cause, may debar the Grantee and prohibit the Grantee from bidding on future contracts. The Grantee may contest the final evaluation and result by: (i) filing rebuttal statements, which may result in either removal or correction of the evaluation (§24-105-102(6), C.R.S.); or (ii) under §24-105-102(6), C.R.S., exercising the debarment protest and appeal rights provided in §§24-109-106, 107, 201 or 202, C.R.S., which may result in the reversal of the debarment and reinstatement of the Grantee, by the Executive Director, upon showing of good cause.

## 23. GENERAL PROVISIONS

A. Assignment. Except as otherwise specifically provided in Exhibit B, Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts/subcontractors approved by Grantee or the State shall be subject to the provisions hereof. Grantee shall be solely responsible for all aspects of subcontracting arrangements and performance.

B. Binding Effect. Unless otherwise provided herein, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions. The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit the provisions of this Agreement.

D. Counterparts. This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding. This Agreement represents the complete integration of all understandings between the Parties, and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other amendments hereto shall not have any force or affect whatsoever, unless embodied herein.

F. Federal Funding – List of Selected Applicable Laws. Grantee at all times during the performance of this Grant shall comply with all applicable Federal and State laws and their implementing regulations, currently in existence and as hereafter amended, including without limitation those set forth on Exhibit A, Applicable Laws, attached hereto, which laws and regulations are incorporated herein and made a part hereof. Grantee shall also require compliance with such laws and regulations by sub-contractors under sub-contracts permitted by this Grant.

G. Indemnification.

i. Intergovernmental Grants. If this is an intergovernmental Grant, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S., or the Federal Tort Claims Act, 28 U.S.C. 2671, et seq., as applicable, as now or hereafter amended.

ii. Non-Intergovernmental Grants. Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Grant.

H. Jurisdiction and Venue. All suits, actions, or proceedings related to this Agreement shall be held in the State of Colorado, and the Parties herby agree that venue shall be proper in the City and County of Denver.

I. Modification.

i. By the Parties. Except as specifically provided in this Agreement, modifications of this Agreement shall not be effective unless agreed to in writing by both parties in an amendment to this Agreement, properly executed and approved in accordance with Colorado State law and State Fiscal Rules.

ii. By Operation of Law. This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and made a part hereof on the effective date of such change, as if fully set forth herein.

J. Order of Precedence. The provisions of this Agreement shall govern the relationship of the State and Grantee. In the event of conflicts or inconsistencies between this Agreement and its exhibits and attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

i. Colorado Special Provisions

ii. Exhibit C, Terms and Conditions for American Recovery and Reinvestment Act

iii. The provisions of the main body of this Grant Agreement

iv. Exhibit A, Applicable Laws

v. Exhibit B, Statement of Project

K. Severability. Provided this Agreement can be executed, and performance of the obligations of the Parties accomplished, within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

L. Survival of Certain Agreement Terms. Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Grantee fails to perform or comply as required.

M. Third Party Beneficiaries. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits that third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

N. Waiver. Waiver of any breach of a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

**24. COLORADO SPECIAL PROVISIONS**

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

A.1. CONTROLLER'S APPROVAL. C.R.S. §24-30-202(1). This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

B.2. FUND AVAILABILITY. C.R.S. §24-30-202(5.5). Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C.3. GOVERNMENTAL IMMUNITY. No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671, et seq., as applicable now or hereafter amended.

D.4. INDEPENDENT CONTRACTOR. Grantee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be or shall be deemed to be an agent or employee of the state. Grantee shall pay when due all required employment taxes and income taxes and local head taxes on any monies paid by the state pursuant to this Grant. Grantee acknowledges that Grantee and its employees are not entitled to unemployment insurance benefits unless Grantee or a third party provides such coverage and that the state does not pay for or otherwise provide such coverage. Grantee shall have no authorization, express or implied, to bind the state to any agreement, liability or understanding, except as expressly set forth herein. Grantee shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by the State) and unemployment compensation insurance in the amounts required by law and shall be solely responsible for its acts and those of its employees and agents.

E.5. COMPLIANCE WITH LAW. Grantee 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.6. CHOICE OF LAW. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Grant. Any provision included or incorporated herein by reference that conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference that purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Grant, to the extent capable of execution.

G.7. BINDING ARBITRATION PROHIBITED. The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Grant or incorporated herein by reference shall be null and void.

H.8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00. State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has, and shall maintain in place, appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I.9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24¬18-201 and 24-50-507. 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 Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

J.10. VENDOR OFFSET. C.R.S. §§24-30-202 (1) and 24-30-202.4. *[Not Applicable to Intergovernmental Grants.]* Subject to C.R.S. §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in C.R.S. §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

K.11. PUBLIC CONTRACTS FOR SERVICES. C.R.S. §8-17.5-101. *[Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services.]* Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Grant, and Grantee will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the Department program established pursuant to C.R.S. §8-17.5-102(5)(c), Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant or enter into a contract with a subcontractor that fails to certify to Grantee that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Grant. Grantee (a) shall not use the E-Verify Program or Department program procedures to undertake preemployment screening of job applicants while this Grant is being performed; (b) shall notify the subcontractor and the contracting State agency within three days if Grantee has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Grant; (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice; and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Grantee participates in the Department program, Grantee shall deliver to the contracting State agency, institution of higher education or political subdivision a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and has complied with all of the other requirements of the Department program. If Grantee fails to comply with any requirement of this provision or C.R.S. §8-17.5-101, et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

I.12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law; (b) shall comply with the provisions of C.R.S. §24-76.5-101, et seq.; and (c) has produced one form of identification required by C.R.S. §24-76.5-103, prior to the effective date of this Grant.

**25. SIGNATURE PAGES.**

Persons signing for Grantee hereby swear and affirm that they are authorized to act on Grantee's behalf and acknowledge that the State is relying on their representations to that effect.

ALL GRANTS REQUIRE APPROVAL by the STATE CONTROLLER

C.R.S. §24-30-202 requires the State Controller to approve all State Grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

**EXHIBIT A – APPLICABLE LAWS**

Laws and regulations incorporated into this contract include, without limitation:

1. Age Discrimination Act of 1975, 42 U.S.C. Sections 6101, et seq.
2. Age Discrimination in Employment Act of 1967, 29 U.S.C. 621-634
3. Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, et seq.

4. Equal Pay Act of 1963, 29 U.S.C. 206(d)

5. Immigration Reform and Control Act of 1986, 8 U.S.C. 1324b

6. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794

7. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d

8. Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e

9. Title IX of the Education Amendment of 1972, 20 U.S.C. 1681, et seq.

10. Section 24-34-302, et seq., Colorado Revised Statutes 1997, as amended

11. The applicable of the following:

11.1. Cost Principals for State, Local and Indian Tribal Governments, 2 C.F.R. 225, (OMB Circular A-87); 11.2. Cost Principals for Education Institutions, 2 C.F.R. 220, (OMB Circular A-21);

11.3. Cost Principals for Non-Profit Organizations, 2 C.F.R. 230, (OMB Circular A-122), and

11.4. Audits of States, Local Governments, and Non-Profit Organizations (OMB Circular A-133); and/or the Colorado Local Government Audit Law, 29-1-601, et seq., C.R.S., and State implementing rules and regulations.

