



**NOTICE AND AGENDA
SPECIAL MEETING
IDAHO SPRINGS CITY COUNCIL
MONDAY, MAY 17, 2021
5:45 P.M.**

WILL BE CONDUCTED AS A REMOTE MEETING

CALL TO ORDER

ROLL CALL

Executive session under C.R.S. section 24-6-402(4)(b) and (e) to receive legal advice and discuss matters that may be subject to negotiation concerning the City's rights under existing agreements.

ADJOURNMENT



**NOTICE AND AGENDA OF A
WORK SESSION
Idaho Springs City Council
May 17, 2021
6:00 p.m.**

- ❖ **Parking Management Agreement**
- ❖ **Library Operation and Maintenance Agreement**
- ❖ **EV Licensing Agreement**
- ❖ **COVID update**

The Public will be able to view and hear this meeting remotely at the following address:
<https://www.colorado.gov/pacific/idahosprings/city-council-live>



City of Idaho Springs City Council Communication

Date: May 17, 2021
Presented By: Jonathan Cain, Assistant City Administrator
RE: Parking Management Contract

Background

City Staff has been working with Interstate Parking of Colorado to update our agreement for Parking Management Services in the Downtown Commercial and nearby Residential Areas. A copy of the proposed Scope of Services for the Contract is attached to this Staff Report.

Notable Changes to the Agreement

Revenue Share: The City will share 50% of the Net Revenue (Gross Revenue minus Credit Card and App Transaction Fees) with Interstate. Interstate currently receives 70% of the Net Revenue.

Pricing: When Parking Management began, hours 1-3 on the street and 1-5 in the Parking lots cost \$1 per hour, with subsequent hours costing \$5. The pricing changed during the Pandemic to free, and then as the City began reopening was changed to first hour free, second and third hours \$1, subsequent hours \$5.

- a) Currently, when a customer pays for parking in the Commercial Zone, the “fee schedule” for parking runs for the entire day, which means that if they leave and return, they start where they left off (i.e., if they are at \$5 an hour, they will remain at that rate. In the new agreement, a Customer’s “clock” will restart after 3 hours. This means if a customer comes for Breakfast, leaves, and then comes back for Dinner they will start paying at the lower rate.
- b) Interstate will provide more Parking Vouchers to Ambassadors that will be available on a case-by-case basis to customers of the Parking Facilities, as well as improve on the Interstate website and other marketing tools used to promote the Parking Facilities.

Staff recommends that the pricing for Customer Parking will be changed to .5 Hours Free, Hours 2 and 3 \$1.50, Subsequent Hours \$5. This means that a customer will pay \$3 to park for 3.5 Hours, \$8 to park for 4.5 hours, \$13 to park for 5.5 hours, etc. This will not affect registered permitted users from the City.

Staff Duties: Interstate Ambassadors will “log” their rounds using QR codes posted on their signs throughout the Downtown. Interstate will provide enhanced reporting to the City regarding usage of the Parking Facilities, as well as enhanced marketing and website presence.

Enforcement: The process for Violations and Notice of Fee issued by Interstate will change. Interstate will cooperate with the City in enforcing parking regulations in the parking facilities as designated by the City's Parking Plan. Interstate will include on Violations Make and Model of Vehicle, License Plate Number, Picture of Violation, Description of the Violation. Parking Violation Fees will be \$25, and the City Fee Schedule will be updated to match. If Fee remains unpaid after 14 days, it will double, and Interstate will provide the City Code Enforcement Officer with a Copy of the Notice and Report generated and shall complete and sign a verified complaint in a form suitable for filing with the Idaho Springs Municipal Court.

Proposed Changes to the Agreement

Change to Bustang Lot: The Bustang Lot does not typically generate much revenue. It would likely be more useful to the City as a "free" parking area than as a "paid" parking area. City Staff recommends that paid parking be removed from the "Bustang Lot" at exit 240.

Staff recommends that the Bustang Lot be changed from "paid" to "free" parking.

Change to Employee, County, and Teacher Permits: Due to continued congestion in the Main City Parking Lots, City Staff recommends the following:

- a) Employee Permits that allow parking in the Main City Lots be discontinued.
- b) County Residential Permits be limited to 3 hours of parking in the Downtown Area AND allowed to park in the Residential Permitted areas of Idaho Springs.
- c) Teacher Permits that allow parking on the street will be discontinued. Teachers will still be able to park for free at the Bustang Lot at 13th Avenue and Idaho Street.

Staff Recommendations

Staff recommends that City Council adopt the Scope of Services developed by City Staff and Interstate Parking as the basis for a new ongoing contract for Parking Management in Idaho Springs that will be on the agenda for City Council Consideration at the regular meeting on May 24, 2021.



City of Idaho Springs Scope of Service Parking Management Services

1. Definitions.

- a) "Ambassador" means an employee of Interstate Parking tasked with enforcing parking regulations and providing associated customer services to visitors of the City of Idaho Springs
- b) "City Resident" refers to an individual residing within the Idaho Springs City Limits.
- c) "County Resident" refers to an individual residing outside the Idaho Springs City Limits but inside Clear Creek County.
- d) "Guest" refers to an individual staying or visiting a City resident for a short period of time.
- e) "Parking Facilities" means public areas set aside for the parking of vehicles. This includes parking lots with stalls and on street parallel parking spaces including areas set aside for the loading and unloading of vehicles.
- f) "Parking Zones" means designated areas of the City with specific rules and regulations regarding the parking of vehicles.
- g) "Commercial Zone" refers to the managed public parking areas in the City managed by Interstate with Free and Paid Parking in the immediate vicinity to the City's Historic District.
- h) "Residential Zone" refers to the managed private parking areas in the City managed by Interstate with City Resident Only parking.
- i) "Customer" refers to an individual that pays to park in the Commercial Parking Facilities in the City.
- j) "Employee" refers to an individual employed by a local business located in or nearby the Downtown Commercial District in Idaho Springs.

- k) "Summons" means a citation issued by the City Code Enforcement officer for violation of the rules and regulations regarding the parking of vehicles in the City.
 - l) "Gross Parking Revenue" means all revenue collected by Interstate in connection with the operation of the Parking Facilities.
 - m) "Transaction Fees" means all fees charged by credit or debit card processing institutions or to 3rd parties levied, rated, charged, assessed or required to be collected and paid by customers using the Parking Facilities.
 - n) "Net Parking Revenue" means all revenue collected by Interstate in connection with the operation of the Parking Facilities minus Transaction Fees.
 - o) "Taxes" means all transactional value, ad valorem, sales and use taxes, rates, charges or assessments levied, rated, charged, assessed or required to be collected or paid in the operation of the Parking Facilities.
 - p) "Warning of Violation" (Warning) means a written notice deposited by an Ambassador on the windshield of a vehicle parked in violation of the City's Parking Plan that contains: (1) a reference to the Parking Plan section violated; (2) time, date and location of the violation; (3) description of the vehicle including the License Plate information; (4) notice that there is no fee for the violation.
 - q) "Notice of Violation and Fee" (Violation) means a written notice deposited by an Ambassador on the windshield of a vehicle parked in violation of the City's Parking Plan that contains: (1) a reference to the Parking Plan section violated; (2) time, date and location of the violation; (3) description of the vehicle including the License Plate information; (4) notice of amount of the Parking Violation Fee due; and (5) instructions on where and when the Fee must be remitted to avoid the initiation of further legal process.
 - r) "Grievance" means a cause of distress to a user of the parking facilities caused by a dispute regarding a Violation issued by Interstate or by another unsatisfactory quality or condition of the Parking Facilities or Interstate Ambassadors.
2. **Management Fee.** As compensation for the services rendered by Interstate Parking, the City will share 50% of the Net Parking Revenue with Interstate.
3. **Accounting for Gross Parking Revenue, Record of Disbursements and Controls.**
- a) **Gross Parking Revenue:** Interstate shall install and maintain an accurate and efficient accounting system for Gross Parking Revenue of the Parking Facilities approved by the City. All records pertaining to Gross Parking Revenue including without limitation, monthly parking records, citations issued by Interstate, coupon

and validation sales and redemption records, daily reports and deposit slips shall be available for examination and audit to the City and its authorized representatives upon seven (7) days written notice by the City to Interstate.

- b) Record of Disbursements: Interstate shall install and maintain at its main office in an accurate and efficient accounting system for disbursements of the Parking Facilities. Such system shall evidence all monies disbursed by Interstate with respect to the management of the Parking Facilities. All records pertaining to disbursements shall be maintained by Interstate and shall be available to the City and its authorized representatives for examination and audit upon seven (7) days written notice by the City to Interstate.
- c) Controls: Interstate shall install and maintain a system of internal controls covering income and expenses.

