**Colorado Department of Trasportation**

**LEASE AGREEMENT
with****Insert Lessor's Full Legal Name**

**CDOT Lease #\_\_\_\_\_\_\_\_\_\_\_**

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# PARTIES

This Lease (hereinafter called “Lease”) is entered into by and between Insert Lessor's Name (hereinafter called “Lessor”), and the STATE OF COLORADO acting by and through the Colorado Department of Transportation (hereinafter called the “State” or “CDOT”). Lessor and the State hereby agree to the following terms and conditions.

# EFFECTIVE DATE and NOTICE of NONLIABILITY

This Lease shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse Lessor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

# RECITALS

## Authority, Appropriation, and Approval

Authority to enter into this Lease exists and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Lease.

Purpose

Briefly describe the purpose of the Lease; for example, public fishing access.

References

All references in this Lease to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

# DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

Evaluation

“Evaluation” means the process of examining Lessor’s performance pursuant to **§17** and rating it based on criteria established in **§6** and **Exhibits** **A and B**.

Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Property Description).

Lease

“Lease” means this Lease, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Lease, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

Lease Funds

“Lease Funds” means funds available for payment by the State to Lessor pursuant to this Lease.

Party or Parties

“Party” means the State or Lessor and “Parties” means both the State and Lessor.

## Property

“The Property” means the real property described in **§6**

## Review

“Review” means examining Lessor’s performance pursuant to **§17** to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§7**.

# TERM AND TERMINATION BY LESSOR.

## Term

To have and to hold the same, together with all appurtenances, unto Lessee, for the term beginning , and ending , at and for a monthly rental of $ . The total amount of the contract shall be \_\_\_\_\_\_\_\_\_\_\_. Payment shall be made on the first of each period during the term hereof, to the Lessor at:

 [Enter address for payments here]

## No Extensions

## The term of this Lease shall not be extended. A new arrangement must be executed to create a new lease term.

##  Termination by Lessor

##  This Lease may be terminated, at the convenience of the Lessor, with 90 days written notice as directed in §15. Lessor must submit a full refund to Lessee of any unused portion of a prepaid lease term at the time an early termination notice is given.

# PROPERTY DESCRIPTION

Lessoris the owner of the Property situated in Section   , Township    South, Range    West of the       P.M. in the County of      , The State of Colorado, described in Exhibit A.

# LEASE, GRANT, and DEMISE – USES and PURPOSES

Lessor hereby leases, grants, and demises unto the State, including its employees, officers, agents, and other authorized parties, the right to access and occupy the Property for purposes described in **§5(c)**. In addition the Parties shall enjoy the following rights and are subject to the following duties and restrictions:

## Exclusivity

The State shall have a exclusive right to access and occupy the Property for the uses and purposes set forth herein.

# PAYMENTS to LESSOR

### Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the State’s current fiscal year. Therefore, Lessor’s compensation beyond the State’s current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. If federal funds are used to fund this Lease in whole or in part, the State’s performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Lease shall be made only from available funds encumbered for this Lease and the State’s liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Lease, the State may terminate this Lease immediately, in whole or in part, without further liability in accordance with the provisions hereof.

### Erroneous Payments

At the State’s sole discretion, payments made to Lessor in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Lessor, may be recovered from Lessor by deduction from subsequent payments under this Lease or other contracts, grants or agreements between the State and Lessor or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

# WARRANTIES and REPRESENTATIONS

## Regarding the Property

Lessor warrants and represents that it is the owner of the Property or the authorized representative or agent of said owner in the form and manner stated herein. During the term of this Lease, Lessor covenants and agrees to warrant and defend the State in the quiet, peaceable enjoyment and possession of the Property. In the event of any dispute regarding Lessor’s ownership, Lessor shall, upon request from and at no cost to the State, immediately furnish proof thereof by delivering to the State copies of documents evidencing that Lessor owns the Property that are sufficient to the State. Lessor further warrants that the Property is not currently subject to any existing leases, easements, or other burdens that would result in this Lease being invalid or that would interfere with the State’s intended use and occupancy of the Property, except as follows:      .