12. Prohibition Against use of Federal Funds for Lobbying, 31 U.S.C. 1352

13. Privacy Act of 1974, 5 U.S.C. S 5529 and Regulations adopted thereunder

14. Drug Free Workplace Act

15. U.S. Department of Health & Human Services regulations:

15.1. Procedures of the Departmental Grant Appeals Board, 45 CFR Part 16;

15.2. Claims Collection, 45 CFR Part 30;

15.3. Debarment and Suspension from Eligibility for Financial Assistance (Nonprocurement), 45 CFR Part 76;

15.4. Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services, Effectuation of Title VI of the Civil Rights Act of 1964, 45 CFR Part 80;

15.5. Practice and Procedure for Hearings Under Part 80 of this Title, 45 CFR Part 81;

15.6. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance, 45 CFR Part 84;

15.7. Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance, 45 CFR Part 86;

15.8. Equal Treatment for Faith-Based Organizations, 45 CFR Part 87;

15.9. Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance, 45 CFR Part 91;

15.10. New Restrictions on Lobbying, 45 CFR Part 93;

15.11. Block Grants, 45 CFR Part 96;

15.12. Consolidation of Grants to the Insular Areas, 45 CFR Part 97;

15.13. Intergovernment Review of Department of Health and Human Services Programs and Activities, 45 CFR Part 100.

15.14. Uniform administrative requirements for grants and cooperative agreements to State, local, and tribal governments, 45 CFR Part 92.

16. Community Services Act, Public Law 105-285, Title II, and 42 U.S.C. 9901-9923

17. Certification required by 29 CFR Part 98, "Government Debarment and Suspension"

18. Environmental Tobacco Smoke Certification, also known as the Pro-Children Act of 1994, Public Law 103-227.

19. Programs and activities under the CSBG Act are considered to be programs receiving federal financial assistance and are subject to all provision of EEO, except for those Grantees who are under Section 679 of the CSBG Act, religious organization's exempt from Section 702 of the Civil rights Act of 1964 (42 U.S.C. 2003-1) regarding employment practices.

**EXHIBIT B – STATEMENT OF PROJECT**
**(SOP) American Recovery and Reinvestment Act (Recovery Act) of 2009**

1. GENERAL DESCRIPTION OF THE PROJECT

1.1. Project Description and Eligible Expenses. Otero County in conjunction with the Workforce Center will complete a tiered training plan to include Work Readiness, Production Skills and Specialized Skills that at the end of the training each participant will receive a Work Readiness Certificate. These grant dollars will be used to assist in funding a mobile training laboratory. In addition, training and assessments will be available to the youth in the county. Copies of receipts or invoices for work readiness and specialized skills classes, equipment needed for work; career scope software and license fee will be submitted for reimbursement.

1.2. Results Oriented Management Accountability (ROMA). The Community Services Block Grant (CSBG) Program is a national program that must demonstrate ROMA. This is accomplished through the nine federal objectives, six national goals, and sixteen national indicators.

Otero County shall provide services meeting the following Federal Objectives. Employment; National Indicators: 1.2, 2.3, 2.4, 3.1, 3.2, 4.1, and 5.1; and National Goals: 1, 2, 3, 4, and 5. Grantee's final report to the Department shall reflect outcomes in accordance with the above federal objectives, national indicators, and national goals. Any changes during the term of this Grant requires a public hearing, new application and plan, and a modification of this agreement in accordance with Modification subsection of the General Provisions of the Grant.

1.3. Poverty Guidelines. Services will be provided only to those persons at or below 200% of poverty guidelines as follows:

**The 2009 Poverty Guidelines for the 48 Contiguous States and the District of Columbia**

| *Persons in Family* | *Poverty Guideline* | *200% of Poverty* |
|---|---|---|
| 1 | $10,830 | $21,660 |
| 2 | $14,570 | $29,140 |
| 3 | $18,310 | $36,620 |
| 4 | $22,050 | $44,100 |
| 5 | $25,790 | $51,580 |

| | | |
|---|---|---|
| 6 | $29,530 | $59,060 |
| 7 | $33,270 | $66,540 |
| 8 | $37,010 | $74,020 |

2. DEFINITIONS

2.1. List specialized terminologies used in the SOP: NONE

2.2. List abbreviations used in the SOP: NONE

3. PERSONNEL

3.1. Responsible Administrator. Grantee's performance hereunder shall be under the direct supervision of Jean Hinkle, an employee or agent of Grantee, who is hereby designated as the responsible administrator of this project.

3.2. Other Key Personnel: NONE

3.3. Replacement. Grantee shall immediately notify the Department if any key personnel cease to serve. Provided there is a good-faith reason for the change, if Grantee wishes to replace its key personnel, it shall notify the Department and seek its approval, which shall be at the Department's sole discretion, as the Department issued this Grant in part reliance on Grantee's representations regarding Key Personnel. Such notice shall specify why the change is necessary, who the proposed replacement is, what their qualifications are, and when the change will take effect. Anytime key personnel cease to serve, the Department, in its sole discretion, may direct Grantee to suspend work on the Project until such time as their replacements are approved. All notices sent under this subsection shall be sent in accordance with §18 of the Grant.

4. PAYMENT

4.1. Payment Schedule: Grantee shall submit a request for payment to the State, at a minimum, monthly, no later than the 20th day of the following month. All requests shall be for eligible expenses, as described in detail in §1 above, using the state-provided form and accompanied by supporting documentation equal to 100% of reimbursement request.

4.2. Remittance Address. If mailed, payments shall be remitted to the following address unless changed in accordance with §18 of the Grant:

Otero County
P. O. Box 511
La Junta, CO 81050

5. ADMINISTRATIVE REQUIREMENTS

5.1. Reporting.

5.1.1. Financial Status and Program Reports. Grantee shall submit the following reports to the Department using the state-provided forms:

| ***Report Period*** | ***Report Type*** | ***Due Date*** |
|---|---|---|
| July through September | Financial Status | October 5, 2009 |
| October through December | Financial Status | January 5, 2010 |

| | | |
|---|---|---|
| January through March | Financial Status | April 5, 2010 |
| April through June | Financial Status | July 5, 2010 |
| **April** through **June** | **Final Financial Status** | **October 5, 2010** |
| July through September | Program Status | October 5, 2009 |
| October through December | Program Status | January 5, 2010 |
| January through March | Program Status | April 5, 2010 |
| April through June | Program Status | July 5, 2010 |
| **April** through **June** | **Final Program Status** | **October 5, 2010** |
| **July 1, 2009** through **September 30, 2010** | **End of Grant Financial and Program Report** | **October 31, 2010** |

5.1.2. Unexpended Balance. The grantee shall inform the Department no later than 30 days prior to the Termination Date of the status of the Grant Funds and any potential unexpended balance.

