



551 Hot Springs Boulevard
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**TOWN COUNCIL MEETING AGENDA
TUESDAY, JULY 1, 2014
Town Hall Council Chambers
551 Hot Springs Blvd
5:00 p.m.**

- I. CALL MEETING TO ORDER**
- II. PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE**
- III. APPROVAL of MEETING MINUTES FROM JUNE 19, 2014**
- IV. PUBLIC COMMENT – *Please sign in to make public comment***
- V. LIQUOR LICENSE**
 - 1. Liquor License Renewal – Pagosa Peak Partners LLC dba Higher Grounds Coffee at 189 Talisman Dr Suite A**
 - 2. Liquor License Renewal – Shabri LLC dba Plaza Liquor at 511 San Juan Street**
 - 3. Liquor License Renewal – Ramons Restaurant 56 Talisman Drive**
 - 4. Liquor License Renewal – Dillon Companies Inc dba City Market at 165 Country Center Drive**
 - 5. Special Events Liquor Permit – Pagosa Mountain Morning Rotary Club Wrestling Club Fundraiser at Town Park Athletic Field on July 12, 2014**
 - 6. Special Events Liquor Permit – Pagosa Springs Chamber of Commerce Renaissance Festival at San Juan Motel on E Pagosa Street July 18, 19 & 20, 2014**
 - 7. Special Events Liquor Permit – Friends of the Upper San Juan Cruise-A-Thong at Town Park July 19 & 20, 2014**
 - 8. Special Events Liquor Permit – Pagosa Springs Athletic Booster Club Pirate Plunge at Yamaguchi Ballpark on July 26, 2014**
- VI. DELEGATIONS**
 - 1. Smartmeters – Jason Nichols and LPEA**
- VII. NEW BUSINESS**
 - 1. 8th Street Paving and Striping**
 - 2. Pagosa Springs Golf Course**
 - 3. Resolution 2014-09, Sales Tax Initiative**
 - 4. Resolution 2014-10, Geothermal Utility Member Appointment**
 - 5. Town Manager Hiring Procedure**
- VIII. OLD BUSINESS**
 - 1. Ordinance 812, Second Reading, Lease/Purchase Agreement for Chamber Building**
 - 2. Lease Agreement with Chamber of Commerce**
 - 3. 6th Street Pedestrian Bridge**
- IX. PUBLIC COMMENT – *Please sign in to make public comment***
- X. NEXT TOWN COUNCIL MEETING JULY 17, 2014 AT 12:00PM**
- XI. ADJOURNMENT**

**Don Voiger
Mayor**

Public comment and agenda comment item sign-up sheets are available at meeting
Copies of proposed Ordinances and Resolutions are available to the public from the Town Clerk



AGENDA DOCUMENTATION

LIQUOR LICENSES: V.1

PAGOSA SPRINGS TOWN COUNCIL
JULY 1, 2014

FROM: BILL ROCKENSOCK, POLICE CHIEF

PROJECT: LIQUOR LICENSE RENEWALS
ACTION: DISCUSSION AND POSSIBLE ACTION

BACKGROUND

Businesses granted liquor licenses by the State of Colorado and the Town of Pagosa Springs are required to renew their liquor license annually. The Town Council, as the Local Licensing Authority, has requested that the Police Department provide them with information on police contacts with these businesses in consideration of their renewal application.

Annually, the Police Department works with the Colorado Liquor Enforcement Division to conduct compliance checks on businesses within the Town of Pagosa Springs holding liquor licenses. A liquor compliance check was conducted by the Police Department in May 2011 with 15 establishments holding liquor licenses within the Town limits. Throughout the year, Officers do perform random checks/walk thru of businesses selling liquor in the town limits.

The vendors listed below have requested a renewal of their liquor license. Based upon a local records check, the Police Department has found the following:

Pagosa Peak Partners LLC dba Higher Grounds Coffee – Since July 2013, there were no documented police contacts at Higher Grounds Coffee located at 189 Talisman Drive, Suite A.

Shabri LLC dba Plaza Liquor – Since July 2013, there were three documented police contacts (theft, property damage) at the Plaza Liquor located at 511 San Juan Street.

Ramon's Restaurant – Since July 2013, there were no documented police contacts at the Ramon's Restaurant located at 56 Talisman Drive.

Dillon Companies Inc. dba City Market – Since July 2013, there were 19 documented police contacts (shoplifting, harassment) at the City Market located at 165 Country Center Dr.

ATTACHMENT(S):

None

RECOMMENDATION

It is the recommendation of the Police Chief that the Town Council,

Consider the above information when determining approval of liquor license renewals.



AGENDA DOCUMENTATION

NEW BUSINESS: VII.1

PAGOSA SPRINGS TOWN COUNCIL

JULY 1, 2014

FROM: JAMES DICKHOFF, PLANNING DEPARTMENT

PROJECT: COORDINATING ROAD LANE CONFIGURATION FOR S. 8TH STREET WITH REPAVING PROJECT

ACTION: DISCUSSION AND POSSIBLE ACTION

PURPOSE/BACKGROUND

On May 22, 2014, Town Council approved the additional expense of \$150,000 to include a concrete intersection improvement at Piedra Street and S. 8th Street, as part of the 2014 repaving project. During the intersection design stage, Davis Engineering identified the need for determining the lane configuration to ensure the new pavement has a crown at the double yellow line. Since there has been much discussion over the years regarding the insufficient width (36') of the street to accommodate parking on both sides and two travel lanes, staff has suggested the Town consider a lane reconfiguration so that the repaving investment is coordinated with a determined double yellow line and street crown location.

The project timing is somewhat time sensitive given we would like to complete the project during summer school break, otherwise significant detour considerations will need to be in place after school begins.

The budgeted repaving project extends from San Juan Alley to Apache Street.

ANALYSIS

Staff has invited 8th Street residents and property owners to a neighborhood meeting on Monday June 30th at 5:30pm in Town Hall, to provide their comments regarding the future lane configuration on S. 8th Street.

Comments received will be shared at the July 1, 2014 TC meeting.

Staff's analysis has determined most all properties along the west side of S. 8th Street have access/parking from S. 8th Street via a driveway or access via the 8/9th Alley. There is also a number of properties along the west side that can utilize the unimproved portion of the ROW, west of the curb, for parking off of the pavement. Some benefits for configuring the lane stripping as described above include:

- ~ East side parking lane will provide a buffer to sidewalk users.
- ~ Snow removal can be plowed to the west side reducing snow being plowed onto sidewalk east sidewalk.
- ~ Bike lanes will provide a route to and from the High school and other public services.
- ~ Narrower lane stripping will provide a traffic calming feature that will help reduce vehicle speeds.

ATTACHMENT(S)

- ~ Cross section of a proposed lane configuration.

FISCAL IMPACT

- ~ With the exception of additional painted street markings / stripping, there is no fiscal impact associated with the determination of the lane configuration.
- ~ The repaving project is estimated at \$287,000 with the Piedra Street intersection improvement estimated at up to an additional \$150,000 for a total project estimate of \$437,000, however, until we go out to bid for contractor pricing, the actual amount of the project is somewhat un-certain.

RECOMMENDATION

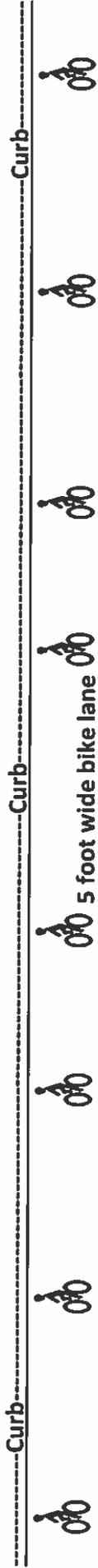
Staff recommends that the Town Council consider approving a lane configuration for S. 8th Street.

- 1) **APPROVE the Road Lane Configuration for S. 8th Street that includes prohibiting Parking on the west side of the street, allowing on street parking on the east side and providing bike lane markings on both sides of the street.**
- 2) **APPROVE the Road Lane Configuration for S. 8th Street that includes prohibiting Parking on the west side of the street, allowing on street parking on the east side and providing bike lane markings on both sides of the street, with the following revisions (to be determined at the TC meeting).....**
- 3) **Approve a different lane configuration plan that includes.....**

Lane configuration proposed for South 8th Street between San Juan Alley and Apache Street

West Side of South 8th Street

Most all properties have Driveways or Alley Access. Parking would be allowed west of the curb on the dirt area.



East Side of South 8th Street



AGENDA DOCUMENTATION

NEW BUSINESS: VII.2

PAGOSA SPRINGS TOWN COUNCIL

JULY 1, 2014

FROM: JAMES DICKHOFF, PLANNING DEPARTMENT

PROJECT: PAGOSA SPRINGS GOLF COURSE AND CONSIDERATION FOR PURSUING A MUNICIPAL OWNED GOLF COURSE

ACTION: DISCUSSION AND DIRECTION TO STAFF

PURPOSE/BACKGROUND

Jon Knudsen of Insight Golf is representing Northstar Bank of Colorado, the bank that currently owns the Golf Course. The course is currently for sale, however, Jon Knudsen has stated that the bank is considering shutting down the course if they do not receive a reasonable offer in the coming months. The asking price is \$1,900,000.00 cash.

Since the Golf Course is a very important amenity in our community for locals and tourists, Staff asks direction from Town Council regarding any interest in pursuing the property as a Municipal Golf Course. Staff has the "Real Estate Prospectus" if Town Council would like to review. The bank has responded to our request regarding the potential for the bank to carry a note if a reasonable offer is received.

The preliminary terms the bank has provided include:

Purchase Price:	\$1,900,000 (as listed)
Cash Down:	\$600,000
Loan Amount:	\$1,300,000
Amortization:	20 years
Maturity:	10 years
Rate:	Wall Street Journal Prime Rate + 1 percentage point
Rate Adjustment:	In 5 years and again in 7 years.
Rate Floor:	4.00%
Loan Fee:	50 basis points (1/2 Percent of loan amount)

The Planning Director has requested the Parks and Recreation Board briefly discuss the matter for further consideration at the next P&R Board meeting.

ATTACHMENT(S):

~ Golf Course Prospectus.

FISCAL IMPACT

The prospectus gives some perspective on the business viability. Additional analysis is needed for determining the full financial impact.

RECOMMENDATION

The Planning Director recommends that the Town Council consider the information provided and to direct staff as to how to proceed if at all.



PAGOSA SPRINGS GOLF CLUB

PAGOSA SPRINGS, COLORADO



Presented By:

Insight Golf

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PAGOSA SPRINGS GOLF CLUB

The information herein has been obtained from sources believed reliable. While we do not doubt its accuracy, we have not verified it and make no guarantee, warranty or representation about it. It is your responsibility to independently confirm its accuracy and completeness. Any projections, opinions, assumptions or estimates used are for example only and do not represent the current or future performance of the property. The value of this transaction to you depends on tax and other factors which should be evaluated by your tax, financial and legal advisors. You and your advisors should conduct a careful, independent investigation of the property to determine to your satisfaction the suitability of the property for your needs.