## Regarding Legal Authority

Lessor warrants that it possesses the legal authority to enter into this Lease and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Lease and to bind Lessor to its terms. The person signing and executing this Lease on behalf of Lessor hereby represents, warrants, and, guarantees that they have full authorization to do so. If requested by the State, Lessor shall provide the State with proof of Lessor’s authority to enter into this Lease within 15 days of receiving such request.

## Regarding Provisions Special to this Contract

Lessor represents that it has read and understood the Provisions Special to this Lease attached as Exhibit B.

# CONDITION on TERMINATION

At the termination hereof, the State shall surrender and deliver the Property in as substantially good order and condition as exists at the inception hereof; excepting however, loss by fire, inevitable accident, act of God, and ordinary wear and tear.

# EMINENT DOMAIN

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

# CASUALTY

If the property is damaged by fire, flood, or other casualty, the State may terminate this Lease within 30 days of the date the State becomes aware of such occurrence if, in the opinion of the State, the Property has been so damaged as to render it wholly or partially unfit for the State’s purposes. If the State so elects, it shall terminate this Lease by giving written notice to Lessor as provided in **§15**. Such termination shall be effective 30 days from the date of mailing of the notice of termination.

# DEFAULT

## Defined

In addition to any breaches specified in other sections of this Lease, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Lessor, or the appointment of a receiver or similar officer for Lessor or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

## Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in **§15**. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in **§14**. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Lease in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

# REMEDIES

If Lessor is in breach under any provision of this Lease, the State shall have all of the remedies listed in this **§14** in addition to all other remedies set forth in other sections of this Lease following the notice and cure period set forth in **§14(B)**. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

## Early Termination in the Public Interest

The State is entering into this Lease for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and Courts. If this Lease ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Lease in whole or in part. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. In such event, State shall provide Lessor written notice, as provided in **§16** at least 30 days prior to the desired termination date. If this Lease is terminated for convenience, Lessor shall be paid prorated rent through the termination date, less payment previously made.

## Removal of Improvements

In the event of termination for any reason, the State shall have the right to remove any improvements it placed on the Property that can be removed without substantial injury to the Property. Removal of improvements by the State shall be done within 90 days of the termination date hereof and any improvements remaining thereafter shall become property of Lessor.

## Use of Property

After termination for any reason, Lessor shall not be required to offer use of the Property to the public, but may reserve exclusive use to Lessor.

# NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party’s principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

## The State:

|  |  |
| --- | --- |
| Name and/or Title | Name and/or Title |
| Agency/Dept | Agency/Dept |
| Address | Address |
| Address | Address |
| City, State Zip | City, State Zip |
| Email | Email |

## Lessor:

|  |  |
| --- | --- |
| Name | Name |
| Title | Title |
| Address | Address |
| Address | Address |
| City, State Zip | City, State Zip |
| Email | Email |

# LIABILITY LIMITATIONS

## Governmental Immunity

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act §24-10-101, et seq. and the risk management statutes, CRS §24-30-1501, et seq., as amended.

## Lessor

Pursuant to CRS §33-41-101, et. seq., as amended, Lessor may enjoy limitations on its potential liability which arise from use of the Property by members of the public for recreational purposes.

# STATEWIDE LEASE MANAGEMENT SYSTEM

If the maximum amount payable to Lessor under this Lease is $100,000 or greater, either on the Effective Date or at anytime thereafter, this **§17** applies.

Lessor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of Lease performance information in a statewide Lease management system.

Lessor’s performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Lease, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Lessor’s performance shall be part of the normal Lease administration process and Lessor’s performance will be systematically recorded in the statewide Lease Management System. Areas of Evaluation and Review shall include, but shall not be limited to performance of Lessor’s obligations hereunder. Collection of information relevant to the performance of Lessor’s obligations under this Lease shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Lessor’s obligations. Such performance information shall be entered into the statewide Lease Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Lease term. Lessor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Lessor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the CDOT, and showing of good cause, may debar Lessor and prohibit Lessor from bidding on future contracts. Lessor may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Lessor, by the Executive Director, upon a showing of good cause.

# GENERAL PROVISIONS

## Assignment and Subletting

The State shall not have the right to assign or sublease its interest under this Lease, or any portion thereof, absent Lessor’s written consent, which consent shall not be unreasonably withheld.