5.2. Monitoring. The Department shall evaluate this Project through review of Grantee submitted reports. The Department shall conduct on-site monitoring to determine whether the Grantee met the performance goals, administrative standards, financial management and other requirements of the CSBG Act and this Grant.

5.3. Records. Grantee is expected to maintain records in accordance with §11 of the Grant.

5.4. Subgrantee Monitoring. Grantee shall monitor subgrantees, if any, at least once during the term of this Grant. Documentation of monitoring results will be forwarded to the Department.

6. PROJECT BUDGET

| ***Project Activities*** | ***Total Project Costs*** |
|---|---|
| Payments made in accordance with eligible expenses as outlined in §1 of this Exhibit. No other expenses are eligible | $82,076.00 |
| TOTAL | $82,076.00 |

## EXHIBIT C
## TERMS AND CONDITIONS FOR AMERICAN RECOVERY AND REINVESTMENT ACT FUNDED CONTRACT

1. Authority. The requirements listed in this exhibit contain basic requirement that Grantee should be familiar with, but are not intended to be comprehensive. Grantee shall consult with the ARRA and implementing regulations for completeness. The requirements are primarily from the federal statutes, regulations and OMB guidance identified below.

(a) American Recovery and Reinvestment Act of 2009 (Public Law 111-5)

(b) M-09-10 Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009 http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m0910.pdf

(c) Bulletin No. 09-02 Budget Execution of the American Recovery and Reinvestment Act of 2009 Appropriations, http://www.whitehouse.gov/omb/assets/bulletins/b09-02.pdf

(d) OMB Circular No. A-133 Single Audit Compliance Supplement, http://www.whitehouse.gov/omb/circulars_a133_compliance_09toc/

(e) M-09-15 Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009, http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-15.pdf

(f) M-09-18 Payments to State Grantees for Administrative Costs of Recovery Act Activities, http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-18.pdf

(g) Addendum to the Single Audit Compliance Supplement – American Recovery and Reinvestment Act, http://www.whitehouse.gov/omb/circular_a133_compliance_09toc/

(h) Award Terms for Assistance Agreements that include funds under the American Recovery And Reinvestment Act of 2009 (2 CFR Part 176)

(i) Federal Funding Accountability and Transparency Act of 2006, as amended (Public Law 109-282)

2. Definition. For the purpose of this exhibit, the terms "Contractor" and "Recipient" shall have the same meaning as the term "Grantee" that is used through out this Grant Agreement.

3. Conflicting Requirements. Where ARRA requirements conflict with existing state requirements, ARRA requirements control.

4. Sub-Recipients Requirements. Contractor shall include these terms, including this requirement, in any of its subcontracts or subgrants in connection with projects funded in whole or in part with funds available under the American Recovery and Reinvestment Act of 2009.

5. Modification By Operation of Law. This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and made a part hereof on the effective date of such change, as if fully set forth herein.

6. Reporting & Registration Requirements (Section 1512). Grantee shall be responsible to ensure compliance with all ARRA reporting requirements including the completeness, accuracy, and timeliness of such reports. The State will issue a separate guidance on the reporting mechanism Grantee shall use to transmit the required data elements to the State and the federal government.

Requirements include but are not limited to:

(a) General. This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 ("Recovery Act") and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) Reporting. The recipient shall report the information described in section 1512(c) using the reporting instructions and data elements that will be provided online at www.FederalReporting.gov and ensure that any information that is pre-filled is corrected or updated as needed.

(c) Due Date. The reports are due no later than five calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act. At its discretion, the State may

extend the reporting deadline to allow Grantee more time once ARRA reporting mechanism is finalized and the State determines that it can meet the rigorous federal reporting schedule.

(d) Registration. Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.

(e) In addition to all other reporting requirements, recipient shall report the names and total compensation of the five most highly compensated officers if it received (a) 80% or more of its annual gross revenues in Federal awards; and (b) $25 million or more in annual gross revenue from Federal awards.

Grantee's failure to meet the reporting requirements shall constitute an "Event of Default". Upon the occurrence of an Event of Default, the State may terminate this contract upon 30 days prior written notice if the default remains uncured within five calendar days following the last day of the calendar quarter, in addition to any other remedy available to the State in law or equity. All such non-compliance may be made available to the public.

7. Buy American Requirement (Section 1605)

I. For Construction, Alteration, Maintenance, or Repair of a Public Building or Public Work that does not involve iron, steel, and/or manufactured goods covered under international agreements:

(a) Definitions. As used in this award term and condition—

"Manufactured good" means a good brought to the construction site for incorporation into the building or work that has been:

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

"Public building" and "public work" means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

"Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Domestic preference.

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this term and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows: None

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this term and condition if the Federal government determines that:

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act.

(1) (i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this term and condition shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this term and condition.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this term and condition.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) Data. To permit evaluation of requests under paragraph (b) of this term and condition based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

**FOREIGN AND DOMESTIC ITEMS COST COMPARISON**

| *Description* | *Unit of Measure* | *Quantity* | *Cost (Dollars)** |
|---|---|---|---|
| Item 1: | | | |
| Foreign steel, iron or manufactured good | | | |
| Domestic steel, iron, or manufactured good | | | |
| Item 2: | | | |
| Foreign steel, iron, or manufactured good | | | |
| Domestic steel, iron, or manufactured good | | | |

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[* Include all delivery costs to the construction site.]

II. For Construction, Alteration, Maintenance, Or Repair Of A Public Building Or Public Work That Involves Iron, Steel, And/Or Manufactured Goods Materials Covered Under International Agreements:

(a) Definitions. As used in this award term and condition—

"Designated country" –

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

"Designated country iron, steel, and/or manufactured goods" –

(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

"Domestic iron, steel, and/or manufactured good" –

(1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

"Foreign iron, steel, and/or manufactured good" means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

"Manufactured good" means a good brought to the construction site for incorporation into the building or work that has been –

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

"Public building" and "public work" means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works. "Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Iron, steel, and manufactured goods.

(1) This award term and condition implements

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of $7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this term and condition.

(3) The requirement in paragraph (b)(2) of this term and condition does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows: None.

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this award term and condition if the Federal government determines that–

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured goods is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.

(1) (i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph(b)(4) of this term and condition shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this term and condition.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this term and condition.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods.. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to the section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) Data. To permit evaluation of requests under paragraph (b) of this term and condition based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers.

**FOREIGN AND DOMESTIC ITEMS COST COMPARISON**

| *Description* | *Unit of Measure* | *Quantity* | *Cost (Dollars)** |
|---|---|---|---|
| Item 1: | | | |
| Foreign steel, iron or manufactured good | | | |
| Domestic steel, iron, or manufactured good | | | |
| Item 2: | | | |
| Foreign steel, iron, or manufactured good | | | |
| Domestic steel, iron, or manufactured good | | | |

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[* Include all delivery costs to the construction site.]