DISCLAIMER

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PAGOSA SPRINGS GOLF CLUB

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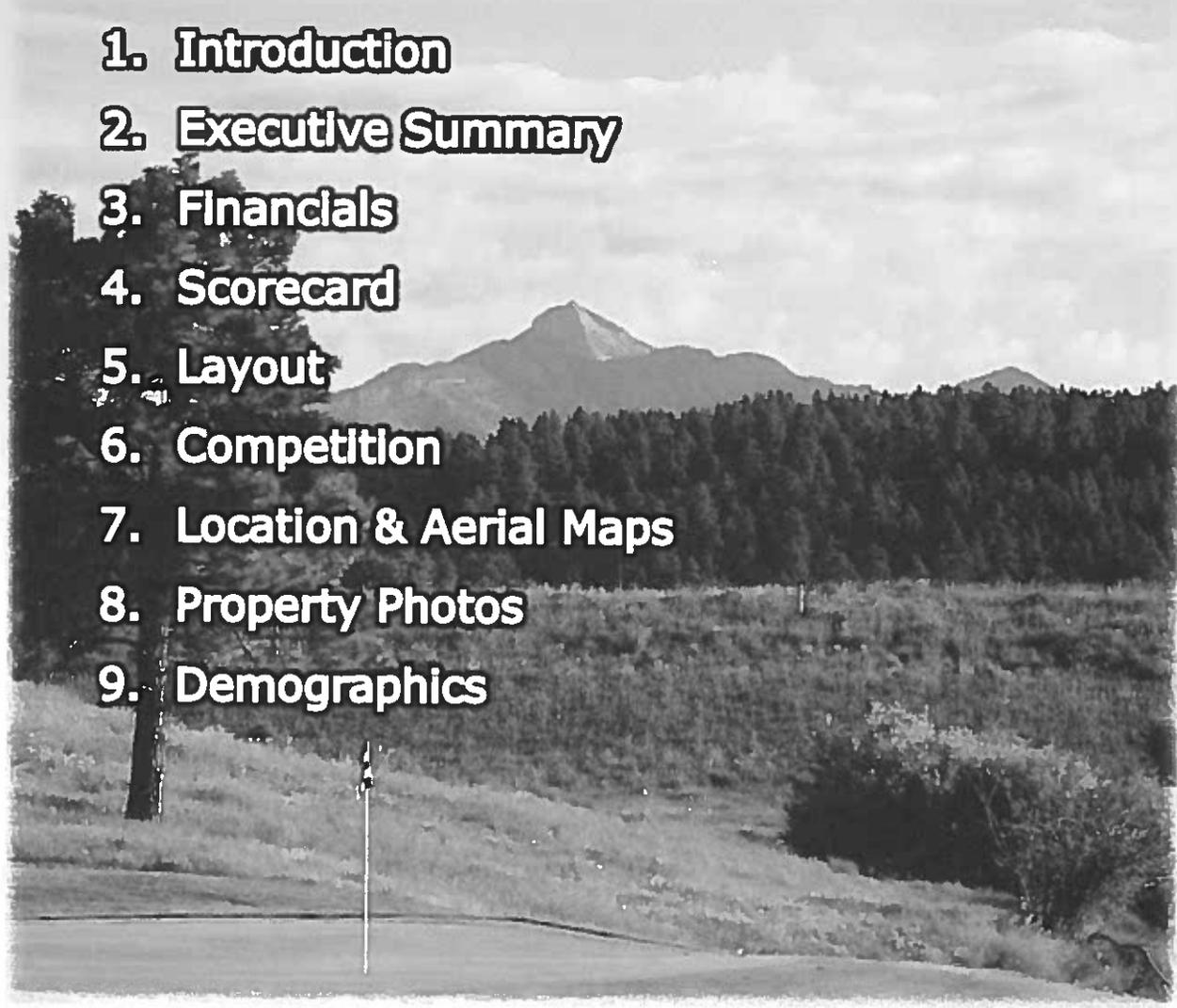
- 1. Introduction**
 - 2. Executive Summary**
 - 3. Financials**
 - 4. Scorecard**
 - 5. Layout**
 - 6. Competition**
 - 7. Location & Aerial Maps**
 - 8. Property Photos**
 - 9. Demographics**
- 

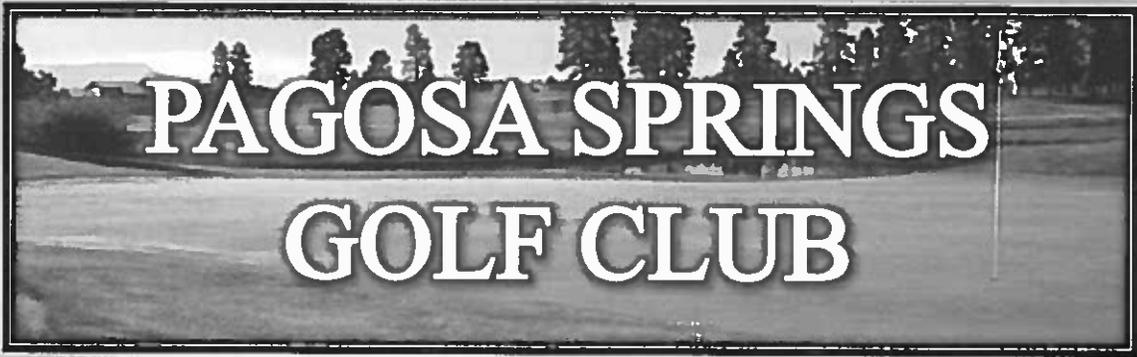


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INTRODUCTION

Pagosa Springs is located in the Colorado Sunbelt, just 35 miles north of the New Mexico border and along the Western slope of the Continental Divide. The combination of high desert plateau and Rocky Mountains to the north and east of town creates an unusually mild climate. The city is surrounded by nearly 3 million acres of the San Juan National Forest and Weminuche Wilderness Area.

Pagosa Springs Golf Club is a spectacular, 27-hole daily fee golf facility located in this southwest Colorado resort market. Ponderosa pines line the fairways making the course both beautiful and challenging. While on the property, golfers are surrounded by magnificent views of the San Juan Mountains.

Each year new golfers are tested by the challenging 27-hole layout. Two of the three nine-hole courses were completed in 1976 and the third was added in 1985. The courses were designed by Johnny Bulla and D.J. DeVictor and these are regulation golf courses that are played in three different configurations to maximize enjoyment and challenge. The maximum 18-hole yardage is 7,228 yards from the back tees.

The Meadows course is a links-style layout while the Pinon and Ponderosa courses offer mountain terrain with treed fairways. Improvements include a two-level clubhouse with a full-service pro shop, restaurant and bar, lockers, cart storage and staging facilities. The only competition for Pagosa Springs is found in three 18-hole golf courses in the Durango vicinity, 50 miles west, and also at the Rio Grande Club & Resort in South Fork, 50 miles northeast. Pagosa Springs Golf Club is the only option for golf play in this busy, summertime resort town.

The Pines Restaurant serves golfers seven days a week from mid-April through November. The club also offers an outdoor snack bar for players at the turn. Pagosa Springs Golf Club attracts about 20% of its rounds from local play with the 80% balance from tourists, which saturate the market during mild summer months.

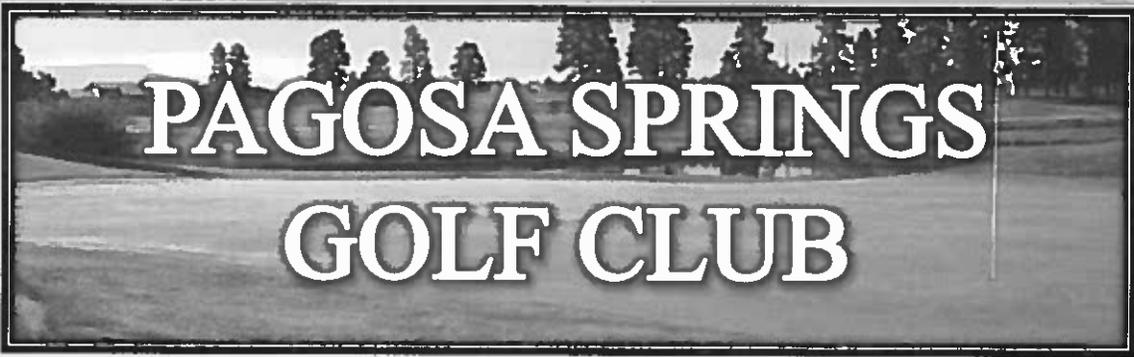


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PAGOSA SPRINGS GOLF CLUB

The Property: Pagosa Springs Golf Club is a 27-hole, public golf course with full practice facilities located one hour east of Durango, CO.

Location: Pagosa Springs Golf Club
#1 Pines Club Place
Pagosa Springs, Colorado 81147

Site: The golf course is located just north of US Route 160 and 3.4 miles west of downtown Pagosa Springs. At 7,000 feet altitude, Pagosa Springs is surrounded by the San Juan Forest and adjacent to the Weminuche Wilderness. The combination of high desert plateau and Rocky Mountains to the north creates an abnormally mild climate in this portion of Colorado. The 180-acre site features gently rolling hills, fairways lined with ponderosa pines and breathtaking views of southwest Colorado. The most appealing factor about Pagosa Springs Golf Club is that it is the exclusive provider of golf for players within a fifty mile radius.

Year Opened: 1976 (Meadows 9 opened in 1985)

Golf Architect: Johnny Bulla (Pinon/Ponderosa); DJ DeVictor/Ron Ault (Meadows)

Zoning: PUD (Planned Unit Development); limited to golf course development or open space.

Golfing Season: April 1 - November 15

Clubhouse: The single story, functional clubhouse is 8,421 square feet and includes a fully stocked pro shop, office space, locker rooms and kitchen. The Pines Restaurant offers traditional, grilled fare for patrons. Seating is also available on the exterior deck. There is an outdoor snack bar that is utilized for food & beverage at the turn.

Membership: Annual Membership Rates:

Category	<u>2011</u>	<u>2012</u>	<u>2013</u>
Annual - Individual	\$2,400	\$2,640	\$2,640
Annual - Couples	\$3,350	\$3,685	\$3,675

**There are currently 48 active members at Pagosa Springs*



EXECUTIVE SUMMARY

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Rates:

Peak Season (June 1 – September 14)

18 Hole Local	\$49.00
18 Hole	\$86.00
9 Hole	\$35.00
18 Hole Jr	\$25.00
Twilight (after 1:00)	\$56.00
Super Twilight (after 4:00)	\$39.00

Off Peak (Opening day – April 30; October 15 – close)

18 Hole Local	\$30.00
18 Hole	\$40.00
9 Hole	\$25.00
18 Hole Jr	\$25.00

Off Peak 2 (May 1 – May 31; September 15 – October 14)

18 Hole Local	\$39.00
18 Hole	\$55.00
9 Hole	\$30.00
18 Hole Jr	\$25.00
Twilight (after 1:00)	\$39.00

Other Rates

Weekly Pass	\$300.00
Weekly Pass Wyndham	\$270.00
Range Balls	\$5.00
Club Rental – 18 Hole	\$30.00
Club Rental – 9 Hole	\$20.00

Rounds Played:	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014 Projected</u>
	23,643	25,857	20,855	23,538

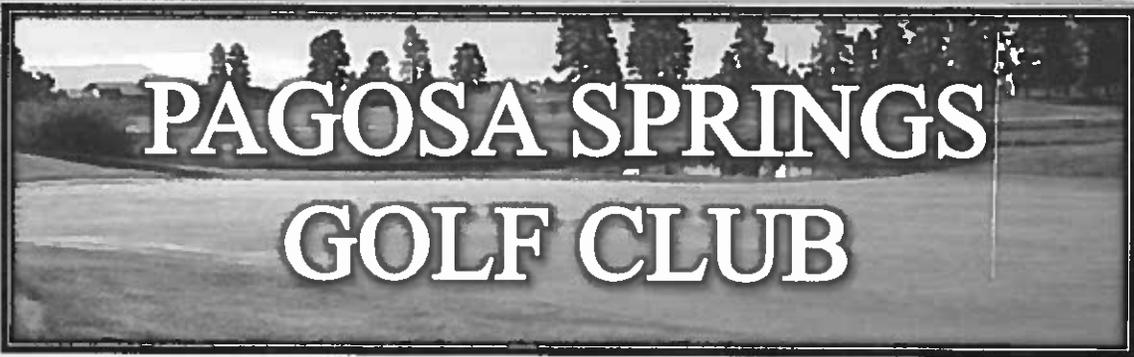
Practice Facilities:

Pagosa Springs features an approximately 300 yard driving range and two putting greens adjacent to the clubhouse.