## Binding Effect

Except as otherwise provided in **§18(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties’ respective heirs, legal representatives, successors, and assigns.

## Captions

The captions and headings in this Lease are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

## Counterparts

This Lease may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

## Entire Understanding

This Lease represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

## Extinguishment and Replacement

This Lease extinguishes and replaces any prior leases between the Parties related to the Property upon the effective date hereof.

## Indemnification

Lessor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Lessor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Lease; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

## Jurisdiction and Venue

The exclusive jurisdiction for all suits, actions, or proceedings related to this Lease shall be in the State of Colorado and the exclusive venue shall be in the City and County of Denver.

## Modification

### By the Parties

Except as specifically provided in this Lease, modifications of this Lease shall not be effective unless agreed to in writing by both parties in an amendment to this Lease, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.

### By Operation of Law

This Lease is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Lease on the effective date of such change, as if fully set forth herein.

## Order of Precedence

The provisions of this Lease shall govern the relationship of the State and Lessor. In the event of conflicts or inconsistencies between this Lease and its exhibits and attachments, including, but not limited to, those provided by Lessor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

### Colorado Special Provisions;

Remaining pages of this Lease;

ExhibitA.

## Quiet Enjoyment

The State shall be entitled to quiet enjoyment of the Property as long as it is not in default under the provisions hereof.

## Severability

Provided this Lease can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Lease in accordance with its intent.

## Survival of Certain Lease Terms

Notwithstanding anything herein to the contrary, provisions of this Lease requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Lessor fails to perform or comply as required.

## Taxes

The State is exempt from paying any taxes, including, but not limited to, real property taxes. Lessor shall be solely liable for paying any taxes associated with this Lease as the State is prohibited from paying or reimbursing Lessor for such taxes.

## Third Party Beneficiaries

Enforcement of this Lease and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Lease are incidental to the Lease, and do not create any rights for such third parties.

## Waiver

Waiver of any breach of a term, provision, or requirement of this Lease or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

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# OFFICE of THE STATE CONTROLLER’S SPECIAL PROVISIONS

**The Special Provisions apply to all Leases except where noted in *italics*.**

## 1. CONTROLLER'S APPROVAL. CRS §24-30-202(1).

This Lease shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

## 2. FUND AVAILABILITY. CRS §24-30-202(5.5).

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

## 3 GOVERNMENTAL IMMUNITY.

No term or condition of this Lease 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, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

## 5. COMPLIANCE WITH LAW..

Lessor 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 Lease. 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 Lease, 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 Lease or incorporated herein by reference shall be null and void.

## 10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [

**[*Not Applicable to intergovernmental agreements*]** Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State’s vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

SPs Effective 1/1/09

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Lease/Lease Routing Number

THE PARTIES HERETO HAVE EXECUTED THIS LEASE

\* Persons signing for Lessor hereby swear and affirm that they are authorized to act on Lessor’s behalf and acknowledge that the State is relying on their representations to that effect.

|  |  |
| --- | --- |
| **LESSOR** **Legal Name of Lessor**By: Name of Authorized IndividualTitle: Official Title of Authorized Individual\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\*SignatureDate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **STATE OF COLORADO****John Hickenlooper GOVERNOR** Name of Agency or IHE Name & Title of Head of Agency or IHE\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By: Name & Title of Person Signing for Agency or IHEDate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | **LEGAL REVIEW**John W. Suthers, Attorney GeneralBy: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature - Assistant Attorney GeneralSignatureDate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts/Leases. This Contract/Lease is not valid until signed and dated below by the State Controller or delegate. Lessor/Contractor is not authorized to begin performance until such time. If Lessor/Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Lessor/Contractor for such performance or rents or costs incurred hereunder.

|  |
| --- |
| **STATE CONTROLLER****David J. McDermott, CPA****By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**Name of Agency or IHE Delegate-Please delete if Lease will be routed to OSC for approval**Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |

# EXHIBIT A – PROPERTY DESCRIPTION

# EXHIBIT B – PROVISIONS SPECIFIC TO THIS LEASE