8. False Claims Act. The Contractor shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

9. Fixed Price – Competitively Bid. Contractor, to the maximum extent possible, shall award any subcontracts funded, in whole or in part, with ARRA funds as fixed-price contracts through the use of competitive procedures.

10. Funding of Programs. The Contractor acknowledges that the programs supported with temporary federal funds made available by the American Recovery and Reinvestment Act of 2009, will not be continued with state financed appropriations once the temporary federal funds are expended.

11. Job Opportunity Posting Requirements. Contractor shall post notice of job opportunities created in connection with activities funded in whole or in part with ARRA funds in the Connecting Colorado Job Site, http://www.connectingcolorado.com/.

12. Compliance with National Environmental Policy Act. In accordance with ARRA § 1609, the contractors/grantees and sub-contractors/sub-grantees must comply with any applicable environmental impact requirements of the National Environmental Policy Act of 1970, (NEPA).

13. Non-Discrimination. The Contractor shall comply with Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and other civil rights laws applicable to recipients of Federal financial assistance.

14. Publication. All contracts resulting from the ARRA will be published on the State of Colorado's Recovery Web site, www.colorado.gov/recovery.

Contractor shall include the Colorado Recovery logo on all signage or other publications in connection with the activities funded by the State of Colorado through funds made available by the American Recovery and Reinvestment Act of 2009.

15. Inspection & Audit of Records. The Contractor shall permit the United States Comptroller General or his representative or the appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1998 or his representative (1) to examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) to interview any officer or employee of the Contractor or any of its subcontractors/subgrantees regarding the activities funded with funds appropriated or otherwise de available by the ARRA.

16. Single Audit

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Recovery Act) as required by Congress and in accordance with 2 CFR 215, subpart 21 "Uniform Administrative Requirements for Grants and Agreements" and OMB A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profrt Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. This shall be accomplished by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) Recipients agree to separately identify to each sub-recipient, and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to sub-recipients shall distinguish the sub-awards of incremental Recovery Act funds from regular sub-awards under the existing program.

(d) Recipients agree to require their sub-recipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor sub-recipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

17. Internal Control/Fraud Prevention.

Consistent with normal practices, Grantee must use appropriate internal control assessments to assess the risk of program waste, fraud, and/or abuse. Using the aforementioned risk assessments, Grantee must have defined strategies to prevent or timely detect waste, fraud, or abuse. Grantee should initiate additional measures, as appropriate, to address higher risk areas

By establishing an effective fraud prevention program, Grantees can provide reasonable assurance that ARRA funds benefit intended recipients. A well-designed fraud prevention program will minimize waste and abuse and should consist of preventive controls, detection, monitoring, investigations, and prosecutions. These controls prevent ineligible individuals and questionable firms from gaining access to government funds in the first place.

The National Procurement Fraud Task Force (NPFTF) published a white paper (A Guide to Grant Oversight and Best Practices for Combating Grant Fraud, Washington, D.C.: February, 2009) that identified best practices and made recommendations for agencies to consider in preventing fraud, waste, and abuse in grants they administer. These recommendations included enhanced certifications, increased training, improved communications with grant recipients, increased

information sharing concerning potential fraud, and rigorous oversight of how grant dollars are spent after they are awarded.

18. Prohibition on Use of Funds. None of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, swimming pools, or similar projects.

19. Segregation of Costs. Contractor shall segregate obligations and expenditures of ARRA funds from other funding. No part of funds made available under the American Recovery and Reinvestment Act of 2009, may be comingled with any other funds or used for a purpose other than that of making payments for costs allowable under the ARRA.

20. Wage Rate Requirements (Section 1606). All laborers and mechanics employed by contractors and subcontractors on projects funded in whole or in part with funds available under the ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality, as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. (See ARRA Sec. 1606). The Secretary of Labor's determination regarding the prevailing wages applicable in Colorado is available at http://www.gpo.gov/davisbacon/ co.html.

21. Whistle Blower Protection. Contractor shall not discharge, demote or otherwise discriminate against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract or grant relating to Covered Funds; (2) a gross waste of Covered Funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of Covered Funds; an abuse of authority related to implementation or use of Covered Funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to Covered Funds. In this Subsection, "Covered Funds" shall have the same meaning as set forth in Section 1553(g)(2) of Division A, Title XV of the ARRA.

(a) Recipient must post notice of the rights and remedies available to employees under Section 1553 of Division A, Title XV of the ARRA. (For Colorado employees see the State Personnel Employee Protection Act CRS §24-50-101, et seq., and obtain the complaint form at www.colorado.gov/dpa/spb/docs/ WhistleblowerComplaint.doc

(b) The Contractor shall include the substance of this clause including this paragraph (b) in all subcontracts.

**FORM 1 —**
**AFFIDAVIT OF LEGAL RESIDENCY**

I, _____, swear or affirm under penalty of perjury under the laws of the State of Colorado that (check one):

- ☐ I am a United States citizen, or
- ☐ I am a Permanent Resident of the United States, or
- ☐ I am lawfully present in the United States pursuant to Federal law.

I understand that this sworn statement is required by law because I have applied for a public benefit or I am a sole proprietor entering into a contract or purchase order with the State of Colorado. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit or prior to entering into a contract with the State. I further acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under CRS §18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

_____
Signature

_____
Date

## ARTICLE 41

## Wildlife Services

*Cooperative Service Agreement*
*December 14, 2009*

### ARTICLE 1 – Purpose

The purpose of this agreement is to facilitate wildlife damage management (WDM) program activities for Otero County, in Colorado to manage conflicts caused by wildlife. The activities will include employing available technologies in an operational program as well as information transfer.

### ARTICLE 2 –Authority

APHIS WS has statutory authority under the Act of March 2, 1931 (46 Stat. 1468; 7 U.S.C. 426-426b) as amended, and the Act of December 22, 1987 (101 Stat. 1329-331, 7 U.S.C. 426c), for the Secretary of Agriculture to cooperate with States, individuals, public and private agencies, organizations, and institutions in the control of wild mammals and birds that are reservoirs for zoonotic diseases, or are injurious or a nuisance to, among other things, agriculture, horticulture, forestry, animal husbandry, wildlife, and public health and safety.

### ARTICLE 3 – Mutual Responsibilities

The Cooperator and WS agree:

a. To confer and plan a WDM program that addresses the need for managing conflicts caused by wildlife in Otero County, CO. Based on this consultation, WS will formulate in writing the program work plan and associated budget and present them to the Cooperator for approval.

b. The annual Work and Financial Plans developed by the Cooperator and APHIS-WS are incorporated into this Agreement by reference. Each year the Cooperator and APHIS-WS must agree to, and sign, new Work and Finance Plans that become part of this 5-year Cooperative Service Agreement.

c. When either of the Cooperating parties address the media or incorporate information into reports and/or publications, both Cooperating parties must agree, in writing, to have their identities disclosed when receiving due credit related to the activities covered by this agreement.

d. That APHIS-WS has advised the Cooperator that other private sector service providers may be available to provide wildlife management services and notwithstanding these other options, Cooperator requests that APHIS-WS provide wildlife management services as stated under the terms of this Agreement.