EXECUTIVE SUMMARY





PAGOSA SPRINGS GOLF CLUB

Yardages:

Meadows/Ponderosa

<u>Tees:</u>	<u>Par:</u>	<u>Yardage:</u>	<u>Rating/Slope:</u>
Blue:	71	6,890 yards	71.1 / 120
White:	71	6,026 yards	67.3 / 114
Red:	71	4,999 yards	62.4 / 102

Pinon/Ponderosa

<u>Tees:</u>	<u>Par:</u>	<u>Yardage:</u>	<u>Rating/Slope:</u>
Blue:	71	6,555 yards	69.5 / 115
White:	71	6,412 yards	67.5 / 113
Red:	71	5,221 yards	63.3 / 106

Meadows/Pinon

<u>Tees:</u>	<u>Par:</u>	<u>Yardage:</u>	<u>Rating/Slope:</u>
Blue:	72	7,173 yards	72.6 / 123
White:	72	6,443 yards	69.0 / 118
Red:	72	5,316 yards	63.9 / 108

Irrigation Water:

Irrigation water originates from the mountains on this gravity fed system. Water is stored in three on-site lakes and dispersed via two separate pump houses onto the course. The course is guaranteed 300 acre feet of irrigation water annually from Pagosa Area Water.

Irrigation System:

The single row Toro irrigation system is satellite controlled and was installed on the Pinon course in 1972, Ponderosa in 1980 and Meadows course in 1986.

Grass Type:

Pagosa Springs utilizes Bentgrass for the greens. The remainder of the course, including fairway, tee boxes and rough, are a combination of Rye and Bluegrass.

Cart Paths:

Paths surrounding the practice facility and staging areas are concrete while those on the course are packed earth.

Leases:

The course leases 75, 2008 ClubCar Precedent electric carts for \$52,670 per year.

Liquor License:

Beer, wine and liquor are for sale in the clubhouse and on the golf course.





PAGOSA SPRINGS GOLF CLUB

Maintenance Facility: Two maintenance buildings totaling 10,680 square feet are utilized for storage of equipment, chemicals and office space for the superintendent and staff.

Property Taxes: 2012: \$36,327

Demographics:

	<u>3-mile</u>	<u>5-mile</u>
2012 Population:	5,869	7,362
Ave Household Income:	\$72,543	\$72,455

**21% of Pagosa Springs households earn over \$100,000 per year. The median value of a single family home in PS is \$328,218, more than \$100,000 higher than state average.*

Historical Financials:

<u>Revenue</u>	<u>2012</u>	<u>2013</u>	<u>Budget 2014</u>
Total Revenue	\$1,270,320	\$1,006,640	\$1,210,691
COG	<u>\$188,686</u>	<u>\$111,302</u>	<u>\$123,829</u>
Gross Profit	\$1,081,634	\$895,338	\$1,086,862
Departmental Exp	\$236,772	\$164,905	\$237,923
Other Operating Exp	\$718,038	\$495,083	\$646,550
Fixed Charges	<u>\$73,936</u>	<u>\$8,666</u>	<u>\$10,670</u>
Total Operating Exp	\$1,219,645	\$779,956	\$1,018,972
EBITDA:	(\$135,798)	\$226,684	\$191,719

**EBITDA does not include management fee to identify true net from operations*

Price: \$1,900,000 Cash



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PAGOSA SPRINGS GOLF CLUB



Clubhouse Entrance



Restaurant/Bar



PROPERTY PHOTOS

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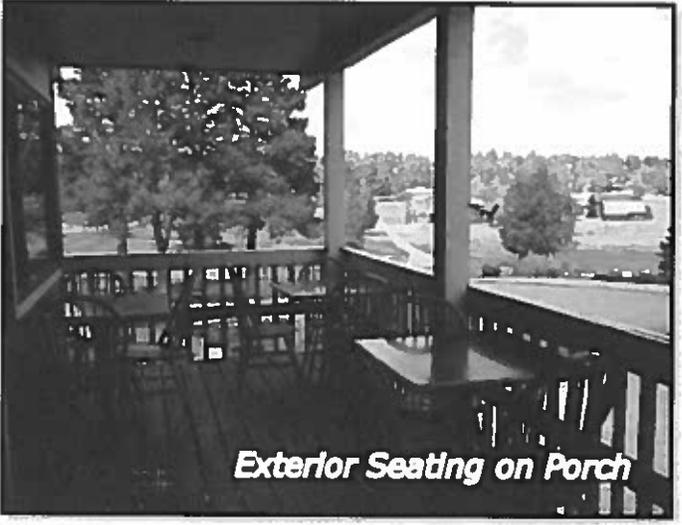
PAGOSA SPRINGS GOLF CLUB



Restaurant/Lounge



Pro Shop



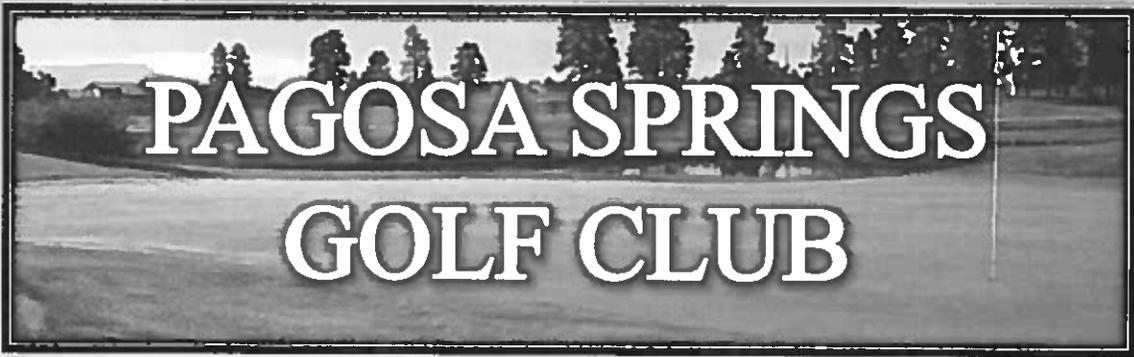
Exterior Seating on Porch



PROPERTY PHOTOS

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PAGOSA SPRINGS GOLF CLUB



Driving Range



Primary Putting Green



Secondary Putting Green



Maintenance Facility



PROPERTY PHOTOS

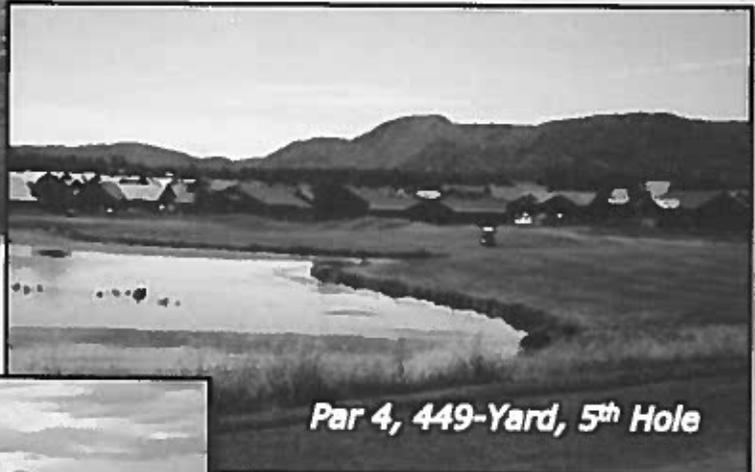
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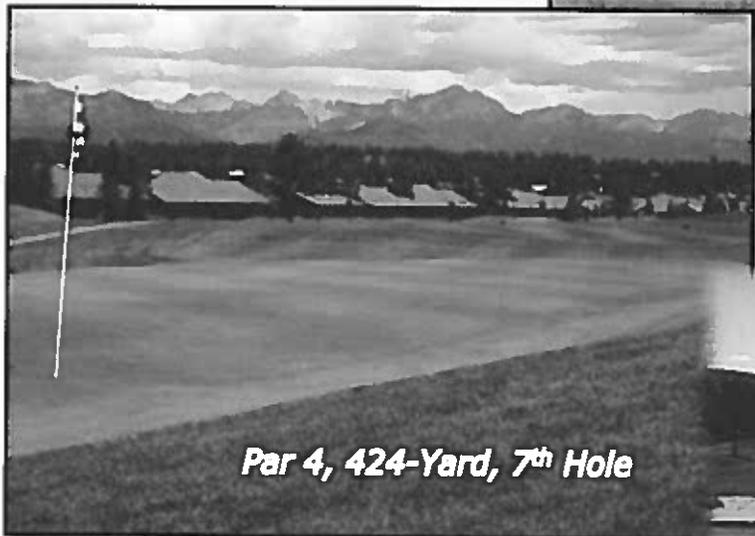
PAGOSA SPRINGS GOLF CLUB



Par 3, 1670-Yard, 4th Hole



Par 4, 449-Yard, 5th Hole



Par 4, 424-Yard, 7th Hole



Par 4, 398-Yard, 8th Hole



PROPERTY PHOTOS
MEADOWS COURSE

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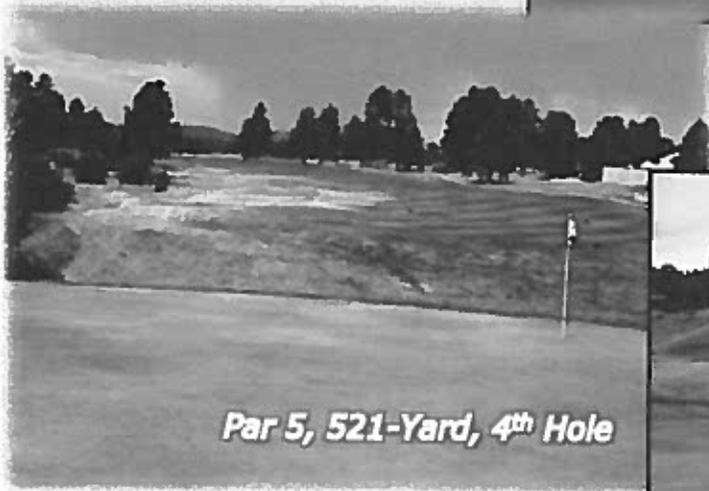
PAGOSA SPRINGS GOLF CLUB