4. City Deliverables.

- a) Before 12:00 PM on the 15th day of the month, Interstate shall give the City a report with statistics and analysis for the proceeding calendar month setting out information required by the City in a manipulable format:
 - i. Total Number of Vehicles Parked in the Commercial Facilities, broken down by the following demographics:
 - 1. Customers
 - 2. City Residents
 - 3. County Residents
 - ii. Average length of stay for each demographic of user listed above.
 - iii. Total number of Warnings and Violations issued by Interstate Ambassadors.
 - iv. Total number of Violations collected by Interstate.
 - v. Total number of uncollected Violations turned over to the City by Interstate.
 - vi. Gross Parking Revenue collected by Interstate in connection with the operation of the parking facilities, broken down by category (hourly payments, citations, etc.) along with any other revenue sources not specifically mentioned herein.
 - vii. Total transaction fees charged.
 - viii. Total Net Parking Revenue.
 - ix. Total number of Residential Permits, broken down by the following demographics:
 - 1. City Residents
 - 2. County Residents
 - x. Log of Grievances received regarding the parking facilities and their resolution.
 - xi. Log of Ambassador “QR Check Ins” for the appropriate time period.

- b) Interstate shall provide the City with a disbursement equal to 50% of the Net Parking Revenue for the period.
 - c) Work done by City Staff in relation to the Administration of Paid or Permitted Parking Management, or in relation to the installation, maintenance, and upkeep of required elements of the paid parking system shall be charged to Interstate at a rate of \$50.00 per hour.
5. **Meetings.** Interstate shall meet with City Staff and Elected Officials monthly for the purpose of reviewing all matters pertinent to this agreement. Interstate shall also present at least annually to City Council a report regarding the management of the Parking Facilities to City Council, to include review of all matters pertinent to this agreement.
6. **Parking Facilities.** Interstate shall manage Commercial and Residential Parking Zones of the City defined in the City's Parking Plan by the terms of this agreement. These parking zones are subject to change as deemed necessary by the City.
7. **Signage.** Interstate agrees to pay for all instructional signage **required by** the City for the Parking Facilities. The signage will be branded as required by the City, and the City and Interstate agree to work together to secure all governmental approvals and permits required for such signage.
- a) Interstate agrees to install and update all signage related to the parking facilities regarding hours of operation, cost, and other information.
 - b) Work done by City Staff in relation to the Installation or Updating of Signage for Parking Management shall be deducted from the fee owed to Interstate at a rate of \$50.00 per hour.
8. **Hours of Operation.**
- a) **Commercial Zone:** Paid Parking shall operate in the Commercial Zone between the hours of 10:00 a.m. and 6:00 p.m. each day or at other times as determined to be necessary by the City.
 - b) **Residential Zone:** Management of the Residential Zone shall operate between the hours of 10:00 a.m. and 6:00 p.m. each day.
 - i. Interstate will provide the Idaho Springs Police Department with the means to check vehicle registrations after hours.
 - c) These hours are subject to change as required by the City.

9. **Vehicle Registration.** Interstate shall manage the registration of vehicles owned by Residents of the City and County, Guests, and other special use short term vehicle parking permits.
- a) **City Resident Vehicles:** Residents of the City shall without limitation be able to annually register vehicles to park in both the Commercial Zone and Residential Zone.
 - i. **City Residents that live within the Residential Permitted Zone** shall be able to register short term guests to park in the Residential Zone (permits shall last for 1 week). Long Term Guests may be permitted on a longer basis on a case-by-case basis.
 - ii. Vehicles parked in the Resident Only Zone must be registered to a Resident of the City or to a Guest.
 - iii. Vehicles Registrations will expire after 1 year.
 - iv. Residents shall be able to check registration status of vehicles both online and via email.
 - v. Interstate shall send email confirmation to include make, model, license plate and expiration date of registration upon successful registration of any City Resident Vehicle.
 - b) **County Resident Vehicles:** Residents of the County shall without limitation be able to annually register vehicles to park in the Commercial Zone of the City for **3 hours**. After leaving the commercial district for 3 hours that clock shall reset.
 - i. Registrations must be renewed annually.
10. **Staffing and Grievances.** Interstate shall employ at the Parking Facilities honest, competent and courteous personnel capable of managing and maintaining the Parking Facilities in accordance with the terms and conditions such that the Parking Facilities shall be operated in a first-class manner.
- a) **Hiring:** Interstate shall advertise all open positions for employment in the City of Idaho Springs locally, in the following mediums:
 - a. On the Park Idaho Springs Website
 - b. In the Clear Creek Courant
 - c. Other mediums that may be dictated by the City.
 - (b) **Staffing Levels:** The number of persons employed at the Parking Facilities shall be satisfactory to the City and shall be increased or decreased as required by the City. The staffing levels of the parking facilities shall adjust seasonally, as follows:
 - a. At least 1 year-round FTE on-site supervisor during all operating hours of the parking facilities; and
 - b. **January-February 28** At least 1 Ambassador on duty during operation hours for the parking facilities
 - c. **March 1-April 15:** At least 2 Ambassadors on duty during operation hours

- d. **April 15-June 1:** At least 1 Ambassador on duty during operation hours
 - e. **June 1- October 15:** At least 2 Ambassadors on duty during operation hours
 - f. **October 15-November 20:** At least 1 Ambassador on Duty during operation hours
 - g. **November 20-December 31:** At least 2 Ambassadors on Duty during operation hours.
- (c) Interstate shall provide an employment schedule to the City on Monday of Each Week.
- (d) Interstate will cause Stickers with QR codes to be installed throughout the Residential Permitted Area and Commercial Parking District. Ambassadors will scan these codes when on rounds and a record of this will be provided to the City along with other reporting requirements required for monthly payment of the parking fee by the City.
- (e) Personnel shall be screened by Interstate before hiring and shall be employed, disciplined, discharged, promoted and directed in the performance of their duties by Interstate, including in accordance with all applicable regulations. All personnel providing services hereunder shall be and remain, at all times, employees of Interstate and shall not be considered the employees or agents of the City for any purpose. Interstate shall provide all necessary executive and supervisory personnel who are not stationed at the Parking Facilities but are required for the proper management of the Parking Facilities.
- (f) Criminal Background Check and Drug Screening must be completed for each employee.
- (g) Interstate's employees shall present a clean, neat, professional and easily recognized appearance as an Interstate employee. Interstate shall provide each employee with matching uniforms. The uniforms shall include black polo shirts with the Park Idaho Springs Logo and clean and fitted pants or bottoms, all approved by the City. Hats must be black or blue and branded with the Park Idaho Springs Logo. In addition, Interstate shall provide each employee with an identification badge with the employee's name, photo, and the Interstate Logo. The identification badges shall be worn or attached to an outer garment when the employee is performing services under this contract.
- (h) Interstate shall negotiate and obtain any necessary labor agreement.
- (i) The City shall have the right to require the removal of any employee from the Parking Facilities whose conduct shall not reasonably satisfy the City.

- (j) Interstate agrees to handle and record in a prompt and courteous manner all Grievances by Customers of the Parking Facilities pursuant to the following protocol:
 - a. Interstate shall monthly provide a log to the City of Complaints received. That log shall consist of the related Citation number (if applicable), the name of the complainant, their complaint, and a brief note regarding how the complaint was resolved.
 - b. Interstate shall respond to complaints from the Public within 2 business days. Interstate will not charge late fees of any kind for any Violation for which there are Grievances in which it cannot be documented that there was a response within that time period. Interstate will log and report complaints to the City.
 - c. In the case that Interstate is not able to resolve a complaint in a timely fashion, they will notify the City in writing of the complaint, the nature of the complaint, as well as the name and contact information of the complainant.

11. **Rates.**

- a) Rates for parking in the paid zone shall be set as follows: First Half Hour Free, First Paid Hour \$1.50, Second Paid Hour \$1.50, Third Hour \$1.50, 4th and subsequent hours \$5. This rate structure may be adjusted by the City as required.
 - i. Parking Fee “Reset”: Parking fees will “reset” after 3 hours so that if a Customer leaves for 3 hours and returns they restart the rate schedule.
- b) The Cost associated with a Violation issued by Interstate will be \$25. Citations will double in price after 14 days.

12. **Enforcement.** Interstate shall cooperate with the City in enforcing parking regulations related to the parking facilities as designated by this agreement and the City’s Parking Plan.

- a) Parking Violation Process: The process for parking violations issued by Interstate in the parking facilities designated by this contract shall be as follows:
 - a) Upon identification of a violation of the rules of the Parking Facilities, Ambassadors are authorized to properly complete and leave a Notice of Violation and Fee on the windshield of the offending vehicle.
 - b) Interstate shall generate a report that includes the following information:
 - i. Make and Model of Vehicle
 - ii. License Plate Number
 - iii. Picture of Violation
 - iv. Description of Violation
 - c) If a Parking Violation Fee remains unpaid by the deadline provided in the Notice of Parking Violation and Fee, Interstate shall provide the City Code Enforcement Officer with a copy of the Notice and of the report generated under subsection (b) above and shall complete and sign a verified complaint in a form suitable for filing with the Idaho Springs Municipal Court.