### ARTICLE 4 – Cooperator Responsibilities

The Cooperator agrees:

a. To designate Jean Hinkle, County Administrator, Otero County Commissioners; PO Box 511, La Junta, CO 81050 as the authorized representative who shall be responsible for collaboratively administering the activities conducted in this Agreement;

b. To reimburse APHIS-WS for costs, not to exceed the annually approved amount specified in the Work and Financial Plan. If costs are projected to exceed the amount reflected in the Financial Plan, the Work and

Financial Plan shall be formally revised and signed by both parties before services resulting in additional costs are performed. The Cooperator agrees to pay all costs of service submitted via an invoice within 30 days of the date of the submitted invoice or invoices as submitted by APHIS-WS. Late payments are subject to interest, penalties, and administrative charges and costs as set forth under the Debt Collection Improvement Act of 1996. If the Cooperator is delinquent in paying the full amount of the due service costs submitted by APHIS-WS, and/or is delinquent in paying the due late payments, and/or is delinquent in paying the interest, penalties, and/or administrative costs on any delinquent due service costs, APHIS-WS will immediately cease to provide the respective service associated with the submitted service costs. APHIS-WS will not reinstate or provide the respective service until all due service costs, and/or due late payments, and/or due interest, penalty, and/or administrative costs are first paid in full.

c. To provide a Tax Identification Number or Social Security Number in compliance with the Debt Collection Improvement Act of 1996.

d. As a condition of this Agreement, The Cooperator ensures and certifies that it is not currently debarred or suspended and is free of delinquent Federal debt.

**ARTICLE 5 – APHIS-WS Responsibilities**

APHIS-WS agrees:

a. To designate Michael Yeary, WS Colorado State Director; (303) 236-5810; 12345 W. Alameda Pkwy, Suite 204, Lakewood, CO 80228 as the authorized representative who shall be responsible for collaboratively administering the activities conducted in this Agreement;

b. The performance of wildlife damage management actions by APHIS-WS under this agreement is contingent upon a determination by APHIS-WS that such actions are in compliance with the National Environmental Policy Act, Endangered Species Act, and any other applicable environmental statutes. APHIS-WS will not make a final decision to conduct requested wildlife damage management actions until it has made the determination of such compliance;

c. To provide personnel and other resources necessary to implement the approved WDM program Work and Financial Plan;

d. To bill the Cooperator for costs incurred in performing WDM activities in Otero County, CO as authorized in the approved annual Work and Financial Plan as may be amended;

e. Authorized auditing representatives of the Cooperator shall be accorded reasonable opportunity to inspect the accounts and records of WS pertaining to such claims for reimbursement to the extent permitted by Federal laws and regulations.

**ARTICLE 6 – Appropriations**

For costs borne by APHIS-WS, this agreement is contingent upon the passage of the Agriculture, Rural Development, and Related Agencies Appropriation Act for the current fiscal year from which expenditures may be legally met and shall not obligate APHIS upon failure of Congress to so appropriate. This Agreement also may be reduced or terminated if Congress provides APHIS funds only for a finite period under a Continuing Resolution.

## ARTICLE 7 – Assurances

Nothing in this agreement shall prevent any other State, agency, organization or individual from entering into separate agreements with APHIS-WS or the Cooperator for the purpose of managing wildlife damage.

## ARTICLE 8 – Congressional Restrictions

Pursuant to Section 22, Title 41, United States Code, no member of or delegate to Congress shall be admitted to any share or part of this agreement or to any benefit to arise therefrom.

## ARTICLE 9 – Applicable Regulations

All WDM activities will be conducted in accordance with applicable Federal, State and local laws and regulations.

## ARTICLE 10 – Agreement Effective Date

This agreement shall become effective on January 1, 2010 and shall continue through December 31, 2014. This agreement may be amended at any time by mutual agreement of the parties in writing. It may by terminated by either party upon 60 days written notice to the other party. Further, that in the event the Cooperator does not for any reason reimburse expended funds, WS is relieved of the obligation to continue any operations under this agreement

## WORK AND FINANCIAL PLAN

COOPERATOR: Otero County Commissioners

TAX IDENTIFICATION NO.: 84-6000789

COOPERATIVE AGREEMENT NO.: 10-7308-5273-RA

ACCOUNT NO.: 07373-08404

LOCATION: Otero County, Colorado

DATES: January 1-December 31, 2010

Pursuant to Cooperative Service Agreement No. 10-7308-5273-RA between the United States Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Service (APHIS-WS) and the Otero County Commissioners, Otero County, Colorado; this Work Plan defines the objectives, plan of action, and budget for the Wildlife Services program to be conducted during CY 2010.

**OBJECTIVES/GOALS:**

To conduct a cooperatively funded wildlife damage management program for the citizens of Otero County in Colorado.

**PLAN OF ACTION:**

APHIS-WS will provide direct control or technical assistance at times and places throughout Otero County where it is determined there is a need to resolve problems caused by wildlife. work will primarily involve control of livestock predation, along with other wildlife issues. Lethal control efforts will be directed towards specific offending individuals or local populations. Method selection will be based on an evaluation of selectivity, humaneness, human safety, effectiveness, legality, and practicality.

Damage Control Strategies:

1) Technical Assistance: Wildlife Services personnel may provide verbal or written advice, recommendations, information, demonstrations or training to others to use in managing wildlife damage problems. Generally, implantation of technical assistance recommendations is the responsibility of the resource/property owner.

2) Direct Control: Direct control is usually provided when the resource/property owner's efforts have proven ineffective and technical assistance alone is inadequate. Direct control methods/techniques include: traps, ground shooting, aerial shooting, snaring, M-44's denning, and dogs. (Due to the passage of Amendment 14 in November of 1996 and subsequent implementing legislation in 1997, the use of leghold and body gripping traps, neck and foot snares, and toxicants has been severely restricted. The use of these methods is no longer legal on public lands and limited to one 30-day period per calendar year, per parcel, on private land. Prior to any use of these methods by APHIS-WS personnel, cooperating property/resource owners must have received an authorization to use these methods from the Colorado Division of Wildlife.)

**REPORTS:**

APHIS-WS will be responsible for the preparation of periodic reports as specified in the Cooperative Agreement.

**STIPULATIONS AND RESTRICTIONS:**

a. All operations shall have the joint concurrence of APHIS-WS and the Otero County Commissioners and shall be under the direct supervision of APHIS-WS. APHIS-WS will conduct the program in accordance with its established operating policies and all applicable state and federal laws and regulations.

b. Control on Private Lands: An agreement for Control of Animal Damage on Private Property (ADC Form 12A) will be executed between APHIS-WS and the landowner, lessee, or administrator before any APHIS-WS work is conducted.

c. control of Public Lands: An agreement for Control of Animal Damage on Non-Private Property (ADC Form 12C) or an appropriate NEPA document will be executed between APHIS-WS and the public land administrator(s) managers(s) before any APHIS-WS work is conducted.