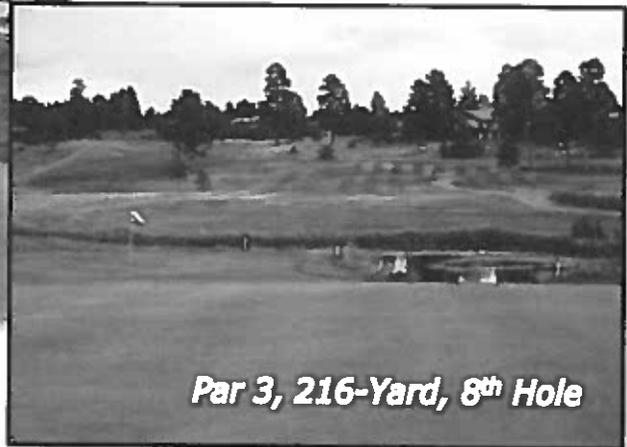
Ornamental Bobcat



Par 4, 415-Yard, 2nd Hole



Par 5, 521-Yard, 4th Hole

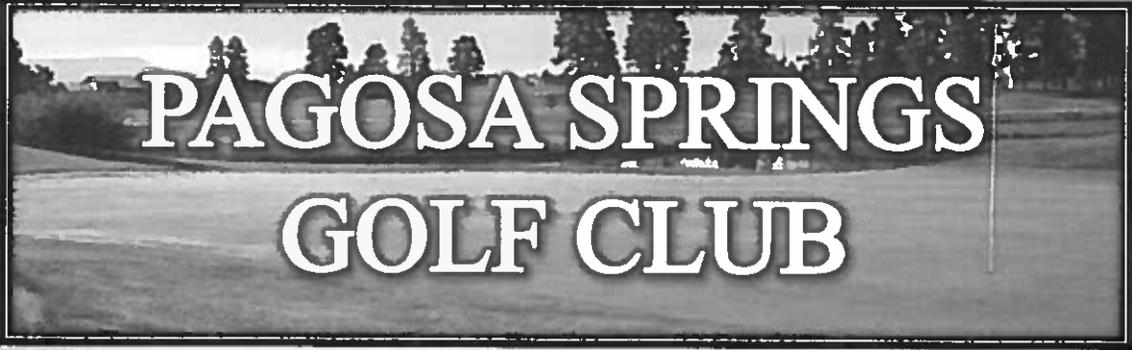


Par 3, 216-Yard, 8th Hole



PROPERTY PHOTOS
PINON COURSE

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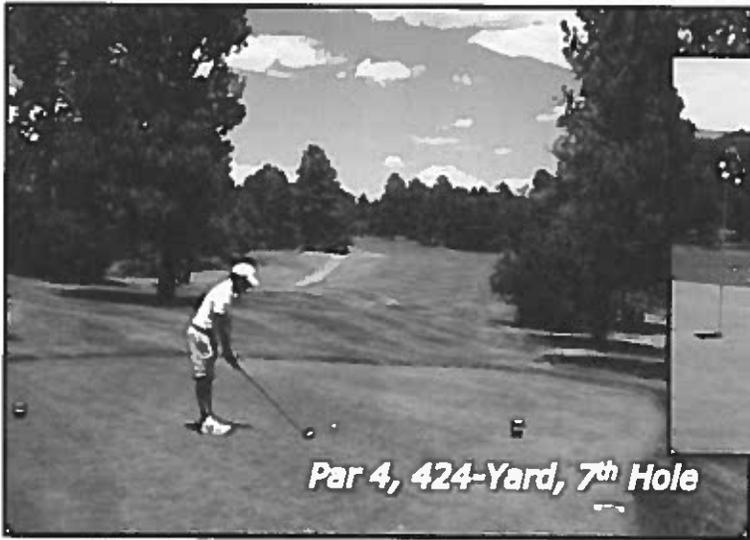
PAGOSA SPRINGS GOLF CLUB



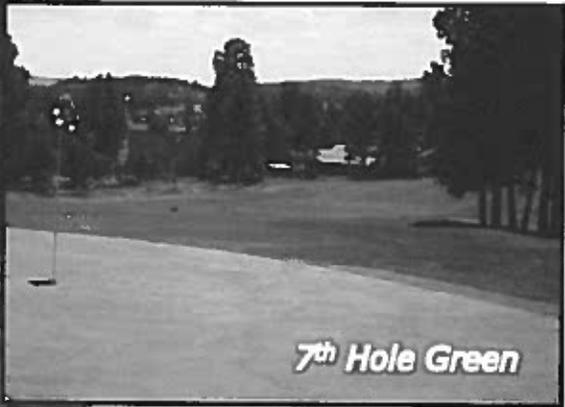
Par 4, 408-Yard, 5th Hole



Par 4, 361-Yard, 6th Hole



Par 4, 424-Yard, 7th Hole



7th Hole Green

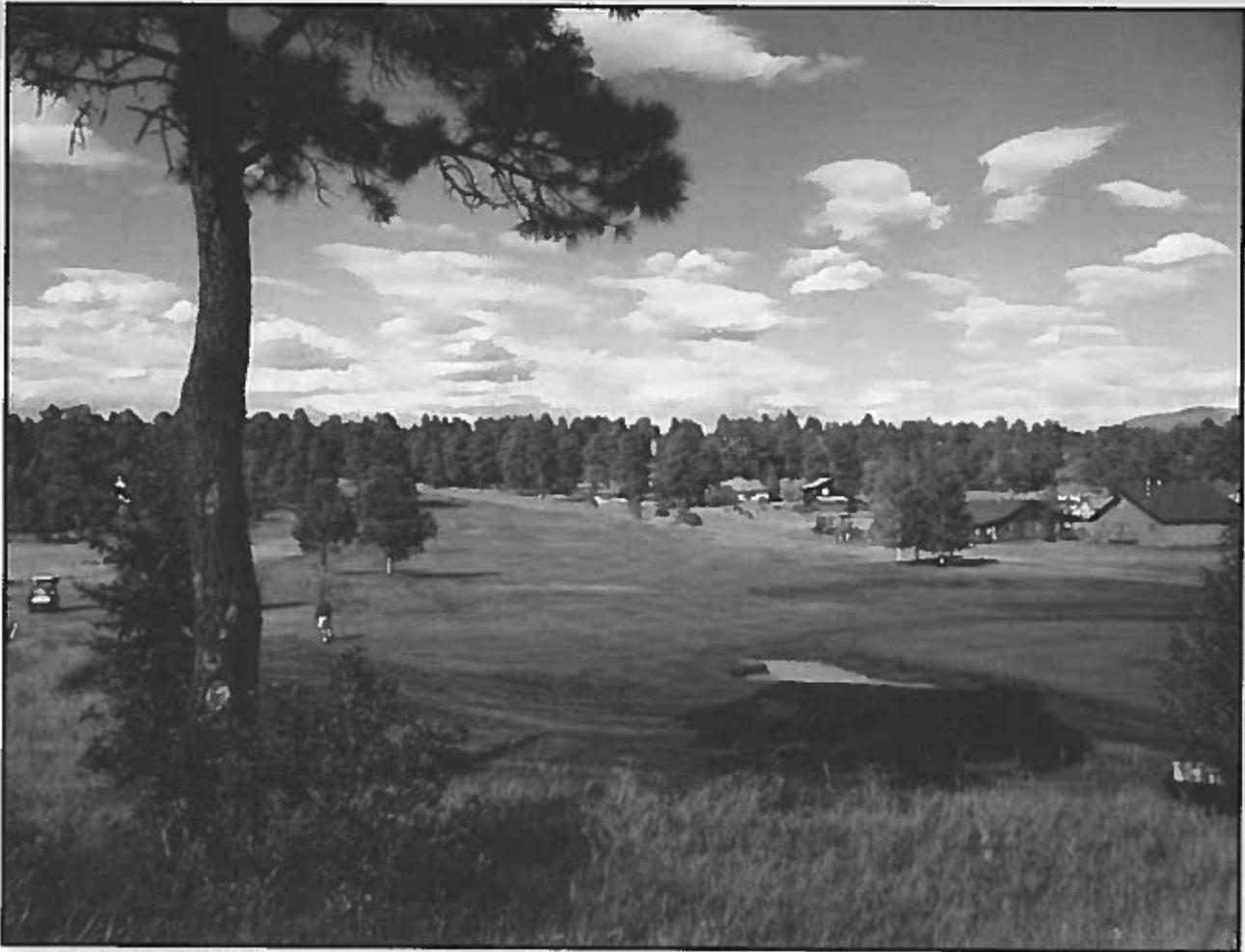


PROPERTY PHOTOS
PONDEROSA COURSE

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PAGOSA SPRINGS GOLF CLUB



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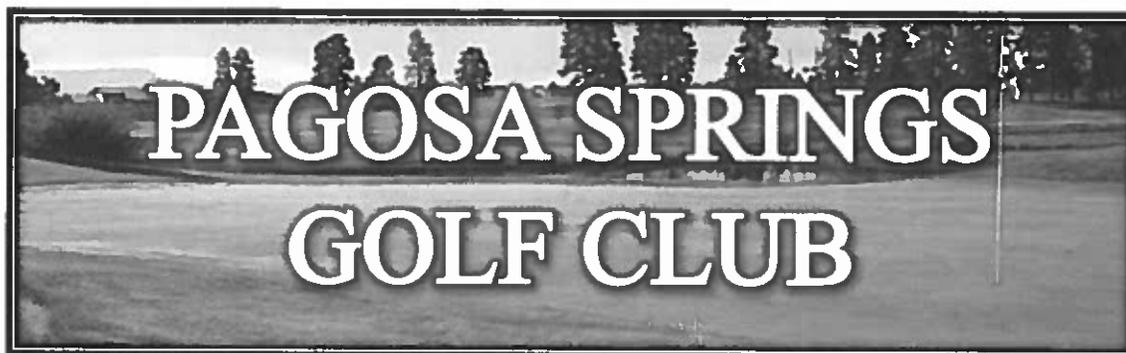


PAGOSA SPRINGS GOLF CLUB



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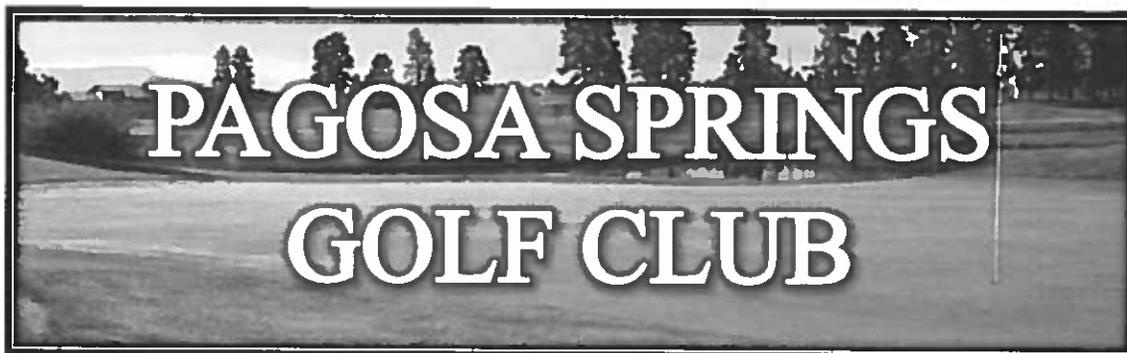
2012-2013 P&L Statements