- b) Ambassadors shall cooperate with the City in all subsequent efforts related to prosecution of parking violations in the City's Municipal Court, including but not limited to providing testimony at trials, hearings and other court proceedings.
13. **Equipment.** Interstate will install in the Parking Facilities sufficient modern and working equipment in the Parking Facilities to manage paid parking. Additionally, Interstate will outfit Ambassadors with equipment necessary to ensure vehicles parked in the Parking Zones are properly registered. All equipment will be installed at Interstate's expense.
- a) The City reserves the right to require Interstate to replace equipment related to the Parking Facilities deemed faulty or obsolete by the City.
14. **Maintenance.** Interstate shall maintain the Parking Facilities operating equipment in working order, including but not limited to Interstate's license plate recognition technology, Interstate's vehicles and revenue control system, pay by phone app, tap n explore qr codes signage, online violation payment solution, resident and employee permits technology. Interstate will conduct maintenance and updating of the parking facilities in a timely manner.
15. **Website, Branding and Marketing.**
- a) Interstate will provide a regularly updated Website linkable to www.idahospringsco.com that provides the following features:
 - i. Interactive Maps of Commercial Zone, Residential Zone, and "Free" Zones. "Interactive" means that a user should be able to click the map and receive information related to parking in that zone.
 - 1. Commercial Zone Map should show hours of operation, pricing, location of kiosks, location of Interstate Office, and contact information for Interstate Ambassadors on duty.
 - 2. Residential Zone Map should show hours of operation, clickable link to register Resident & Guest vehicles, clickable link to check status of vehicle registration, and contact information for Interstate Ambassadors on Duty.
 - ii. A Page for Residents with information about the process for registering vehicles, a clickable link to register Resident & Guest Vehicles, Clickable link to check the status of vehicle registration, information about how to deal with a violation if one is received, and other information as may be required by the City.
 - iii. A Page for Employees with information for registering vehicles, a clickable link to register Vehicles, Clickable link to check the status of vehicle registration, information about how to deal with a violation if one is received, and other information as may be required by the City.
 - iv. A Page for Teachers at Carlson Elementary School with information for registering vehicles, a clickable link to register Vehicles, Clickable link to check the status of vehicle registration, information about how to deal with

a violation if one is received, and other information as may be required by the City.

- v. A Page for Customers of the Parking Facilities, with information about the process for paying for parking, information about physical and non-physical payment methods, hours of operation, pricing, location of kiosks, location of the Interstate office, and contact information for Ambassadors on Duty. This page should also include a map to free parking resources in Idaho Springs, and link to the Chamber of Commerce website and other pertinent tourism-based websites.
 - 1. Should include detailed and multimedia instructions regarding how to pay for parking utilizing each technology in place in the City.
- vi. Integrated Live Chat feature for online communication between customers, residents and Interstate Staff.
- vii. Customized Contact forms for residential, employee and customer requests
- viii. Access to Interstates Online Residential and Employee Parking Account Management System which should allow for the verification of registration status by users.
- ix. Link to Violation Payment website. Should include option to contest ticket in obvious and clear language.
- x. A home page that includes information about Special Events happening in and around the City, including information for parking when town is Congested.
- xi. A “FAQ” with questions answered as required by the City.
- xii. Website should be designed with basic SEO features.
- xiii. Customer Feedback Page to include online digital survey.
- xiv. Other features as required by the City.

Paid Parking Facilities



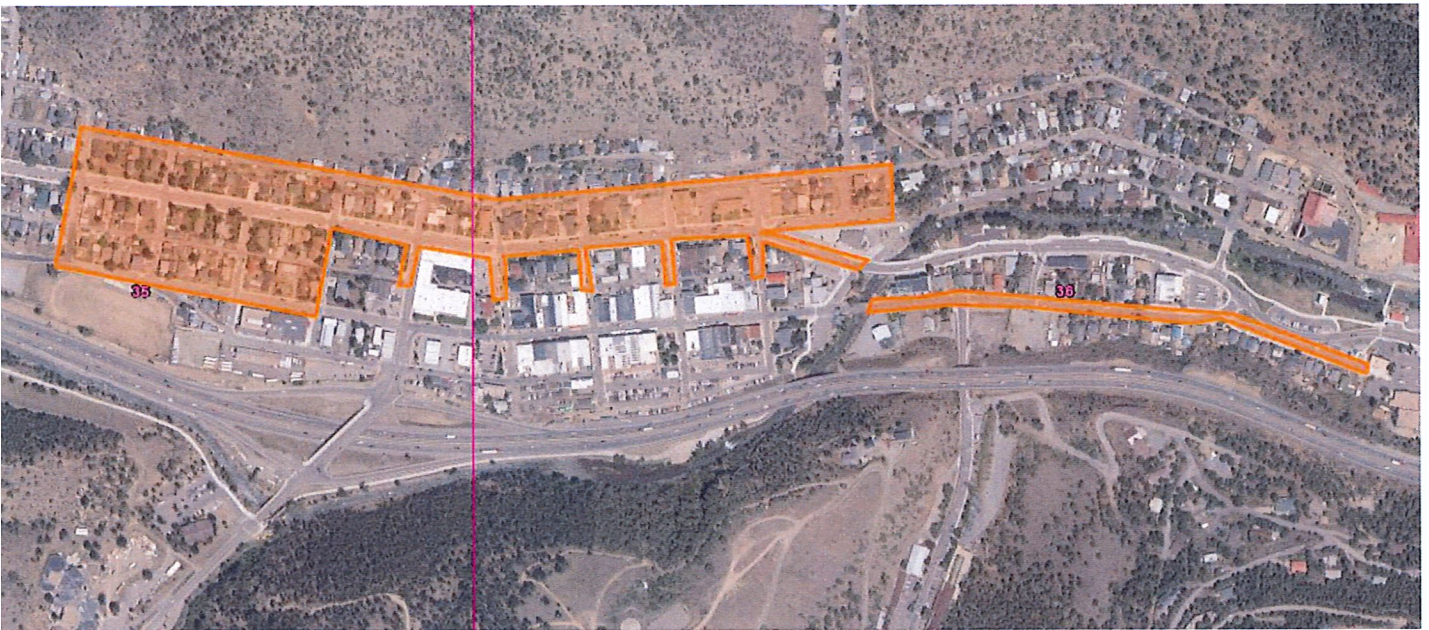
Hours 10am-6pm

City Residents Free

County Residents 3 Hours Free

Customers: .5 Hours Free, First and Second Full Hours \$1.50, Subsequent Hours \$5

Residential Parking Facilities



Open only to Registered City Residents. Proposed Change to allow County Residents.

There is 3 hour public parking on the South Side of Colorado Boulevard to the South of the United Center and on the whole north Side of Colorado Boulevard between 17th and 16th Avenues.



ATTORNEYS AT LAW

TO: Hon. Mayor Hillman and Idaho Springs City Councilors
 CC: Andrew Marsh, City Administrator
 FROM: Carmen Beery
 DATE: April 28, 2021
 RE: Carnegie Library Operation and Maintenance (O&M) Agreement

During your last two meetings, you considered the Clear Creek County Library District's ("District") request to amend its existing agreement with the City governing operations and maintenance of the Carnegie Library property. To propose new terms, the District has provided a new draft O&M Agreement.

There is an existing O&M Agreement between the City and District, dated January 9, 2006. It is not a lease; there is no definite term or expiration date. This memo provides a summary chart of the main differences¹ between the current O&M Agreement and the draft proposed by the District:

	Existing Agreement	Proposed Agreement
City Duties	Maintenance, snow removal of sidewalks and driveways <u>outside</u> of landscaped area adjacent to the building. 50% of system repairs (elec, hvac, plmbg) > \$1K. 100% of any major landscape redesign or changes to the Library grounds Upkeep, maintenance of exterior building elements + structural components. Sprinkler system maintenance <i>exceeding</i> \$500 / year.	Pay \$12K/year to District for "minor and routine" maintenance of building + property (amount adj. annually by constr. cost index) * Balance amounts generally carry-over, year to year (unless year-end balance exceeds 2x the amount due next yr.) 100% of "all major repairs and maintenance" + capital improvements Expenses > \$2,500 require mutual consent Post "Library Only" parking signs for parking adjacent to property during operation hours. Payment of sprinkler system water usage Maintain its own insurance on property/bldg.
District Duties	Maintenance, snow removal of pathways <u>inside</u> landscaped area adjacent to building. 100% of repairs < \$1K; 50% of repairs > \$1K. Maintenance of the Library grounds, incl. mowing, watering, trimming. Sprinkler system maintenance <i>up to</i> \$500/yr. Payment of all utilities – water, sewer, other Insurance for building, grounds + library contents	Perform minor and routine maintenance (funded by City) Expenses > \$2,500 require mutual consent Pay all utilities <i>except</i> sprinkler system Maintain general liab. insurance only.

¹ This memo highlights major points discussed by Council and of likely importance; other minor variations and terms are not summarized.

**AGREEMENT FOR OPERATION AND
MAINTENANCE OF IDAHO SPRINGS PUBLIC LIBRARY**

THIS AGREEMENT is made and entered into on this _____ day of _____, 2021, by and between the **CITY OF IDAHO SPRINGS** (the “City”), a municipal corporation in the State of Colorado and the **CLEAR CREEK COUNTY LIBRARY DISTRICT** (the “District”), a library district organized and existing pursuant to part 1 of article 90, title 24, C.R.S.