**COST ESTIMATE FOR SERVICES:**

Equipment, field personnel and supervision will be provided by APHIS-WS (aerial hunting operations are funded separately through an Aerial Hunting Agreement). One full-time 12-month, Wildlife Services Specialist will be employed by APHIS-WS. Funding for this position is shared between Otero County, Crowley County, Bent County, City of La Junta, and U.S. Army-John Martin Reservoir. He will be assigned the primary responsibility for conducting the Wildlife Services work in these locations.

Estimated total cost for services of one full-time Wildlife Specialist is $75,920. fifty-six percent (56%) of the funding for this position is shared between cooperators and the remaining forty-four percent (44%) is funded by wildlife Services. Otero County total funding for this work plan is $9,167 which will be billed in equal quarterly installments. Wildlife Services total funding for this work plan is $7,200, for a total of $16,367. Such costs include, but are not limited to, salary/benefits, vehicle use, travel costs, and supplies/equipment. An estimated itemization of expenses is listed below; however funds my be distributed between itemized categories at the discretion of APHIS-WS if required. Any equipment and supplies purchased under the terms of this agreement will remain the property of APHIS-WS.

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## Estimated Costs for Services

| *Cooperator Estimated Costs* | | *Wildlife Services Estimated Costs* | |
|---|---|---|---|
| Salaries and Benefits | $6,783.58 | Salaries and Benefits | $5,328.00 |
| Travel and Vehicle | $1,558.39 | Travel and Vehicle | $1,224.00 |

| | | | |
|---|---|---|---|
| Supplies and Equipment | $825.03 | Supplies and Equipment | $648.00 |
| **TOTAL** | $9,167.00 | **TOTAL** | $7,200.00 |

NOTE: In accordance with the Debt Collection Improvement Act (DCIA) of 1996, bills issued by WS are due and payable within 30 days of receipt. The DCIA requires that all debts older than 120 days be forwarded to debt collection centers or commercial collection agencies for more aggressive action. Debtors have the option to verify, challenge and compromise claims, and have access to administrative appeals procedures which are both reasonable and protect the interests of the United States.

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## ARTICLE 42

### Colorado Rural Workforce Consortium

*Contract*
*January 28, 2010*

THIS CONTRACT is entered into by and between the BOARD OF COUNTY COMMISSIONERS OF OTERO COUNTY, COLORADO, hereafter referred to as "Otero County," and the STATE OF COLORADO, acting by and through the COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT on behalf of THE COLORADO RURAL WORKFORCE CONSORTIUM, hereafter referred to as "CDLE."

WHEREAS, the overall goals of the American Recovery and Reinvestment Act (ARRA) are to stimulate the economy in the short term and invest in education and other essential pubic services to ensure the long-term economic health or our nation; and

WHEREAS, employment is a critical issue in Otero County in that the unemployment rate is significantly higher in Otero county than the State as a whole; thus, employment training is necessary and essential for Otero County residents; and

WHEREAS, Otero County is the recipient of ARRA funds in the sum of $82,076.00, such funds to be used for employment training; and

WHEREAS Otero County and the Colorado Department of Local Affairs (DOLA), shall enter into an "American Recovery and Reinvestment Act Community Services Block Grant Agreement," a copy of which is attached hereto as Exhibit A, as concerns the grant monies Otero County will receive to by used for employment training; and

WHEREAS, Otero County and CDLE are desirous of setting forth in writing the Contract between the parties as concerns the services to be provided by CDLE and the payment to be made by Otero County for those services:

NOW, THEREFORE, based upon good and valuable consideration, the receipt of which is acknowledged, the parties hereby agree as follows:

1. CDLE hereby agrees to provide the services set forth hereafter and Otero County hereby agrees to provide payment to CDLE for those services as set forth hereafter.

2. Otero County will pay to the CDLE the total sum of $82,076.00 to be used for the purpose of providing tiered training including but not limited to, Work Readiness, Production Skills and Specialized skills; leveraging work readiness activities for individuals who are WIA eligible; providing on-the-job training for individuals requiring additional to enhanced training upon completion of classroom instruction to eligible applicants;

and making training and assessments available to youth in Otero County. These funds will be paid to the CDLE as follows:

(a) The CDLE will submit invoices for work readiness and specialized skills classes, equipment needed for work, career scope software and license fee to Otero County no later than the 20th day of the following month. all requests shall be for eligible expenses as described above, using the form provided and accompanied by supporting documentation equal to 100% of reimbursement request.

3. The CDLE will provide such services at the following training costs:

(a) Work Readiness: 40 participants @$337 each, or $13,480;

(b) Specialized Skills, including Electrical Maintenance, Mechanical Maintenance and Material Management: 20 participants @$100 each, or $2,000;

(c) Specialized Skills, including machining and welding: 20 participants @$1,838 each, or $36,760;

(d) Equipment (boots required): 20 @$100 each or $2,000;

(e) PJT/Work Experience Activities: $4,573;

(f) Career Scope Software & License Fee: $4,223.

TOTAL TRAINING COST: $82,076.00

4. The "American Recovery and Reinvestment Act Community Services Block Grant Agreement" between Otero County and DOLA, attached hereto as Exhibit "A" is incorporated herein by reference, and the CDLE agrees to be subject to the applicable provisions thereof. CDLE further acknowledges and agrees that it will be acting as a "sub-grantee" or Otero County under this arrangement, and the CDLE will be responsible for using its best efforts to comply with the applicable terms and provisions of Exhibit "A" as they may apply to CDLE's performance under this Contract.

5. Otero County must provide financial status reports and program status reports to DOLA as set forth in Exhibit "B" of this Contract's Exhibit "A" attached to the "American Recovery and Reinvestment Act Community Services Block Grant Agreement" between Otero County and DOLA; thus, the CDLE agrees to provide financial status reports and program status reports to Otero County as follows in order for Otero County to provide timely reports to DOLA:

| ***Report Period*** | ***Report Type*** | ***Due Date*** |
|---|---|---|
| October through December 2009 | Financial Status | January 5, 2010 |
| January through March 2010 | Financial Status | April 5, 2010 |

| ***Report Period*** | ***Report Type*** | ***Due Date*** |
|---|---|---|
| April through June 2010 | Financial Status | July 5, 2010 |
| **April through June 2010** | **Final Financial Status** | **October 5, 2010** |

| | | |
|---|---|---|
| July through September 2009 | Program Status | October 5, 2009 |
| October through December 2009 | Program Status | January 5, 2010 |
| January through March 2010 | Program Status | April 5, 2010 |
| April through June 2010 | Program Status | July 5, 2010 |
| **April through June 2010** | **Final Program Status** | **October 5, 2010** |
| **July 1, 2009 through September 30, 2010** | **End of Grant Financial and Program Report** | **October 31, 2010** |