	2012				2013			
REVENUES								
Annual Passes	80,778	6.4%	2,992	3.12	20,617	2.0%	764	0.99
Golf Greens Fees	512,377	40.3%	18,077	19.82	510,648	50.7%	18,913	24.49
Other Golf Revenues	376,252	29.6%	13,935	14.55	276,466	27.5%	10,239	13.26
Merchandise Sales	75,721	6.0%	2,804	2.93	68,485	6.8%	2,536	3.28
Food and Beverage	213,407	16.8%	7,604	8.25	117,318	11.7%	4,345	5.63
Miscellaneous	11,785	0.9%	438	0.46	13,106	1.3%	485	0.63
TOTAL REVENUES	1,270,320	100.0%	47,049	49.13	1,006,640	100.0%	37,283	48.27
EXPENSES								
COST OF SALES								
Merchandise and Golf Services	63,207	83.5%	2,341	2.44	47,528	69.4%	1,760	2.29
Food & Beverage	125,479	58.8%	4,647	4.85	63,774	54.4%	2,362	3.06
TOTAL COST OF SALES	188,686	14.9%	6,988	7.30	111,302	11.1%	4,122	5.34
GROSS PROFIT	1,081,634	85.1%	40,061	41.83	895,338	88.9%	33,161	42.93
DEPARTMENTAL EXPENSES								
Golf (3)	90,757	9.4%	3,381	3.51	86,179	10.7%	3,162	4.13
Food & Beverage (3)	126,235	59.2%	0	0.00	75,116	64.0%	2,782	3.60
Sales and Marketing	19,780	1.6%	0	0.00	3,610	0.4%	134	0.17
TOTAL DEPARTMENTAL EXPENSES	236,772	18.6%	3,381	3.51	164,905	16.4%	3,192	7.91
TOTAL OPERATING PROFIT	844,862	66.5%	36,680	38.32	730,433	72.6%	29,969	35.02
UNDISTRIBUTED OPERATING EXPENSES								
General and Administrative	134,659	10.6%	4,987	5.21	89,878	8.0%	3,329	4.31
Maintenance	383,189	10.8%	14,192	5.21	296,166	29.4%	10,969	14.20
Leases	92,639	7.3%	3,431	3.58	64,247	6.4%	2,380	3.08
Irrigation	107,551	8.5%	3,993	4.16	44,792	4.4%	1,659	2.15
TOTAL UNDISTRIBUTED EXPENSES	718,038	56.5%	26,594	18.16	495,083	49.2%	18,336	23.74
INCOME BEFORE FIXED CHARGES	126,824	10.0%	10,105	20.16	235,350	23.4%	11,632	11.29
FIXED CHARGES								
Property Taxes (3)	47,680	3.8%	1,766	1.84	-	0.0%	-	-
Insurance	26,256	2.1%	972	1.02	8,666	0.9%	321	0.42
Management Fee (1)	2,213	0.2%	82	0.09	48,533	4.8%	1,798	2.33
Reserve for Replacements (2)	-	-	-	-	-	-	-	-
TOTAL FIXED CHARGES	76,149	6.0%	2,820	2.95	57,199	5.7%	2,118	2.74
TOTAL OPERATING EXPENSES	1,219,645	96.0%	45,172	47.17	828,489	82.3%	30,685	39.73
NET OPERATING INCOME - EBITDA	(138,011)	-10.9%	(5,112)	(5.34)	178,151	17.7%	6,598	8.54



FINANCIAL SUMMARY

Insight
GOLF



2014 Budget

Members (Year-End)	53
Rounds	23,746
Avg. GF & CF (w/Dues)	39.03

REVENUE

Annual Memberships	88,085
Green Fees	537,351
 Tournament Fees	 41,255
 Other Golf Fees	 14,480
Cart Fees	260,231
Range Fees	38,099
Merchandise	93,310
Food & Beverage	79,912
Alcohol	<u>62,731</u>

TOTAL REVENUE 1,215,454

COST OF SALES

Merchandise	64,168
Food & Beverage	31,449
Alcohol	20,745
Merch COS%	68.80%
F&B COS%	39.40%
Alcohol COS%	<u>31.10%</u>
TOTAL COS	116,362

PAYROLL

Golf	41,411
Cart Fees	31,797

PAYROLL (continued)

Food & Beverage	63,763
Clubhouse	3,179
G&A	82,364
Marketing	2,751
Maintenance	<u>287,610</u>
TOTAL PAYROLL	512,874

OTHER EXPENSES

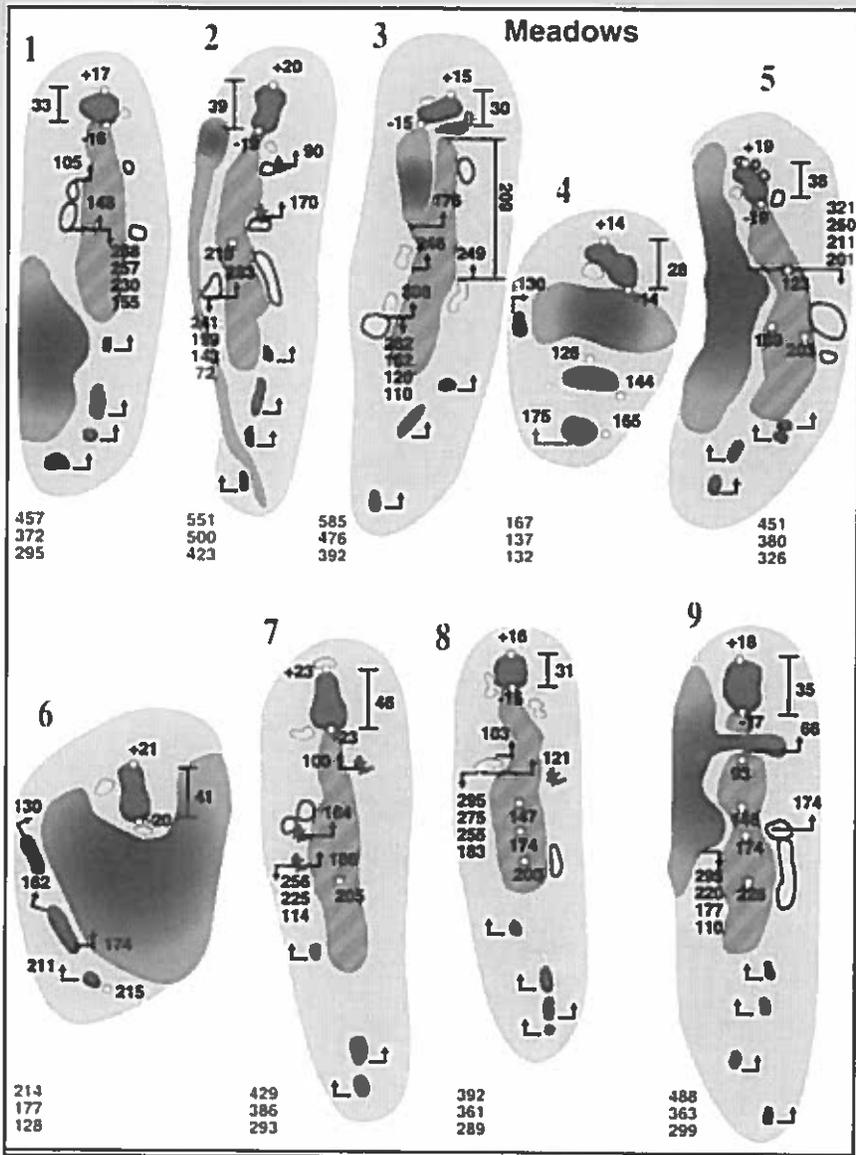
Golf	4,225
Cart Fees	7,900
Range Fees	5,500
Food & Beverage	11,505
Clubhouse	39,220
G&A	155,787
Marketing	18,900
Maintenance	189,708
Lease	<u>55,704</u>
TOTAL OTHER EXP	488,449