WHEREAS, the Idaho Springs Public Library is housed in a Carnegie Library building (the “Library Building”) owned by the City and located upon real property owned by the City, such building and property being located at 219 14th Avenue, Idaho Springs, Colorado, and more fully described as Lot 1, Lot 2 and the east eleven (11) feet of Lot 3 in Block 33, City of Idaho Springs; and

WHEREAS, the District is the owner of all contents of the Library Building; and

WHEREAS, the Library Building has served the area as a public library since its construction in 1904; and

WHEREAS, the City and the District have a mutual desire to maintain and carry on the services of the Idaho Springs Public Library for the citizens of Idaho Springs and the surrounding areas; and

WHEREAS, both parties wish to formalize the conditions under which the current use of the Library Building and the property upon which it is located can be maintained, along with each party’s respective responsibilities therefor.

NOW, THEREFORE, for and in consideration of the mutual promises and undertakings herein set forth, the parties agree as follows:

1. The City shall be responsible for the following:
 - a. Upkeep and repair, including removal of snow, ice and debris, of all sidewalks and driveways.
 - b. Upkeep and maintenance of the landscaping and sprinkler system. The City will pay for the sprinkler system water usage.
 - c. Upkeep and maintenance of the Library Building exterior and structural components.
 - d. One hundred percent (100%) of the costs of any major landscape redesign, or other changes to the Library Building grounds, such work to be determined and implemented exclusively by the City.
 - e. Fifty percent (50%) of the cost of major repairs or replacement of mechanical, electrical, plumbing or heating systems in excess of two thousand five hundred dollars (\$2,500.00) annually, said excess costs to be agreed upon in advance by the parties.
2. The District shall be responsible for the following:
 - a. Purchase and maintain, and pay the premiums upon, adequate insurance

for general liability and workers' compensation as set forth below, as well as insurance deemed adequate by the District to insure its personal property stored in the Library Building and grounds. Certificates of Insurance will be provided to the City on an annual basis.

- General Liability. The Library District shall carry Comprehensive General Liability insurance with minimum combined single limits of \$500,000 each occurrence and \$1,000,000 aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. Property and casualty insurance shall be sufficient to effect replacement of damaged or destroyed components of the Library Building and contents. The City of Idaho Springs shall be listed as an additional insured under such policy. The Library District shall provide the City of Idaho Springs with certificates evidencing such insurance.
 - Workers' Compensation. The Library District shall carry Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employers' Liability insurance with minimum statutory limits of \$100,000 per occurrence for bodily injury, \$100,000 per employee for bodily injury by disease and a \$500,000 policy limit for bodily injury by disease.
- b. Timely payment of all charges for water, sewer and all other utilities for the Library Building, except water usage for the sprinkler system.
 - c. One hundred percent (100%) of the cost of routine and minor repairs and replacements costing less than two thousand five hundred dollars (\$2,500.00) per repair/replacement. Fifty percent (50%) of the cost of major repairs or replacement of mechanical, electrical, plumbing or heating systems in excess of two thousand five hundred dollars (\$2,500.00) annually, said excess costs to be agreed upon in advance by the parties.
 - d. Coordination and administration of projects involving the sharing of costs for maintenance or replacement of materials or systems pursuant to Sections 1.e, and 2.c above. It is agreed that three bids shall be solicited for any such work, and said bids shall be presented to the City for approval before any contract is awarded or any work is commenced.
3. Both parties further agree to the following:
 - a. This agreement shall become effective on the date first set forth above

and shall remain in effect until terminated by mutual agreement of the parties, or for material breach in accordance with section 4 below.

- b. The Library Building shall be used solely for the purpose of a public library, and no portion thereof shall be sublet to any person, organization or agency.
- c. The District shall continue the operation of the Idaho Springs Public Library at the Library Building. Subject to the foregoing, the operations of the said public library shall be as determined and implemented by the District in its sole discretion.
- d. Nothing herein contained shall be construed to constitute either party the agent of the other, or in any manner to limit the parties in the carrying on of their own respective activities.
- e. Any and all notices between the parties shall be in writing and shall be deemed delivered when mailed to the designated representatives at the respective addresses listed below:

City of Idaho Springs
Attn: City Administrator
P.O. Box 907
Idaho Springs, CO 80452-0907

Clear Creek County Library District
Attn: Director
P.O. Box 338
Georgetown, CO 80444-0338

- f. This Agreement shall be recorded in the real property records of the Clear Creek County Clerk and Recorder. The benefits and burdens of this Agreement shall run with the above-described real property and the Library Building, and shall be binding upon and inure to the benefit of both parties hereto, their successors and assigns.
- g. This agreement may be amended only by mutual agreement of the parties, approved by their respective governing bodies.
- h. This agreement represents the complete agreement between the parties. Any and all previous leases, agreements or other instruments concerning the property and its operation as a public library are hereby mutually declared null and void.
- i. Nothing contained in this agreement shall be construed as requiring the commission of any act contrary to law. In the event that any portion of this agreement shall be held to be invalid or otherwise unenforceable, the entire agreement shall not fail on account thereof, and the balance of the agreement shall continue in full force and effect.
- j. The parties understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this agreement, the monetary limitations (presently \$387,000 per person and \$1,093,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 et seq., 10 C.R.S., as from time to time amended, or otherwise available to the City, its officers, or its employees.

4. Termination. Either party may terminate this Agreement for a material default in the other party's performance of this Agreement which default continues and is

not cured for a period of thirty (30) days after written notice specifically setting forth the nature of the default has been given to the party allegedly in default (the “noticed party”) or, if more than thirty (30) days is reasonably required to cure the alleged default, if the noticed party fails to commence to correct the same within said thirty (30) day period or shall thereafter fail to prosecute the same to completion with reasonable diligence.

IN WITNESS WHEREOF, THE PARTIES HAVE SET THEIR SIGNATURES AND OFFICIAL SEALS.

CITY OF IDAHO SPRINGS

By: _____

Mayor

CLEAR CREEK. COUNTY LIBRARY
DISTRICT

By: _____

President

DRAFT



ATTORNEYS AT LAW

TO: Hon. Mayor Hillman and Idaho Springs City Councilors
CC: Andrew Marsh, City Administrator
FROM: Carmen Beery
DATE: May 12, 2021
RE: Discussion of EV License Agreement (*Meeting Date May 17, 2021*)

The City has been in discussions with EV Build, LLC concerning the possible location of Electric Vehicle (EV) charging stations within a City-owned parking lot. Over the past few weeks, the two parties have come to a tentative agreement on most terms of a Charging Station License Agreement. The only remaining term that requires finalization (subject to City Council approval) is the matter of compensation.

Staff proposed compensation equal to one-half (1/2) the amount of parking fees that a parking space would generate if it were occupied the entire period that parking fees are charged (8 hours/day) for the 6-month busy season of May – October. Compensation under the License Agreement calculated this way is as follows:

- To occupy 1 space from 10 a.m. – 6 p.m. = \$29/parking space per day
- \$29/day x 30 days = \$870/parking space per month
- 4 parking spaces/charging stations = \$ 3,480 per month
- For the equivalent of 6 months = \$ 20,880 annually
- Cut that in half = **\$ 10,440 annually** for the 1st year
- Amount due in subsequent years may vary depending on parking rates then in effect + parking spaces/charging stations added or subtracted (subj. to City approval)

EV Build proposed an alternative amount in response, and asked the City to consider the following points: (1) they expect utilization of the charging stations the 1st year to be slow, due to COVID-related delays in EV production (non-Tesla); (2) they believe charging station users will shop and dine in Idaho Springs and possibly move to another parking spot after charging, creating additional revenue; (3) EV Build pays commercial property tax on the charging stations; and (4) increased costs to EV Build mean increased costs to charging station users, and EV Build is obligated by the Colorado Energy Office grant program to keep charging costs reasonable.

EV Build therefore proposed the following compensation:

- \$300/parking space per month
- 4 parking spaces = \$ 1,200 per month
- For the equivalent of 6 months = **\$ 7,200 annually** for the 1st year
- An **increase of 5%** per parking space in each subsequent year
(*the initial Term = 10 years*)

At your May 17th meeting, I will seek your direction on this issue of compensation. Once finalized, the License Agreement will be placed on a future agenda for your formal vote and action. I will be present at your meeting on the 17th to answer any questions you may have at that time.

Attorneys at Law

CHARGING STATION LICENSE AGREEMENT

This CHARGING STATION LICENSE AGREEMENT (this “*License Agreement*”), effective as of the date indicated below (the “*Effective Date*”), is between, EV BUILD, LLC , a Kansas limited liability company, with its principal office located at 13851 W. 63rd Street, Suite 301, Shawnee, Kansas 66216 (“*Licensee*”), and CITY OF IDAHO SPRINGS, COLORADO, a Colorado home rule municipal corporation, with its principal place of business located at 1711 Miner Street, PO BOX 907, Idaho Springs, CO, 80452 (“*Host*”). Each of Licensee and Host is a “party,” and together they are the “parties,” to this License Agreement.