IT IS EXPRESSLY ACKNOWLEDGED BY CDLE THAT IT IS AN INDEPENDENT CONTRACTOR UNDER THE TERMS OF THIS CONTRACT. NOTHING IN THIS CONTRACT IS INTENDED NOR SHALL IT BE CONSTRUED TO CREATE AN EMPLOYER/EMPLOYEE RELATIONSHIP OR A JOINT VENTURE RELATIONSHIP OR ALLOW EITHER PARTY TO EXERCISE CONTROL OR DIRECTION OVER THE MANNER OR METHOD BY WHICH THE PARTIES EXERCISE THEIR RESPECTIVE PROFESSIONAL JUDGMENT. CDLE UNDERSTANDS AND AGREES THAT OTERO COUNTY WILL NOT PAY OR WITHHOLD ON BEHALF OF CDLE ANY SUMS FOR INCOME TAX, UNEMPLOYMENT INSURANCE, SOCIAL SECURITY, WORKMEN'S COMPENSATION INSURANCE OR ANY OTHER WITHHOLDING TAX OR INSURANCE PURSUANT TO ANY LAW OR REQUIREMENT OF ANY GOVERNMENTAL BODY. CDLE AGREES THAT ALL SUCH PAYMENTS AND WITHHOLDINGS, IF ANY, ARE THE SOLE RESPONSIBILITY OF CDLE, AND CDLE HEREBY WARRANTS AND REPRESENTS THAT CDLE WILL MAKE ALL SUCH PAYMENTS AND WITHHOLDINGS.

6. The term of this Contract is from the effective date of this Contract to October 25, 2010.

7. This Contract may be amended by further agreement of the parties placed in writing.

8. This Contract shall be nonassignable by either party without having received the prior written consent of the other party.

9. This Contract shall inure to the benefit of the parties hereto, their successors and assigns.

10. This Contract shall be construed and enforced in accordance with the laws of the State of Colorado.

11. CDLE shall not be bound by the Business Associate Contract Addendum between Otero County and DOLA regarding HIPAA compliance.

12. CDLE shall provide client services through June 30, 2010. After that date CDLE shall only be required to provide the final program and financial report.

## ARTICLE 43

### Otero County 4-H Council

*Memorandum of Understanding*
*March 8, 2010*

This Memorandum of Understanding is between the Otero County 4-H Council, hereafter referred to as "4-H Council," and Board of County Commissioners of the County of Otero, State of Colorado, hereafter referred to as "Otero County."

WHEREAS, Otero County will pay $211.00 per month to the 4-H Council to assist with maintenance of the Events Center and Arkansas Valley Fairgrounds located in Rocky Ford, Colorado; and

WHEREAS, this Memorandum of Understanding shall provide an understanding of Otero County's commitment to pay said funds and how the funds paid to the 4-H council by the County will be expended;

NOW THEREFORE, in consideration of their mutual promises to each, stated below, the parties hereto agree as follows:

1. Term. The term of this Memorandum of Understanding (hereinafter MOU) is January 1, 2010, through December 31, 2010. However, this MOU is not valid until it has been approved by all parties' authorized designees. The other provisions of this Contract, notwithstanding 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. The County is prohibited by law from making financial commitments beyond the term of the current fiscal year.

2. Payment. The County will pay two hundred eleven dollars ($211.00) per month to the 4-H Council on the 15th day of each month commencing January 15, 2010, and continuing through December 15, 2010.

3. Duties. The 4-H Council will utilize said funds to provide custodial services for the Events Center and groundskeeping of the Arkansas Valley Fairgrounds, both located in Rocky Ford, Colorado, for 4-H related events only.

4. Use of Funds and Accounting. The 4-H Council understands and acknowledges that it is the 4-H Council's responsibility to utilize the funds paid by the County to the 4-H Council in a fiscally responsible fashion and in accordance with the budget presented to the 4-H Council and approved by the Council. Further, the 4-H Council acknowledges that it is its responsibility to provide appropriate accounting for the revenues and expenditures so that its fiscal operations can be appropriately audited and confirmed.

5. Limited Amendments. The County may increase or decrease the amount payable under this MOU through a "Limited Amendment." To be effective, the Amendment must be in writing and signed by both parties hereto.

6. Termination. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of either party to terminate this agreement provided the party desiring to terminate give one month's advance written notice of termination to the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding (MOU) this 8th day of March, 2010.

## ARTICLE 44

### Conservation Easement Deeds

*Resolution No. 2010-007*
*April 12, 2010*

WHEREAS, on October 30, 2001, the Arkansas Valley Preservation Land Trust (AVPLT) was incorporated as a Colorado Nonprofit Corporation for the purpose of holding conservation easements; and

WHEREAS, AVPLT, between the years 2004 and 2007, accepted three conservation easements from grantors, namely: Kenneth R. and Ruth Ann Cullen; Ragan G. and Jane M. Jacquart; and John M. and Jolean K. Rose; and

WHEREAS, in January, 2007, Ragan G. and Jane M. Jacquart conveyed the real property subject to the conservation easement to Christopher B. Tomky and Jodi L. Tomky; and

WHEREAS, given new statutory requirements placed upon Conservation Easement grantees by the State of Colorado and other related considerations, the AVPLT Board, in consultation and agreement with the Otero County Commissioners, determined that dissolution of AVPLT was the best course of action; and

WHEREAS, the Conservation Easement Deed specifically provides "Grantee shall have the right to transfer the easement created by this Deed to any public agency or private nonprofit organization that, at the time of transfer, is a 'qualified organization' under §170(h) of the United States Internal Revenue Code, and under Colorado Revised Statutes §§38-30.5-101, et seq., and only if the agency or organization expressly agrees to assume the responsibility imposed on Grantee by this Deed"; and

WHEREAS, the Otero County Land Trust is a "qualified organization," as set forth in §170(h) of the United States Internal Revenue Code and Colorado Revised Statutes §§38-30.5-101, et seq.; and

WHEREAS, the grantors named above consented to the transfer of their respective Conservation Easements to the Otero County Land Trust (OCLT) and executed a Transfer of Easement and Consent as evidence thereof; and

WHEREAS, on November 2, 2009, OCLT approved transfer of the respective Conservation Easements from AVPLT to OCLT;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the County of Otero, Colorado, (as the governing body of the Otero County Land Trust) that:

1. The Otero County Land Trust expressly agrees to assume the responsibilities imposed on the Arkansas Valley Preservation Land Trust as concerns the following-described Conservation Easement Deeds:

(a) A Deed of Conservation Easement from Kenneth R. Cullen and Ruth Ann Cullen, which was recorded December 15, 2004, at Reception No. 506240 of the Prowers County, Colorado, real estate records;

(b) A Deed of Conservation Easement from Ragan G. Jacquart and Jane M. Jacquart, which was recorded December 8, 2006, at Reception No. 612473 of the Otero County, Colorado, real estate records; (NOTE: the real property subject to the Conservation Easement was conveyed to Christopher B. Tomky and Jodi L. Tomky by Warranty Deed dated January 16, 2007, and recorded January 17, 2007, at Reception No. 612896 of the Otero County, Colorado, real estate records):

(c) A Deed of Conservation Easement from John M. Rose and Jolean K. Rose, which was recorded February 20, 2007, at Reception No. 1714814 of the Pueblo County, Colorado, real estate records;

2. The Otero County Land Trust agrees to accept the funds and resources that the Arkansas Valley Preservation Land Trust has developed and maintained to properly administer and oversee the individual Conservation Easements as required by applicable law, and the Arkansas Valley Land Trust has likewise agreed to transfer such funds and resources to the Otero County Land Trust once all debts and obligations of the Arkansas Valley Land Trust have been paid.