OPERATING EXP 1,001,323

EBITDA **97,768**



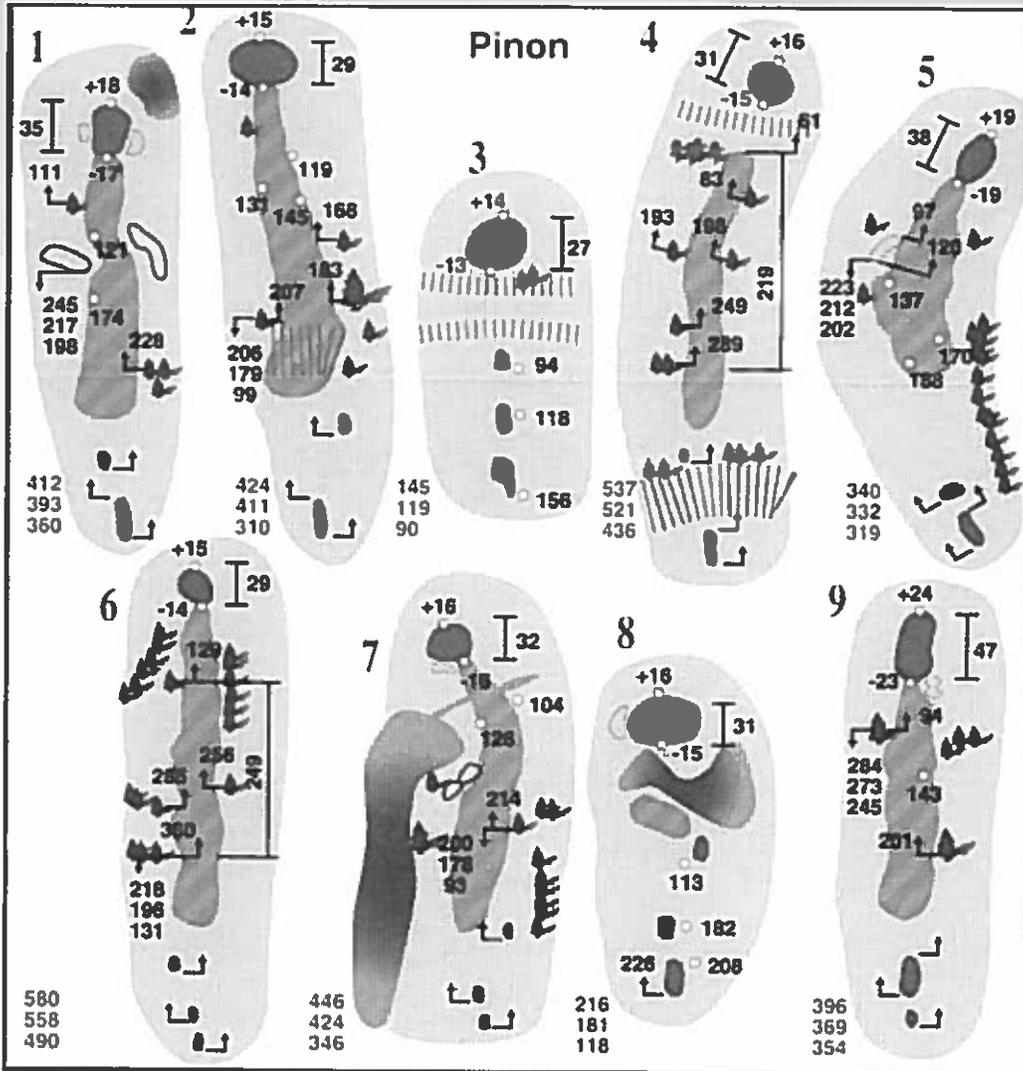
PAGOSA SPRINGS GOLF CLUB



LAYOUT

Insight
GOLF

PAGOSA SPRINGS GOLF CLUB

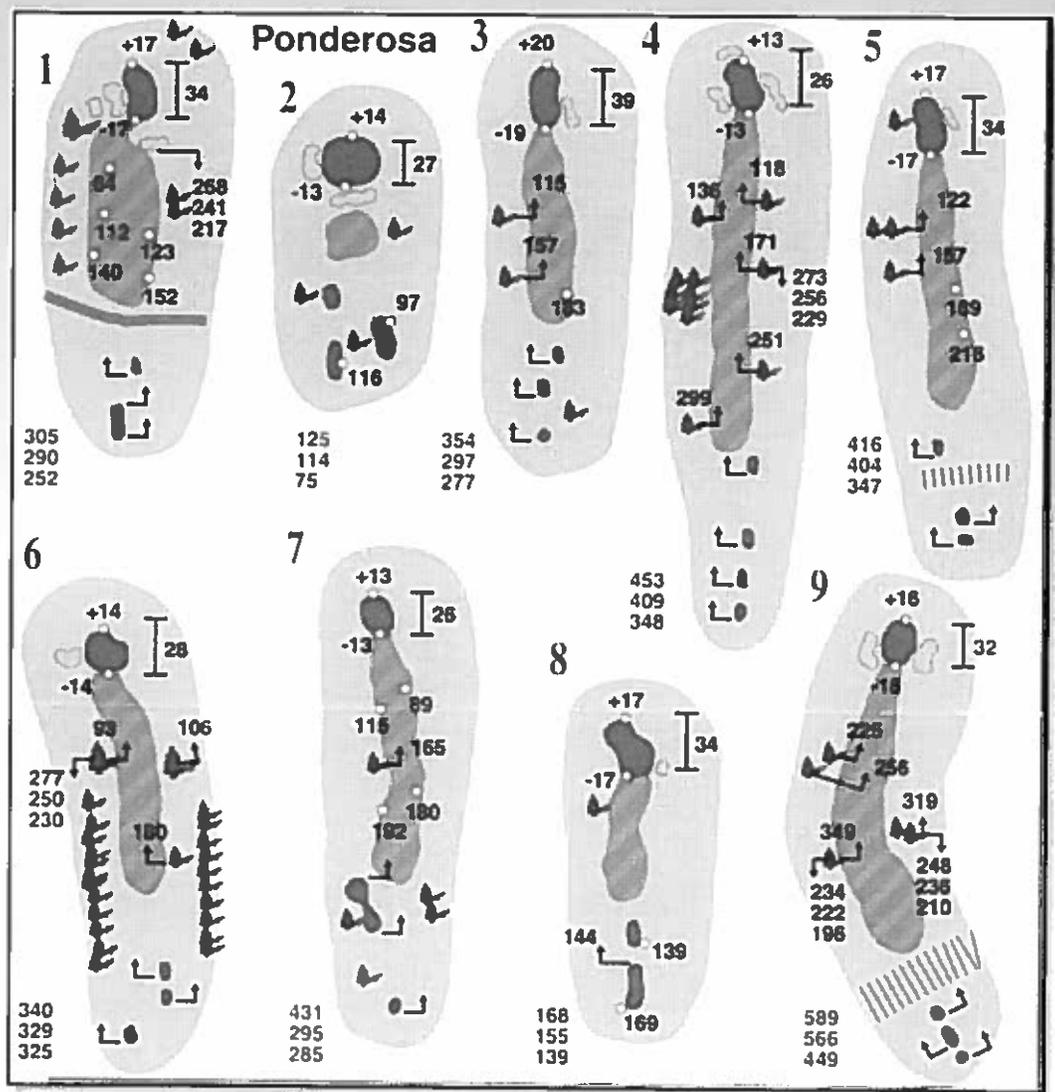


LAYOUT

Insight

GOLF

PAGOSA SPRINGS GOLF CLUB



LAYOUT

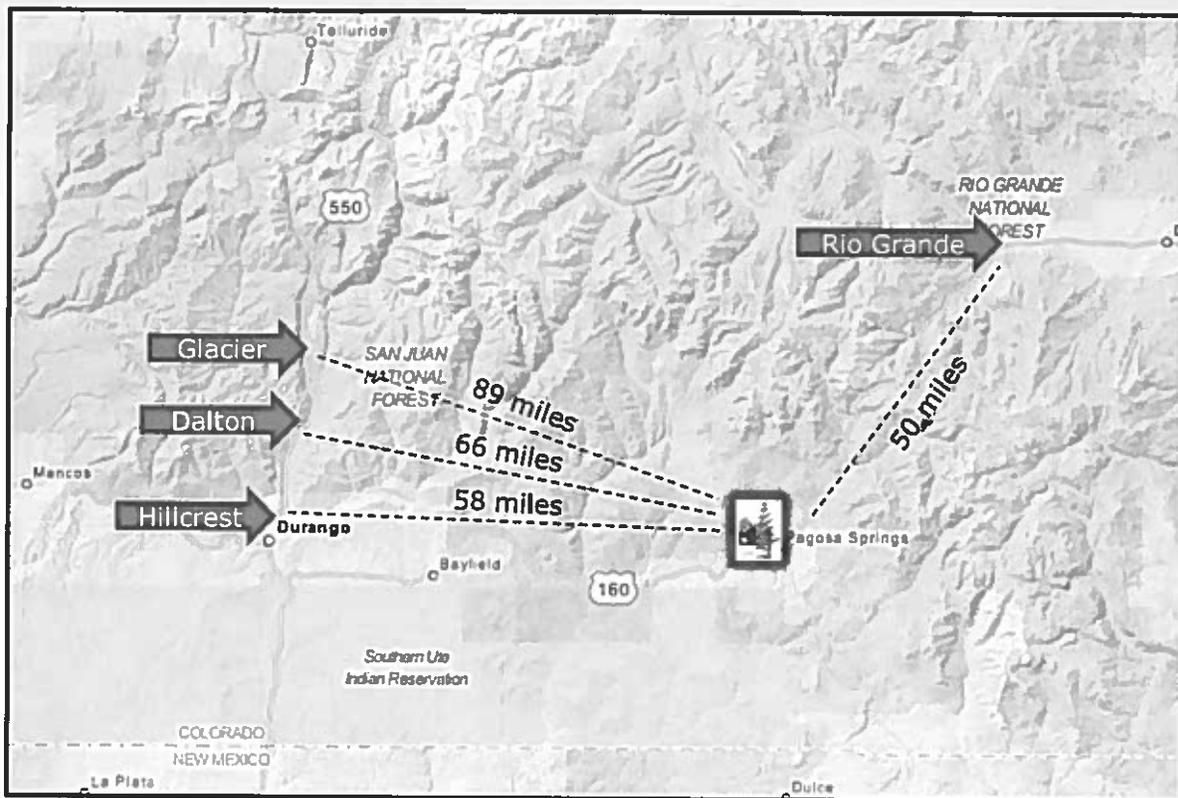
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GOLF



PAGOSA SPRINGS GOLF CLUB

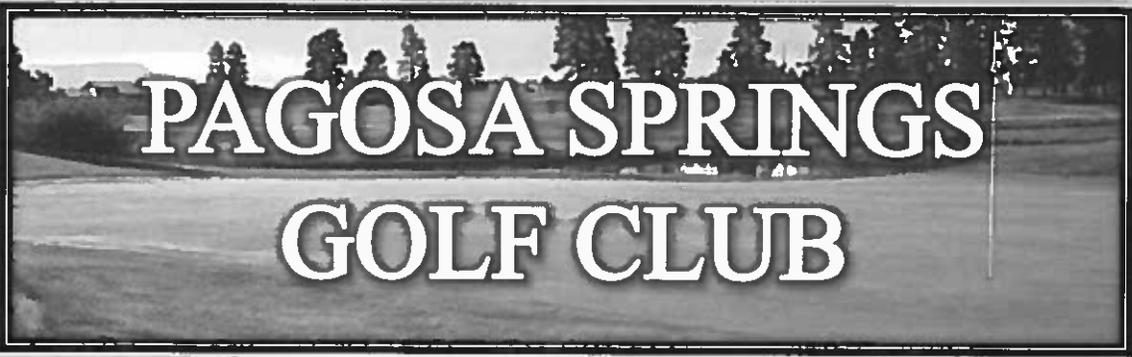
COMPETITION

<u>Course</u>	<u>Type</u>	<u>Year</u>	<u>Holes</u>	<u>Rates</u>
Pagosa Springs	Daily Fee	1980	27	\$30 - \$86
Glacier Club, Durango	Private	1975	27	N/A
Hillcrest Golf Club, Durango	Daily Fee	1980	18	\$27 - \$55
Dalton Ranch, Durango	Dally Fee	1993	18	\$65 - \$105
Rio Grande CC, South Fork	Daily Fee	2001	18	\$59 - \$109