A. Pursuant to the ALT Fuels Colorado Electric Vehicle Direct Current Fast-Charging Corridors Grant Program (“Colorado Grant”), the Colorado Energy Office (“CEO”) is providing grant funds to certain parties in order to increase the number of and access to electric vehicle charging stations along major Colorado transportation corridors;

B. ChargePoint, Inc. (“CPI”) has established a business to provide a variety of electric vehicle charging services to owners of plug-in electric vehicles (“EVs”) and is a recipient of certain Colorado Grant funds under applicable agreements with the CEO and subject to the terms of the Colorado Grant;

C. CPI and Licensee have executed, or will execute, an agreement by which CPI has agreed to donate certain electric vehicle charging stations (the “Charging Stations”) and related charging services to Licensee, using Colorado Grant funds, subject to the terms of the Colorado Grant and Licensee has agreed to accept such Charging Stations;

D. Licensee desires to license parking spaces (as more fully described below) from Host for the purpose of installing such **Charging Stations**, as donated by CPI, and providing charging services to EV Drivers and Host desires to license those spaces to Licensee; and

E. This License Agreement sets forth the parties’ agreement with respect to Host’s grant of the License to Licensee, and is subject to the terms and conditions of the Colorado Grant.

AGREEMENT

1. **Grant of ~~License~~ License and Consideration and License Term.** Host grants to Licensee a limited, non-exclusive license (“*License*”) to use a portion of Host’s property agreed to by the Parties (each such Host location is hereby defined as a “*Host Property*”), for the purposes described in this License Agreement (each parking space identified in an Addendum is a “*Licensed Space*”). **Exhibit A** attached to this License Agreement sets forth the list of potential Host Properties on which Licensee may operate a Charging Station. The final list of Host Properties shall be subject to agreement of the Parties.

In consideration for the License, Licensee shall pay Host an amount equivalent to one-half (1/2) of the public parking rate to continually occupy each Licensed Space from May 1 through October 31. No later than November 1st of each calendar year during the Term and at least 30 days prior to the commencement of the initial Term, the City shall calculate the projected amount due for the following calendar year and send an invoice for the same to Licensee. Licensee shall pay the invoice no later than December 31st of the year of invoice date. At the same time the City calculates the projected amount due for the subsequent calendar year, the City shall prepare an accounting of the number of Licensed Spaces actually in use during the current calendar year. To the extent the projected amount due for the current calendar year exceeded the actual amount due, a credit for the difference shall be included on the next calendar year’s invoice; to the extent the projected amount due was less than the actual amount, the deficit shall be included on the next calendar year’s invoice.

2. **Term.** Each License of a Licensed Space is for an initial term of ten (10) years (the “*License Term*”) commencing on the Effective Date. Subject to the termination provisions set forth in Section 43 hereof, each License may be renewed for subsequent terms of any mutually agreed upon duration, as evidenced by a writing signed by both

Formatted: Superscript

Formatted: Superscript

Formatted: Font: Bold

Formatted: Font: Bold, Underline

~~Parties, beginning on the date on which the Charging Station servicing that Licensed Space is operational (the "License Commencement Date") and ending on the date that is ten (10) years from the License Commencement Date (as extended, the "License Expiration Date"). After the License Expiration Date for a Licensed Space, the License Term for that Licensed Space will automatically renew for successive ten (10) year terms, unless either party gives written notice of termination of the License with respect to that Licensed Space to the other party no later than ninety (90) days before the applicable License Expiration Date (the date on which the License Term for any Licensed Space ends is the "License Termination Date"). Licensee shall have the exclusive right to operate one or more Charging Stations (as agreed to by the Parties) at each Host Property set forth on the final agreed upon Exhibit A. In no event shall Host grant any license, lease or other possessory right to any third party for the purpose of operating a Charging Station at any Host Property set forth on Exhibit A.~~

23. Licensed Space Use. Licensee may use each Licensed Space solely for the purposes of installing, maintaining, repairing, and operating, all in accordance with this License Agreement, one or more Charging Stations and the ancillary uses stated in this License Agreement. The number and approximate location of the Charging Stations and Licensed Spaces at any given Host Property is shown in the appropriate Addendum for that Host Property. Each License covers only the applicable Licensed Space and the areas of Host's adjacent property (other than the areas located within any buildings or other structures located on such adjacent property) that are reasonably necessary to provide access to and from that Licensed Space and the Charging Stations, for the purposes stated in this License Agreement. The parties recognize that the License allows a right of use and does not grant an interest in real property. Except as expressly stated otherwise, all personal property placed, installed, or affixed to or otherwise located in any Licensed Space by Licensee is the sole and exclusive property of Licensee.

34. Charging Models. Licensee shall select the EV charging stations it receives in each Licensed Space. The number, design, make, model, and manufacturer of each Charging Station are subject to the terms of the agreement between Licensee and CPI Licensee, at any time and for any reason during the License Term, may elect to upgrade, revise, alter, or swap any Charging Station installed in any Licensed Space and, as appropriate. Host shall be given prior written notice of any such upgrade, revision, alteration or swap of the Charging Station; provided that standard software upgrades and defective station maintenance to the Charging Station shall not require written notice to Host. Licensee will require access to Host Property and the Licensed Space to replace or upgrade any Charging Stations during the License Term. Such replacement or upgrade will be Licensee's sole responsibility and will cause minimal disruption to the Host's operation as no additional construction, trenching, repaving, or landscaping will be required.

45. Installation; Ownership. Licensee is solely responsible for supervising and performing or causing the performance of the construction and installation activities, including upgrades, for all Charging Stations, subject to the terms of the agreement between Licensee and CPI. Licensee shall schedule the date and time of construction and installation activities with Host in a manner intended not to interfere with Host's business operations. Such schedule shall be binding unless a party provides at least five (5) business days' prior written notice of any need to reschedule. Except in those instances where Licensee is merely replacing ~~or upgrading~~ Charging Stations, Licensee shall submit detailed plans and specifications (prepared by Licensee's appropriately licensed electrical contractor) relating to the construction and installation of the Charging Station to Host for Host's approval. Host agrees to either approve or deny the submitted plans and construction schedule promptly ~~and use its best efforts to do so within fifteen (15) days, but in any event within ten (10) days; provided that, Hosts failure to approve or deny the submitted plans within such ten (10) day period shall be deemed an approval of such plans.~~ No work will begin until plans have been approved ~~(or deemed approved)~~ by Host and all applicable permits and certifications have been obtained, including permits required pursuant to the ordinances, laws and regulations of the Host. Once approved, and on the parties' respective demonstration that all insurance coverages required by this License Agreement are in place, Licensee will, at its sole expense, cause the installation of all Charging Stations, including, to the extent applicable, the hiring and coordination of all vendors and contractors; the installation of electrical equipment, utility lines, hardware, and software; site preparation, trenching, repaving, and landscaping; and installation of all CPI-branded signage, if any, approved by Host in accordance with Section 123 of this License Agreement. Host recognizes that Charging Stations will require the installation of dedicated electrical service, supporting concrete pads, protective bollards and other associated equipment necessary for the safe and effective provision of charging services to EV Drivers. Licensee will, at its sole cost and expense, obtain from applicable governmental authorities, including the Host, all licenses, permits, or other approvals required to install the Charging Stations, and Host will reasonably cooperate (at no out-of-pocket expense to Host) on request with Licensee's efforts to do so. ~~Nothing herein constitutes an agreement or obligation of Host to issue any license, permit or other approval necessary to install the Charging Stations if the application therefor does not satisfy the relevant generally-applicable requirements.~~ On completion of the installation of a Charging Station, that Charging Station is the personal property of Licensee, subject to the terms of the agreement between Licensee and CPI and the Colorado Grant, and is not considered to be a fixture or in any way the property of Host.

Commented [CB1]: The exclusivity language is antithetical to the goal of making EV charging stations more accessible to the public.

Commented [CB2]: A default approval is unacceptable for location of structures on City property

Formatted: Left, Tab stops: 2.84", Left + 3.3", Center

Host acknowledges and agrees that Licensee may retain contractors (and such contractors may retain subcontractors) (collectively, "**Contractors**") to perform some or all of Licensee's obligations under this License Agreement or an Addendum. Licensee shall not permit any mechanics' or other liens to stand against the Licensed Space or Host's adjacent property for work or material furnished Licensee. If any mechanic's or materialmen's lien or notice of lien shall at any time be filed against the Licensed Space or Host's adjacent property by reason of work, labor, services or materials performed or furnished to or on behalf of Licensee, Licensee shall promptly cause the same to be bonded or discharged of record. Except during the pendency of any proceedings instituted by Licensee to contest any such lien or notice, if Licensee shall fail to cause such lien or notice of lien to be discharged or bonded within thirty (30) days after the filing thereof, then, in addition to any other rights and remedies available to Host at law, or in equity or under this License Agreement, Host may, but shall not be obligated to, discharge or bond off the same by paying the amount claimed to be due or posting a bond, and the amounts so paid by Host and all costs and expenses, including reasonable attorneys' fees, incurred by Host in paying, bonding off or procuring the discharge of such lien, shall be due and payable by Licensee to Host within thirty (30) days of demand therefor.