3. The Otero County Commissioners wish to publicly thank the Arkansas Valley Preservation Land Trust Board of Directors for the dedication of each Board member to this undertaking, and to also commend those Board members for their voluntary service to the citizens of Otero County. Those Board members to be recognized and commended are: JAN CHURCH; PAT KARNEY; ALFRED KREPS; GREG NOLL; STEVE PTOLEMY; and TOM TOMKY.

## ARTICLE 45

### Department of Local Affairs

*Contract Amendment*
*April 26, 2010*

**1) PARTIES**

This Amendment to the above-referenced Original Contract (hereinafter called the Contract) is entered into by and between OTERO COUNTY (hereinafter called "Contractor"), and the STATE OF COLORADO (hereinafter called the "State") acting by and through the Department of Local Affairs, (hereinafter called "DOLA").

**2) EFFECTIVE DATE AND ENFORCEABILITY**

This Amendment shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall no be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

**3) FACTUAL RECITALS**

The Parties entered into the Contract for Otero County in conjunction with the Workforce Center to assist individuals in obtaining training necessary to receive a Work Readiness Certificate.

**4) CONSIDERATION-COLORADO SPECIAL PROVISIONS**

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Amendment. The Parties agree to replacing the Colorado Special Provisions with the most recent version (if such have been updated since the Contract and any modification thereto were effective) as part consideration for this Amendment.

**5) LIMITS OF EFFECT**

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments thereto, in any, remain in full force and effect except as specifically modified herein.

**6) MODIFICATIONS**

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

a. Statement of Project: #1 General Description of the Project:

1.1. Project Description and Eligible Expenses: is modified by deleting the Original Contract language and inserting new Contract language as follows:

Otero County in conjunction with the Workforce Center will complete a tiered training plan to include Work readiness, production skills and specialized skills that at the end of the training each participant will receive a Work Readiness Certificate. These grant dollars will be utilized to provide on the job training for individuals requiring additional or enhanced training upon completion of classroom instruction. In addition, training and assessments will be available to the youth in the county. Other reimbursable activities will include rent/mortgage payments utility assistance, basic dental and medical expenses, prescriptions, transportation, food costs, child care, and clothing needed to assist in job readiness. The maximum number of months the applicant would be eligible would be three (3) months. Copies of receipts of invoices for work readiness and specialized skills classes and needed equipment as well as support to clients will be submitted for reimbursement.

**7) START DATE**

This Amendment shall take effect on the later of its Effective Date.

**8) ORDER OF PRECEDENCE**

Except for the Special Provisions, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The most recent version of the Special Provisions incorporated into the Contract or any amendment shall always control other provisions in the Contract or any amendments.

**9) AVAILABLE FUNDS**

Financial obligations of the state payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available.

## ARTICLE 46

### Colorado Rural Workforce Consortium

*Amendment to Contract*
*April 26, 2010*

THIS AMENDMENT TO CONTRACT is entered into by and between the BOARD OF COUNTY COMMISSIONERS OF OTERO COUNTY, COLORADO, hereinafter referred to as "Otero County," and the STATE OF COLORADO, acting by and through the COLORADO DEPARTMENT OF LABOR AND EM-

PLOYMENT on behalf of THE COLORADO RURAL WORKFORCE CONSORTIUM, hereinafter referred to as "CDLE."

WHEREAS, on August 5, 2009, Otero County entered into an agreement with the State of Colorado, acting by and through the Colorado Department of Local Affairs for the benefit of the Division of Local government concerning the use of American Recovery and Reinvestment Act, Community Services Block Grant funds, such funds to be used for employment training in Otero County, Colorado; and

WHEREAS, on February 1, 2010, Otero County entered into a Contract with the State of Colorado, acting by and through the Colorado Department of Labor and Employment on behalf of The Colorado Rural Workforce Consortium wherein CDLE would aid in the implementation of said employment training; and

WHEREAS, paragraph 2 of the Contract with CDLE provides:

> 2. Otero County will pay to the CDLE the total sum of $82,076.00 to be used for the purpose of providing tiered training including, but not limited to, Work Readiness, Production Skills and Specialized Skills; leveraging work readiness activities for individuals who are WIA eligible; providing on-the-job training for individuals requiring additional or enhanced training upon completion of classroom instruction to eligible applicants; and making training and assessments available to youth in Otero County. These funds will be paid to the CDLE as follows:
>
> > (a) The CDLE will submit invoices for work readiness and specialized skills classes, equipment needed for work, career scope software and license fee to Otero County no later than the 20th day of the following month. All requests shall be for eligible expenses as described above, using the form provided and accompanied by supporting documentation equal to 100% of reimbursement request.

and

WHEREAS, the State of Colorado is requesting Paragraph 2 be amended and Otero County consents to the same; and

WHEREAS, paragraph 7 of the Contract between Otero County and the Colorado Department of Labor and Employment on behalf of the Colorado Rural Workforce Consortium allows for amendment "by further agreement of the parties placed in writing."

NOW, THEREFORE, based upon good and valuable consideration, the receipt of which is acknowledged, the parties hereby agree as follows:

A. Paragraph 2 of the Contract between Otero County and the Colorado Department of Labor and Employment on behalf of the Colorado Rural Workforce Consortium is hereby amended to read as follows:

> 2. Otero County in conjunction with the workforce Center will complete a tiered training plan to include Work readiness, production skills and specialized skills that at the end of the training each participant will receive a Work Readiness Certificate. These grant dollars will be utilized to provide on the job training for individuals requiring additional or enhanced training upon completion of classroom instruction. IN addition, training and assessments will be available to the youth in the county. in addition, other reimbursable activities will include rent/mortgage payments, utility assistance, basic dental and medical expenses, prescriptions, transportation, food costs, child care, and clothing needed to assist in job readiness. The maximum number of months the applicant would be eligible would be three months. Copies of receipts or invoice for work readiness and specialized skills classes and needed equipment as well as support to clients will be submitted for reimbursement.

Otero County will pay to CDLE the total sum of $82,076.00 for the purposes stated above, such funds to be paid to CDLE as follows:

(a) CDLE will submit invoices to Otero County no later than the 20th day of the following month. All requests shall be for eligible expenses as described above, using the form provided and accompanied by supporting documentation equal to 100% of reimbursement request.

B. That all other terms and provisions of the Contract shall remain in full force and effect.

EXECUTED this 26th day of April, 2010.