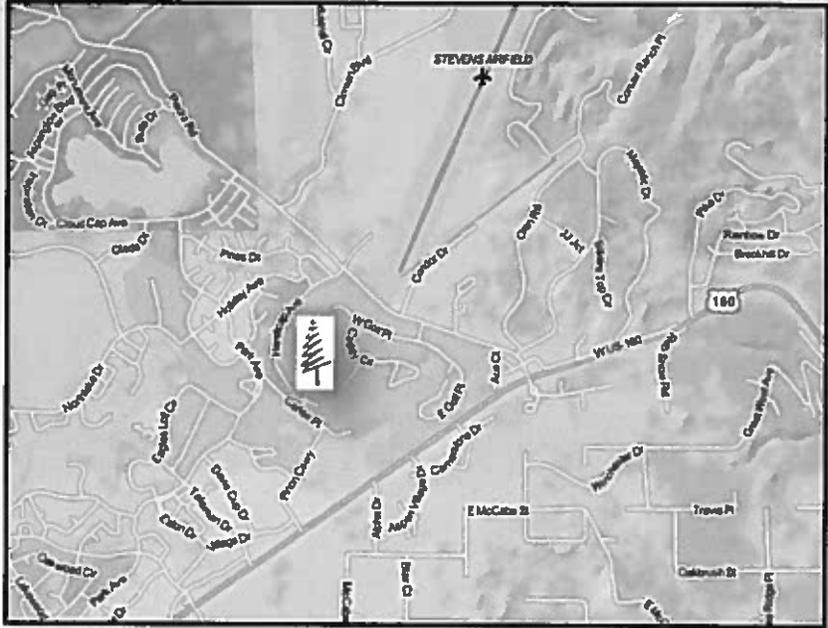


COMPETITION

Insight
GOLF



PAGOSA SPRINGS GOLF CLUB



LOCATION MAPS

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GOLF 



PAGOSA SPRINGS GOLF CLUB



AERIAL PHOTO

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GOLF 



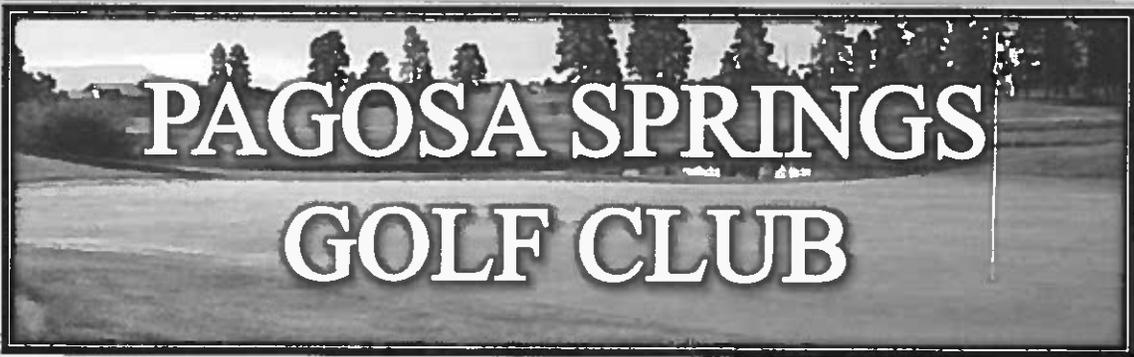
PAGOSA SPRINGS GOLF CLUB

Population	3-mi.	5-mi.
2012 Male Population	2,919	3,699
2012 Female Population	2,950	3,663
% 2012 Male Population	49.74%	50.24%
% 2012 Female Population	50.26%	49.76%
2012 Total Adult Population	4,605	5,800
2012 Total Daytime Population	7,522	8,476
2012 Total Daytime Work Population	3,964	4,122
2012 Median Age Total Population	46	46
2012 Median Age Adult Population	54	54
2012 Age 0-5	327	396
2012 Age 6-13	351	432
2012 Age 14-17	365	460
2012 Age 18-20	346	420
2012 Age 21-24	257	295
2012 Age 25-29	321	371
2012 Age 30-34	303	376
2012 Age 35-39	307	387
2012 Age 40-44	294	402
2012 Age 45-49	436	564
2012 Age 50-54	452	607
2012 Age 55-59	511	649
2012 Age 60-64	540	701
2012 Age 65-69	384	488
2012 Age 70-74	250	306
2012 Age 75-79	193	245
2012 Age 80-84	130	147
2012 Age 85+	102	116
% 2012 Age 0-5	5.57%	5.38%
% 2012 Age 6-13	5.98%	5.87%
% 2012 Age 14-17	6.22%	6.25%
% 2012 Age 18-20	5.90%	5.70%
% 2012 Age 21-24	4.38%	4.01%
% 2012 Age 25-29	5.47%	5.04%
% 2012 Age 30-34	5.16%	5.11%
% 2012 Age 35-39	5.23%	5.26%



DEMOGRAPHICS





PAGOSA SPRINGS GOLF CLUB

Population	3-mi.	5-mi.
% 2012 Age 40-44	5.01%	5.46%
% 2012 Age 45-49	7.43%	7.66%
% 2012 Age 50-54	7.70%	8.25%
% 2012 Age 55-59	8.71%	8.82%
% 2012 Age 60-64	9.20%	9.52%
% 2012 Age 65-69	6.54%	6.63%
% 2012 Age 70-74	4.26%	4.16%
% 2012 Age 75-79	3.29%	3.33%
% 2012 Age 80-84	2.22%	2.00%
% 2012 Age 85+	1.74%	1.58%
2012 White Population	4,905	6,278
2012 Black Population	16	20
2012 American Indian and Aka Native	101	121
2012 Asian alone	42	58
2012 Native Hawaiian and OPI alone	3	3
2012 Some Other Race alone	597	644
2012 Two or More Races alone	205	238
2012 Hispanic	1,241	1,385
2012 Not Hispanic	4,628	5,977
% 2012 White alone	83.57%	85.28%
% 2012 Black or African American alone	0.27%	0.27%
% 2012 American Indian and Aka Native	1.72%	1.64%
% 2012 Asian alone	0.72%	0.79%
% 2012 Native Hawaiian and OPI alone	0.05%	0.04%
% 2012 Some Other Race alone	10.17%	8.75%
% 2012 Two or More Races alone	3.49%	3.23%
% 2012 Hispanic	21.14%	18.81%
% 2012 Not Hispanic	78.86%	81.19%
2000 Not Hispanic: White alone	3,722	4,552
2000 Not Hispanic: Black	14	18
2000 Not Hispanic: American Indian	45	49
2000 Not Hispanic: Asian alone	17	17
2000 Not Hispanic: Native Hawaiian	n/a	n/a
2000 Not Hispanic: Some Other Race	8	8
2000 Not Hispanic: Two or More Races	37	44



DEMOGRAPHICS

Insight

GOLF





PAGOSA SPRINGS GOLF CLUB

Population Change	3-mi.	5-mi.
2012 Total Population	5,869	7,362
2012 Households	2,525	3,148
Population Change 2010-2012	-77	-143
Household Change 2010-2012	-52	-84
% Population Change 2010-2012	-1.29%	-1.91%
% Household Change 2010-2012	-2.02%	-2.60%
Population Change 2000-2012	1,177	1,773
Household Change 2000-2012	648	897
% Population Change 2000 to 2012	25.09%	31.72%

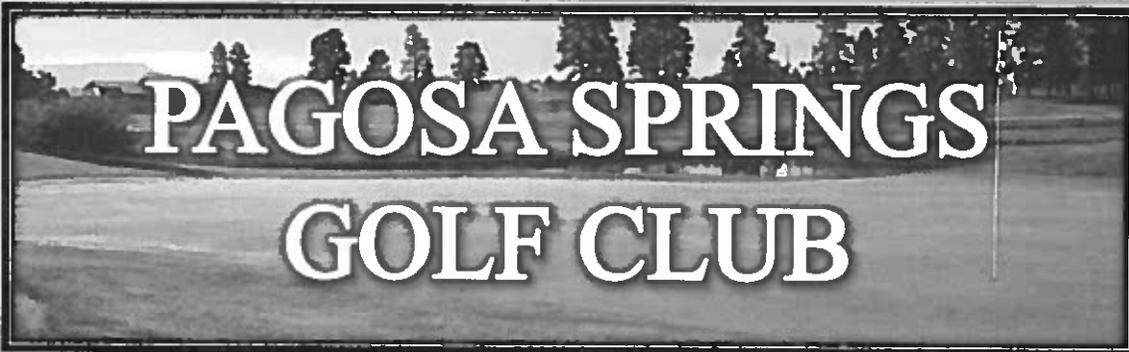
Housing	3-mi.	5-mi.
2012 Housing Units	3,020	3,596
2012 Occupied Housing Units	1,878	2,252
2012 Owner Occupied Housing Units	1,321	1,648
2012 Renter Occupied Housing Units	557	604
2012 Vacant Housings Units	1,143	1,345
% 2012 Occupied Housing Units	62.19%	62.63%
% 2012 Owner occupied housing units	70.34%	73.18%
% 2012 Renter occupied housing units	29.66%	26.82%
% 2012 Vacant housing units	37.85%	37.40%

Household Income	3-mi.	5-mi.
2012 Household Income: Median	\$58,793	\$60,420
2012 Household Income: Average	\$72,543	\$72,455
2012 Per Capita Income	\$31,718	\$31,421
2012 Household income: Less \$10,000	86	119
2012 Household inc \$10,000 to \$14,999	85	104
2012 Household inc \$15,000 to \$19,999	95	95
2012 Household inc \$20,000 to \$24,999	173	187
2012 Household inc \$25,000 to \$29,999	209	211
2012 Household inc \$30,000 to \$34,999	147	182
2012 Household inc \$35,000 to \$39,999	61	95
2012 Household inc \$40,000 to \$44,999	61	95
2012 Household inc \$45,000 to \$49,999	196	234
2012 Household inc \$50,000 to \$59,999	170	240



DEMOGRAPHICS





PAGOSA SPRINGS GOLF CLUB

2012 Household Inc \$60,000 to \$74,999	334	428
2012 Household Inc \$75,000 to \$99,999	543	643
2012 Household \$100,000 to \$124,999	116	242
2012 Household \$125,000 to \$149,999	52	63
2012 Household \$150,000 to \$199,999	98	102
2012 Household \$200,000 or more	99	108
% 2012 Household Less than \$10,000	3.41%	3.78%
% 2012 Household \$10,000 to \$14,999	3.37%	3.30%
% 2012 Household \$15,000 to \$19,999	3.76%	3.02%
% 2012 Household \$20,000 to \$24,999	6.85%	5.94%
% 2012 Household \$25,000 to \$29,999	8.28%	6.70%
% 2012 Household \$30,000 to \$34,999	5.82%	5.78%
% 2012 Household \$35,000 to \$39,999	2.42%	3.02%
% 2012 Household \$40,000 to \$44,999	2.42%	3.02%
% 2012 Household \$45,000 to \$49,999	7.76%	7.43%
% 2012 Household \$50,000 to \$59,999	6.73%	7.62%
% 2012 Household \$60,000 to \$74,999	13.23%	13.60%
% 2012 Household \$75,000 to \$99,999	21.50%	20.43%
% 2012 Household \$100,000-\$124,999	4.59%	7.69%
% 2012 Household \$125,000-\$149,999	2.06%	2.00%
% 2012 Household \$150,000-\$199,999	3.88%	3.24%
% 2012 Household \$200,000 or more	3.92%	3.43%

Retail Sales Volume	3-mi.	5-mi.
2012 Children's/Infants clothing stores	\$833,710	\$985,266
2012 Jewelry stores	\$310,675	\$428,247
2012 Mens clothing stores	\$547,319	\$688,765
2012 Shoe stores	\$699,724	\$893,826
2012 Womens clothing stores	\$1,220,036	\$1,486,768
2012 Automobile dealers	\$8,933,897	\$11,346,390
2012 Automotive parts and stores	\$2,035,075	\$2,532,441
2012 Other motor vehicle dealers	\$316,582	\$366,940
2012 Tire dealers	\$926,836	\$1,163,094
2012 Hardware stores	\$12,938	\$16,090
2012 Home centers	\$206,286	\$254,343
2012 Nursery and garden centers	\$298,035	\$344,462