56. Operation and Maintenance. Except as otherwise provided in this License Agreement, Licensee will, at its sole cost and expense, maintain, operate, and take good care of the Charging Stations, including making all necessary repairs, arrange for appropriate remote monitoring, and obtain and have installed appropriate software and hardware upgrades. In addition, Licensee agrees to keep the Charging Station in good working order and in a safe condition, Notwithstanding the foregoing, all damage or injury to the Charging Stations, whether requiring structural or nonstructural repairs, that are caused by or that result solely from the negligent conduct of Host, or its agents, contractors, employees or invitees, will be repaired by Licensee, but at Host's sole cost and expense, to the condition that existed before the damage. ~~For the purposes of this Section, members of the general public using the Host Property and/or Charging Stations shall not constitute "invitees" of Host.~~ Host shall have no obligation as to the condition or operability of the Charging Station and Licensee hereby waives any claims or cause of action against Host in connection therewith; provided that, Host agrees that it shall permit EV Drivers access to the Licensed Spaces. Host shall ensure that the Licensed Space and the area appurtenant to the Licensed spaces is free and clear of debris ~~to the same extent that Host maintains the remainder of the surrounding Host Property.~~ ~~Additionally, Host shall maintain the general cleanliness and appearance of the Charging Stations.~~ Host shall maintain adequate lighting for the Licensed Spaces. Host shall provide Licensee at least fourteen (14) days prior written notice of any schedule maintenance or repairs to the Host Property, and reasonably prompt notice of an emergency event at the Host Property, that could have the effect of denying access to the Licensed Spaces.

Commented [CB3]: Licensee must maintain general good re of its own property.

67. Utility Availability; General Obligations of Host. Host agrees (at no out-of-pocket expense to Host) to reasonably cooperate in the facilitation of the provision of electricity and any other utilities necessary to operate Charging Stations in each Licensed Space, including by granting (for property owned by Host) or consenting to the granting of (for property leased by Host) appropriate easements to local utility providers; provided, however, that Host is not required to pay money to accomplish the provision of those utilities. Neither Host nor Licensee has any responsibility or liability for interruption, curtailment, failure, or defect in the supply or character of utilities furnished to facilities or equipment located in any Licensed Space, unless the cause of the interruption is covered by the party's indemnity provided for in this License Agreement. Host shall, at its sole cost and expense, take commercially reasonable actions to maintain each Licensed Space in a clean, safe, and orderly condition, to at least the same standard as it customarily maintains the common areas that support its business conducted at the property adjacent to any Licensed Space. Host shall promptly notify Licensee and, as appropriate, emergency response personnel regarding any malfunction or perceived dangerous condition pertaining to a Charging Station.

78. Utility Metering and Electricity Costs. Licensee shall be responsible for paying the electricity costs associated with the use of the Charging Stations.

(a) **Separately Metered Sites.** Charging stations will be separately metered and Licensee shall pay all electrical bills directly to the utility provider.

89. Casualty and Condemnation

(a) **Damage.** If any Licensed Space or any Charging Station is damaged by fire or other casualty, then Licensee, at its sole option, may elect within thirty (30) days of date of fire or other casualty to terminate the License with respect to that Licensed Space on written notice to Host. If Licensee elects to terminate the License with respect to that Licensed Space, it shall remove all of Licensee's property from the affected License Space and restore the Licensed Space in accordance with Section 167 of this License Agreement.

(b) **Condemnation/Taking.** If any Licensed Space or other nearby space is condemned or taken in any manner for a public or quasi-public use that could adversely affect the use of the Charging Stations, then the parties will use commercially reasonable efforts to find an alternate location for that Licensed Space elsewhere on Host's property. The costs of the relocation of any Charging Station shall be paid by Licensee. Licensee may file a separate claim to the condemning authority for any relocation award made as a result of that condemnation; provided, however, in no event shall such claim reduce the Host's award related to such condemnation or taking. On Licensee's sole election, Licensee may elect to terminate the License with respect to any condemned Licensed Space in lieu of relocation effective as of the date title to the Licensed Space is transferred to the condemning authority.

~~(c) **Suspension of Term.** During any time that any Licensed Space or any portion of it is under repair or being relocated pursuant to this Section, the License Term shall be temporarily suspended on a day-for-day basis.~~

Commented [CB4]: Impractical; could result in varying term for different spaces, portions of lots; 10 year term is long enough absorb loss of several spaces for some time.

910. Limitation.

In no event shall either Party be liable to the other party or any other person or entity for any special, exemplary, indirect, incidental, consequential or punitive damages of any kind or nature whatsoever (including, without limitation, lost revenues, profits, savings or business, or contribution or indemnity in respect of any claim against the party), whether in an action based on contract, warranty, strict liability, tort (including, without limitation, negligence) or otherwise, even if such party has been informed in advance of the possibility of such damages or such damages could have been reasonably foreseen by such Party.

110. Insurance.

(a) **Minimum Coverage.** Beginning on the Effective Date and continuing through the License Term, Licensee shall maintain in full force and effect, at its cost and expense, the following coverages and amounts of insurance:

(i) Workers Compensation Insurance required by applicable state laws; Employers Liability Insurance with limits of not less than \$500,000 each Accident; \$500,000 each Employee – Disease; and \$500,000 Policy Limit-Disease.

(ii) Full replacement Property Insurance (written on an "all risk" basis) for personal property, machinery, equipment and trade fixtures to be insured by Licensee. Licensee shall obtain an endorsement waiving rights to subrogation in favor of Host for losses covered by such Property policy.

(iii) Commercial General Liability insurance covering bodily injury, including death, and property damage (including loss of use thereof), personal/advertising injury, and products and completed operations, with limits of liability not less than the following amounts:

- (1) \$1,000,000 Per Occurrence Limit;
- (2) \$1,000,000 Personal and Advertising Injury Limit;
- (3) \$2,000,000 General Aggregate (Other than Products-Completed Operations); and
- (4) \$1,000,000 Products-Completed Operations Aggregate Limit.

(iv) Business Auto Liability Insurance covering all owned, non-owned and hired vehicles, with limits of not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

(v) Umbrella coverage in the amount of \$4,000,000 per occurrence and \$4,000,000 in the aggregate.

(b) Licensee agrees that loss or damage to its owned or leased equipment, tools, or supplies used in performance of this License Agreement will be at Licensee's own risk.

Formatted: Left, Tab stops: 2.84", Left + 3.3", Center

(c) Any insurance carried by the Host, its officers, employees, contractors or its consultants shall be excess and not contributory insurance to that provided by Licensee.

(d) Licensee shall provide to the Host a certificate of insurance as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect.. ChargePoint shall provide Host with at least ~~thirty~~ (30) days prior written notice of any material change or cancellation of these policies. The Host reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

(e) All Contractors must comply with the requirements of this Section.

142. ~~Indemnification~~Indemnification. Licensee shall indemnify, save, and hold harmless the Host, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Licensee, or its employees, agents, Subcontractors, or assignees in connection with this License Agreement.

143. ~~Signage~~Signage. Licensee shall not paint, place, erect, project, nor cause or permit to be painted, placed, erected, or projected, any sign, mark, or advertising device in, on, or about the Licensed Space or elsewhere on the Host's property without in each case first obtaining Host's written consent (which may be granted or denied in Host's commercially reasonable discretion or in accordance with applicable law). All use of CPI marks shall be subject to CPI's Branding Guidelines, available upon request. Licensee shall, at its own cost and expense, obtain any and all permits necessary for the installation of its signs, and Licensee shall be solely responsible for all costs and expenses associated with such permitting, the erection of such sign(s), and the maintenance and operation thereof. ~~Notwithstanding anything to the contrary contained in this License Agreement, Licensee shall be permitted to place signs indicating that the licensed parking spaces are for the use of electric vehicles only and mark the Licensed Spaces with paint. All signs and markings installed or painted by the Licensee shall be maintained by the Licensee.~~

Commented [CB5]: All signage and marking of pavement requires City approval.

143. ~~Assignment~~Assignment. This License Agreement is binding on and inures to the benefit of the parties and their respective heirs, successors, assigns, and personal representatives. Host recognizes that the License is not personal to Licensee. Neither party may assign its rights and obligations in and under this License without first obtaining prior written consent of the other party, which shall not be unreasonably withheld; provided, however, that either party may assign its rights and obligations in and under the License Agreement to a wholly-owned subsidiary or successor by merger or acquisition at any time and without consent, provided further that such assignee agrees to be bound by the terms of this License Agreement; provided further that, Licensee may assign its rights and obligations in and under this License Agreement to CPI at any time and without consent.

145. ~~Taxes~~Taxes. Licensee is solely responsible for personal property taxes imposed on Charging Stations, and any other equipment installed by it, that are located in a Licensed Space. All other real or personal property taxes related to each Licensed Space are the sole obligation of Host. Each party is responsible for its own income, franchise, margin, and similar taxes.

165. ~~Representations~~Representations. Each of Host and Licensee hereby represents and warrants to the other that it has the authority to enter into this License Agreement that this License Agreement is not in contravention of any other License Agreement or contract or obligation of Licensee or Host.

176. ~~Licensed Space on Termination~~Licensed Space on Termination. Host hereby grants Licensee the right, upon the termination of this License Agreement, to enter upon the Licensed Space within 30 days after such termination and to remove any and all Charging Stations as well as any other ancillary property of Licensee relating thereto. Licensee shall restore the Licensed Spaces to the same condition as prior to this License ~~Agreement~~Agreement or in a better condition. Upon removal, Licensee shall ensure that all wiring is capped and left in a safe condition that is in compliance with all applicable laws. Licensee shall coordinate the removal of the Charging Stations with Host.

178. ~~Recordation~~Recordation. Licensee may not record any memorandum or other documentation in the public registries that reflects Licensee's rights and its ownership of any property pursuant to this License Agreement without first obtaining Host's consent (and the consent of any lessor of Host) in each instance, which consent shall not be unreasonably withheld, conditioned or delayed.

198. Access; Construction. Subject to any restrictions and limitations on construction and access to the Licensed Space set forth in Section 56 above, Licensee may use each Licensed Space and Host's adjacent property for the construction and installation of the Charging Stations, and shall confine its operations strictly to those sites permitted by applicable law, ordinances, permits, and Host. Only those materials and equipment that are being used directly in the construction and installation of Charging Stations shall be brought to and stored on that Licensed Space and its adjacent areas. Licensee shall ensure that, subject to reasonable and unavoidable interruptions, all work is performed in a manner that affords continuous, reasonable access to Host's adjacent property.

1920. Intellectual Property. As used in this License Agreement, "*Intellectual Property*" means all copyrights, patents, trademarks and service marks/names, all registrations for copyrights, patents, trademarks and service marks/names, trade secrets, know-how, and all unique concepts, information, data and knowledge that is eligible for legal protection under applicable laws as intellectual property, whether protected through confidentiality, registration or pending registration, regardless of form, whether disclosed in writing, electronically, orally or through visual means, whether learned or obtained orally, through observation, through the discharge of responsibilities under this License Agreement, or through analysis of that information, data or knowledge. The parties agree that, as between them, Licensee has and retains ownership of all copyrights, trade secrets, patents, and other intellectual property rights in Licensee's Intellectual Property, and Host has no right, and may not obtain any right, in any Licensee Intellectual Property other than the specific trademark license granted pursuant to this License Agreement.

210. Confidentiality Covenant. In connection with their discharge of duties and responsibilities under this License Agreement, each of Licensee and Host may provide to the other certain confidential or proprietary information not publicly known. Licensee and Host agree to treat any confidential or proprietary information (as defined below) in the manner required by this License Agreement. The Licensee expressly recognizes that Host is subject to the Colorado Open Records Act, C.R.S. § 24-72-200.1 *et seq.*, and such Act may govern the disclosure of confidential information by the Host, regardless of the provisions in this Section.

(a) **Confidential Information.** The term "Confidential Information" includes all information, data and knowledge concerning either party, including soft or electronic copies of data, the party's Intellectual Property or its operations, regardless of form, that is delivered or disclosed, in connection with the undertakings of the License Agreement by or on behalf of either party to the recipient in writing, electronically, orally or through visual means, or by which the recipient learns or obtains orally, through observation or through analysis of such information, data or knowledge; provided, however, if such information is oral or visual, it must be identified as secret, confidential or proprietary prior to disclosure and is summarized in a writing marked secret, confidential or proprietary and delivered within ten (10) days following the oral or visual disclosure or must, due to its nature or the context of its disclosure, be the sort of information that the recipient should reasonably deem to be confidential. Confidential Information does not include information that (i) was or becomes generally available to the public other than as a result of a disclosure by the recipient, (ii) was or becomes available to the recipient from a source other than either party or its Affiliates, so long as that other source is not bound by a confidentiality agreement regarding that information, (iii) was within the recipient's possession before the information was furnished to the recipient by the other party, or (iv) is independently developed by the recipient, provided that the development was by or on its own behalf without the use of, or any reference to, any Confidential Information.

(b) **Respecting Confidentiality.** Each party agrees to keep Confidential Information confidential. Each party agrees that it will not provide any Confidential Information to a third party, including, without limitation, the fee owner or ground lessee of any Licensed Space or proposed Licensed Space, unless the other party to this License Agreement has approved that in writing, and the third party is advised of and agrees to be bound by the provisions of this Section 201. Within fifteen (15) days of written request following a breach by the other party of the License Agreement, or on termination of the License Agreement, the recipient shall promptly return to the disclosing party all written or other tangible manifestations of material containing Confidential Information, and will not retain any copies.

(c) **Publicity.** Neither party will use the name(s), trademark(s) or trade name(s), whether registered or not, of the other party in publicity or press releases or advertising or in any manner, including customer lists, without that party's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

212. Independent Contractors. The parties shall act as and be independent contractors in the performance of this License Agreement. Nothing in the License Agreement shall be deemed or construed to create a joint venture, partnership, fiduciary, or agency relationship between the parties for any purpose, and the employees of one party shall not be deemed to be the employees of the other party. Except as otherwise stated in this License Agreement, neither party has any right to act on behalf of the other, nor represent that it has such right or authority.

223. Independent Agreements. The parties acknowledge and agree that the rights and obligations under the License Agreement are separate and independent from, and shall not be conditioned on or affected by the performance or non-performance of the terms of, any other agreement between Licensee and Host.

243. Notice. Any notice provided or permitted to be given under the License Agreement must be in writing and be served either by (i) deposit in the mail, addressed to the party to be notified, postage prepaid, and registered or certified, with a return receipt requested, or (ii) deposit with an internationally-recognized overnight delivery carrier, with notice of delivery to the recipient party. Notice given by registered mail or overnight carrier shall be deemed delivered and effective on the date of delivery shown on the return receipt or proof of receipt. For purposes of notice the addresses of the parties shall be as follows:

If to Licensee:

EV Build LLC
13851 W. 63rd Street
Suite 301
Shawnee, Kansas 66216
Attn: Jim Frank

With a copy to (which shall not constitute notice):

ChargePoint, Inc.
254 East Hacienda Avenue
Campbell, CA 95008
Attn: General Counsel

If to Host:

City of Idaho Springs:

Attn: City Administrator
1711 Miner Street
PO BOX 907
Idaho Springs, CO, 80452

With a copy to (which shall not constitute notice):

Carmen Beery
Murray Dahl Beery & Renaud LLP
710 Kipling Street, Suite 300
Lakewood, CO 80215

With a copy to (which shall not constitute notice):

ChargePoint, Inc.
254 East Hacienda Avenue
Campbell, CA 95008
Attn: General Counsel

Each party may change its address for notice by giving notice thereof to the other party.

254. Governmental Immunity. The Host, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Host and its officers or employees.

256. Subject to Annual Appropriations. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligations of the Host not performed during the current fiscal year are subject to annual appropriation, and thus any obligations of the City hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement or liability beyond the current fiscal year. Licensee expressly recognizes that any financial obligation of the Host beyond the current fiscal year may violate the Colorado Constitution and the Host is not waiving the right to raise the restriction of the Colorado Constitution as a defense to any claim for payment under this License Agreement or as a basis to termination without cause upon reasonable notice.

276. Waiver. The failure of a party to insist on strict performance of any provision of the License Agreement does not constitute a waiver of, or estoppel against asserting, the right to require performance in the future. A waiver or estoppel given in any one instance does not constitute a waiver or estoppel with respect to a later obligation or breach.

287. Severability. If any term of this License Agreement is held by any court of competent jurisdiction to contravene, or to be invalid under, the laws of any political body having jurisdiction over this subject matter, that contravention or invalidity shall not invalidate the entire License Agreement. Instead, this License Agreement shall be construed as reformed to the extent necessary to render valid the particular provision or provisions held to be invalid, consistent with the original intent of that provision and the rights and obligations of the parties shall be construed and enforced accordingly, and this License Agreement shall remain in full force and effect as reformed.

289. Governing Law. This License Agreement shall be governed by and interpreted in accordance with the internal laws of the State of Colorado without giving effect to conflict of law rules. The parties further agree that all actions brought under this License Agreement shall be brought in a court of competent jurisdiction in ~~Fremont-Clear Creek~~ County.

2930. Construction. The headings in this License Agreement are inserted for convenience and identification only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this License Agreement or any other provision hereof. When the context requires, the gender of all words used in this License Agreement shall include the masculine, feminine, and neuter, and the number of all words shall include the singular and the plural.

310. Counterpart Execution. This License Agreement may be executed in counterparts, which together will constitute one and the same agreement. Each party will have the right to rely on a facsimile or electronic signature on this License Agreement, and such signature shall be deemed an original signature for purposes of validity of this License Agreement. ~~The Agreement. The~~ parties agree that signatures that are transmitted electronically, including both facsimile and manual signatures, shall be binding as of the date signed and to the same extent as original signatures.

342. Successors and Assigns. Except as otherwise provided, this License Agreement shall apply to, and is binding on, the parties hereto, their respective successors and permitted assigns, and all persons claiming by, through, or under any of these persons.

323. Written Amendment. This License Agreement may not be modified except by a written agreement signed by both parties.

343. Cumulative Rights. The rights and remedies provided by this License Agreement are cumulative, and the use of any right or remedy by any party does not preclude or waive its right to use any or all other remedies. These rights and remedies are given in addition to any other rights a party may have under Applicable Law, in equity or otherwise.

345. Further Assurances. Each party agrees to execute (and acknowledge, if requested) and deliver additional documents and instruments and to perform additional acts as may be reasonably necessary or appropriate to effectuate, carry out, and perform all of the terms, provisions and conditions of this License Agreement.

356. Survival. Sections ~~45, 8, 9, 10, 142, 154, 167, 242, 223~~ and ~~342~~ shall survive the expiration, termination or cancellation of this License Agreement, regardless of reason.

367. No Third Party Beneficiary. This License Agreement does not confer any rights or remedies on any Person other than the parties and their respective successors and permitted assigns.

387. Warranties. The parties represent and warrant that each has the authority, power, and rights necessary to perform its obligations under this License Agreement, without violating the rights of any other party or applicable laws.

398. Drafting Party. This License Agreement expresses the mutual intent of the parties to this License Agreement. Accordingly, the rule of construction against the drafting party has no application to this License Agreement.

3940. Incorporation of Exhibits. All documents or items attached to, or referred to in, this License Agreement are incorporated into this License Agreement as fully as if stated within the body of this License Agreement.

401. Other Relationships. Notwithstanding the foregoing, this License Agreement is expressly made subject to, and does not interfere with or alter, any existing relationships or contractual obligations between each party (or its Affiliates) and its partners, clients, service providers and other third parties. Neither party is prohibited from honoring any of these existing relationships or contractual obligations that otherwise may conflict with any term of this License Agreement.

412. Force Majeure. Neither party is responsible for any delay or failure in performance of any part of this License Agreement to the extent that delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, act or omission of carriers or other similar causes beyond the party's control. The License for the affected Licensed Space may be terminated without a Termination Fee or any other penalty by the party whose performance has not been affected if non-performance continues for more than thirty (30) days.

423. Termination for Cause

For Convenience. This License Agreement or the License for a particular Licensed Space may be terminated for convenience by either Party upon one hundred twenty (120) days' written notice.

For Cause. This License Agreement or the License for a particular Licensed Space may be immediately terminated for cause by either party in the event of the following:

(a) **Breaches.** The other party breaches or fails to perform any of its obligations in any material respect, and such breach or failure continues uncured for thirty (30) days after receipt of written notice, except for those breaches and failures to perform which cannot be cured within thirty (30) days in which case the breaching party shall have such time as is necessary, but not to exceed ninety (90) days, to cure such breach or failure to perform provided that the breaching party has commenced the cure within ten (10) business days after receipt of written notice and diligently pursues such cure until completion.

(b) **Assigns.** The other party attempts to assign or otherwise transfer its rights, obligations, or duties under this License Agreement in a manner prohibited by this License Agreement.

(c) **Insolvency.** The other party becomes insolvent or proceedings are instituted by or against it under any provision of any federal or state bankruptcy or insolvency laws.

(d) **Uneconomic Purpose.** If any time after the sixth year anniversary of this Agreement, Licensee in its sole discretion determines that the Charging Stations cannot be operated at a profit, Licensee shall have the right to terminate this License by providing thirty (30) days prior written consent to Host.

Upon any purported termination for cause by Host or Licensee, the Parties shall meet and confer within thirty (30) days of the notice of termination in an attempt to avoid such termination; provided that, in lieu of any termination, Licensee shall have the option to assign this License Agreement and all of Licensee's rights and obligations hereunder to CPI, in order for CPI to meet its obligations to the CEO under the Colorado Grant.

Upon any termination for cause by Host pursuant to this Section 42, Host shall execute a license agreement with CPI in order for CPI to meet its obligations to the CEO under the Colorado Grant and there shall be no termination fee or any other sum due from Host to Licensee.

Upon any termination for cause by Licensee pursuant to this Section 42, Licensee shall be relieved of any further obligations contained in this License Agreement or the applicable Addendum for the terminated Licensed Space, as applicable, except for those that by their nature survive or may require performance after termination pursuant to Section 35; provided that, Licensee has assigned all of its rights and obligations hereunder to CPI in order for CPI to meet its obligations to the CEO under the Colorado Grant.

Formatted: Font: Not Bold

Commented [CB6]: This eviscerates the termination provision. City cannot really terminate, even for cause.

43.4. Compliance with Laws. Licensee is responsible for and does represent that it will comply with all federal, state, and local laws, rules, regulations (including, without limitation, all zoning ordinances and building codes), applicable to Licensee's use of the Licensed Space, this License Agreement or to the performance thereof and as may be applicable to Licensee's operation and ownership of the Charging Station.

[Signature page(s) follow]

SIGNATURE PAGE TO CHARGING STATION LICENSE AGREEMENT

EXECUTED this _____ day of _____, 2021.

HOST

CITY OF IDAHO SPRINGS, COLORADO

, Mayor

ATTEST:

, City ~~Administrator~~Clerk

Licensee

EV Build, LLC

By: _____

Name: Jim Frank

Title: CEO

APPROVED BY CHARGEPOINT LEGAL

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A – Licensed Spaces

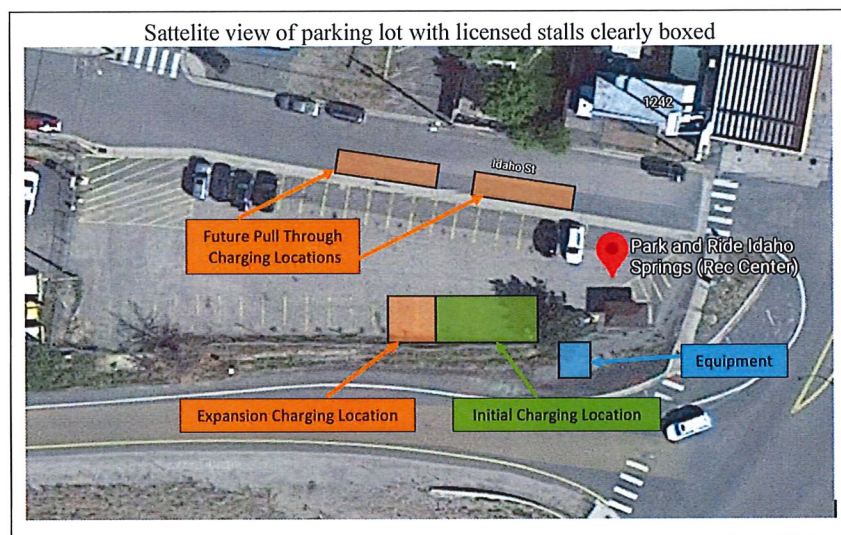


Figure A1 Parking lot site plan above shows the location context for the planned section of the Parking facility for the ChargePoint Express equipment installation.

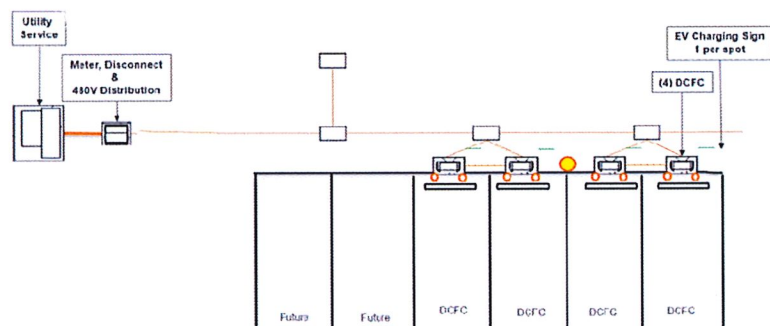


Figure A2 EVSE design above shows details for the ChargePoint electric vehicle supply equipment installation. Site specific details will be confirmed with engineered design and utility coordination.

EXHIBIT B to LICENSE AGREEMENT

CEO AND COLORADO GRANT TERMS AND CONDITIONS

1. INSURANCE

Licensee shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

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

B. General Liability

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

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any damage to premises rented to you limit (any one premises).

C. Automobile Liability

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

D. Additional Insured

The State shall be included as additional insured on commercial general liability policy (leases and construction contracts require additional insured coverage for completed operations) required of Licensee and Subcontractors.

E. Primacy of Coverage

General Liability and Automobile Liability shall be primary over any insurance or self-insurance program carried by Licensee or the State.

F. Cancellation

Licensee will endeavor to provide written notice to the State thirty (30) days prior to any cancellation with the exception of non-payment which can then be ten (10) days.

G. Subrogation Waiver

Commercial General Liability, Automobile Liability and Workers' Compensation insurance policies secured or maintained by Licensee or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive rights of recovery under subrogation or otherwise against Licensee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

H. Public Entities

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

I. Certificates

For each commercial insurance plan provided by Licensee under this Agreement, Licensee shall provide to the State certificates evidencing Licensee's insurance coverage required in this Agreement within 7 Business Days following the Effective Date. Licensee shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within 7 Business Days following the Effective Date, except that, if Licensee's subcontract is not in effect as of the Effective Date, Licensee shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within 7 Business Days following Licensee's execution of the subcontract. Within 15 following the expiration date of Licensee's or any Subcontractor's coverage, Licensee shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Licensee shall, within 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

2. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.*, C.R.S.

A. Colorado Open Records Act Disclosure

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

B. Indemnification

General Indemnification

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

3. GOVERNMENTAL IMMUNITY.

No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S., or the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b).

4. INDEPENDENT CONTRACTOR

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

5. COMPLIANCE WITH LAW.

Licensee 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.

6. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which 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 Agreement, to the extent capable of execution.

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 Agreement or incorporated herein by reference shall be null and void.