DEMOGRAPHICS

Insight

GOLF





PAGOSA SPRINGS GOLF CLUB

2012 Outdoor power equipment stores	\$132,467	\$171,461
2012 Paint and wallpaper stores	\$12,137	\$20,128
2012 Appliance, TV and electronics	\$1,307,570	\$1,604,245
2012 Camera and photographic supplies	\$187,308	\$226,573
2012 Computer and software stores	\$3,329,147	\$4,143,427
2012 Beer, wine, and liquor stores	\$485,897	\$652,505
2012 Convenience stores	\$2,527,355	\$3,150,191
2012 Restaurant Expenditures	\$2,615,212	\$3,227,148
2012 Supermarkets and other grocery	\$9,345,448	\$11,527,365
2012 Furniture stores	\$1,061,007	\$1,267,495
2012 Home furnishings stores	\$2,253,479	\$2,767,812
2012 General merchandise stores	\$15,020,658	\$18,447,916
2012 Gasoline stations with convenience	\$7,718,802	\$9,674,621
2012 Other gasoline stations	\$5,459,558	\$6,878,622
2012 Department stores	\$11,901,560	\$14,582,482
2012 General merchandise stores	\$15,020,658	\$18,447,916
2012 Other health and personal care	\$885,276	\$1,068,547
2012 Pharmacies and drug stores	\$2,648,811	\$3,271,280
2012 Pet and pet supplies stores	\$715,290	\$876,478
2012 Book, periodical, and music stores	\$203,728	\$256,034
2012 Hobby, toy, and game stores	\$229,513	\$278,724
2012 Musical instrument and supplies	\$32,550	\$39,605
2012 Sewing, needlework	\$91,195	\$116,812
2012 Sporting goods stores	\$247,310	\$374,723



DEMOGRAPHICS





AGENDA DOCUMENTATION

NEW BUSINESS: VII.3

PAGOSA SPRINGS TOWN COUNCIL

JULY 1, 2014

FROM: GREGORY J. SCHULTE, INTERIM TOWN MANAGER

PROJECT: RESOLUTION 2014-09, A RESOLUTION INDICATING THE DESIRE OF THE TOWN COUNCIL TO WORK COLLABORATIVELY WITH THE ARCHULETA BOARD OF COUNTY COMMISSIONERS IN REGARDS TO EXPLORING A SALES TAX INCREASE

ACTION: PUBLIC HEARING, DISCUSSION AND POSSIBLE ACTION

PURPOSE/BACKGROUND

The Town of Pagosa Springs and the Archuleta Board of County Commissioners (BoCC) have recently been meeting to discuss the possibility of a sales tax increase. Topics included in those discussions have been the timing of placing the tax increase on the ballot and for what purposes the incremental sales tax revenue would be used for in the event an increase was approved by the electorate. At the most recent joint meeting between the Town Council and the BoCC, held on June 24, 2014, there was general sentiment expressed that it would be most beneficial for the community if the Town and the County work together collaboratively regarding sales tax issues. It was reiterated that the current agreement to split the sales tax has well-served the community. However, there was concern expressed by several Councilmembers that to try and place a sales tax increase, as suggested by the BoCC, on the ballot in November 2014 could be problematic. It seemed to short a time frame to develop the approach, possible project lists, and then developing a strategy to educate the public about the issue. The BoCC expressed some concern that the Town, on its own, pursue a sales tax increase and if the Town would agree to not pursue a sales tax increase, the BoCC would not feel as strongly about placing a sales tax increase this November. Further, it was suggested that if an actual sales tax increase was not pursued on November of 2014, then we could use the opportunity to place "advisory" questions on the ballot to gather feedback and gauge sentiments about a possible sales tax. This was generally received favorably and Town and County staff were directed to look into developing appropriate language.

The attached resolution represents a manifestation of the intent of the Town Council to work collaboratively and outlines specific items of interest for both entities.

ATTACHMENT(S): Resolution 2014-09

FISCAL IMPACT

There is minimal fiscal impact resulting from the adoption of the proposed Resolution 2014-09. By adopting the Proposed Resolution, the Town Council agrees to have appropriate staff work with their counterparts at the County to produce data, analyses, and possible advisory ballot language for both entities consideration. It is believed this staff work can be accommodated in the normal workload and does require a a budgetary adjustment.

APPLICABILITY TO COMPREHENSIVE PLAN AND GOALS:

N/A

RECOMMENDATION

It is the recommendation of the Town Manager that the Town Council, by motion,

Approve Resolution 2014-09 regarding a collaborative working relationship with Archuleta County in regards to a possible sales tax increase.

OR

Disapprove Resolution 2014-09 and provide staff further direction.

TOWN OF PAGOSA SPRINGS, STATE OF COLORADO

RESOLUTION NO. 2014-09

A RESOLUTION INDICATING THE DESIRE OF THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS TO WORK COLLABORATIVELY WITH THE BOARD OF COUNTY COMMISSIONERS OF ARCHULETA COUNTY IN REGARDS TO EXPLORING A SALES TAX INCREASE.

WHEREAS, the current sales tax rate in Archuleta County is 6.9% and the of the 6.9%, 2.9% is reserved for the State of Colorado and the remaining 4% is split evenly between the Town of Pagosa Springs and Archuleta County;

WHEREAS, the Town Council and the Board of County Commissioners both recognize the importance of sales tax as a revenue stream for each respective entity;

WHEREAS, the Town Council and the Board of County Commissioners both acknowledge the wishes of the citizens of Archuleta County must be respected and ultimately, it is the voters that will decide any possible sales tax increase;

WHEREAS, The Town Council and Board of County Commissioners both desire to seek appropriate and meaningful input from the citizens in regards to any possible sales tax increase and for what purpose the incremental sales increase would be used for;

WHEREAS, the Town Council and the Board of County Commissioners both acknowledge that to act in the best interests of the citizens of our community, which includes the residents of the Town and the residents in the unincorporated area, the best approach is to work together in a productive and collaborative manner with a common goal;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS, COLORADO, AS FOLLOWS:

1. The Town Council of Pagosa Springs agrees to participate in regularly scheduled meetings with the Archuleta County Board of County Commissioners with the purpose of exploring an increase to the sales tax that would benefit both entities and outline, with sufficient specificity, the manner in which an incremental sales tax increase would be used.
2. The Town Council agrees to make available appropriate Town staff to work with County staff in providing information, data, and advice in regards to a possible sales tax increase.
3. The Town Council of Pagosa Springs agrees to support, in conjunction with the Board of County Commissioners, one or more advisory questions of the November 2014 General Election ballot with the purpose of seeking advice and input from the electorate in regards to a possible sales tax increase and the possible uses of the incremental increase.

4. As a symbol of the Town Council's desire to work collaboratively with the Board of County Commissioners, this Town Council agrees not to pursue a sales tax increase for the sole benefit of the Town for the period of calendar years 2015 and 2016. However, this does not in any way restrict the ability of the citizens of the Town of Pagosa Springs from placing a ballot question regarding a sales tax increase through the normal initiative process.

ADOPTED THIS _____ DAY OF _____, 2014, BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS, COLORADO, BY A VOTE OF _____ IN FAVOR, _____ AGAINST.

TOWN OF PAGOSA SPRINGS, COLORADO

Don Volger, Mayor

ATTEST:

By: _____
April Hessman, Town Clerk



AGENDA DOCUMENTATION

NEW BUSINESS: VII.4

PAGOSA SPRINGS TOWN COUNCIL
JULY 1, 2014

FROM: GREGORY J. SCHULTE, INTERIM TOWN MANAGER

PROJECT: RESOLUTION 2014-10, A RESOLUTION APPOINTING MEMBERS REPRESENTING THE TOWN OF PAGOSA SPRINGS ON THE BOARD OF DIRECTORS FOR THE PAGOSA AREA GEOTHERMAL WATER AND POWER AUTHORITY.

ACTION: PUBLIC HEARING, DISCUSSION AND POSSIBLE ACTION

PURPOSE/BACKGROUND

The Town Council and the Board of County Commissioners have both approved moving forward with the idea of conducting exploratory drilling and seeking funding both internally and externally to ascertain the viability of geothermal resources in the Pagosa area. In addition, the Town Council and Board of County Commissioners created a the Pagosa Area Geothermal Water and Power Authority (Authority) and composed an Agreement (Agreement) to further define this effort;

The Agreement specifies the membership and composition of the governing Board of Directors for the Authority and the Town Council is allocated 3 members for the governing board;

The Town Council of Pagosa Springs is being asked to designate three individuals to represent the Town on the Authority Board of Directors.

ATTACHMENT(S): Resolution 2014-10

FISCAL IMPACT

There is no fiscal impact associated with the designation of three individuals to serve on the Authority Board on behalf of the Town of Pagosa Springs.

APPLICABILITY TO COMPREHENSIVE PLAN AND GOALS:

N/A

RECOMMENDATION

It is the recommendation that the Town Council, by motion,

Approve Resolution 2014-10 designating three (3) individuals to represent the Town of Pagosa Springs on the Pagosa Area Geothermal Water and Power Authority Board of Directors.

OR

Disapprove Resolution 2014-10 and provide staff further direction.

TOWN OF PAGOSA SPRINGS, STATE OF COLORADO

RESOLUTION NO. 2014-10

**A RESOLUTION APPOINTING MEMBERS REPRESENTING
THE TOWN OF PAGOSA SPRINGS TO THE PAGOSA AREA
GEOTHERMAL WATER AND POWER AUTHORITY.**

WHEREAS, Pagosa Springs has one of the largest geothermal aquifers in the State of Colorado;

WHEREAS, there has been significant research conducted to ascertain the availability and viability of geothermal resources in quantities and temperature for economic development, including a possible utility;

WHEREAS, the Town Council and the Board of County Commissioners have both approved moving forward with the idea of conducting exploratory drilling and seeking funding both internally and externally;

WHEREAS, The Town Council and Board of County Commissioners both desire to create a geothermal utility and consequently formed the Pagosa Area Geothermal Water and Power Authority (Authority) and composed an Agreement (Agreement) to further define this effort;

WHEREAS, the Agreement specifies the membership and composition of the governing Board of Directors for the Authority and the Town Council is allocated 3 members for the governing board;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS, COLORADO, AS FOLLOWS:

The Town Council of Pagosa Springs hereby designates the following three (3) individuals to represent the Town of Pagosa Springs on the Board of Directors for the Pagosa Area Geothermal Water and Power Authority:

- 1.
- 2.
- 3.

ADOPTED THIS _____ DAY OF _____, 2014, BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS, COLORADO, BY A VOTE OF _____ IN FAVOR, _____ AGAINST.

TOWN OF PAGOSA SPRINGS, COLORADO

Don Volger, Mayor

ATTEST:

By: _____
April Hessman, Town Clerk



AGENDA DOCUMENTATION

OLD BUSINESS: VIII.1

PAGOSA SPRINGS TOWN COUNCIL,
JULY 1, 2014

FROM: JAMES DICKHOFF, TOWN PLANNING DIRECTOR

PROJECT: SECOND READING OF ORDINANCE 812, AN ORDINANCE OF THE TOWN OF PAGOSA SPRINGS, AUTHORIZING THE EXECUTION AND DELIVERY BY THE TOWN OF PAGOSA SPRINGS OF A LEASE PURCHASE AGREEMENT BETWEEN THE TOWN, AS LESSEE, AND THE PAGOSA SPRINGS CHAMBER OF COMMERCE, AS LESSOR, FOR THE PURPOSES OF FINANCING THE ACQUISITION OF THE VISITOR'S CENTER PROPERTY; AUTHORIZING OFFICIALS OF THE TOWN TO TAKE ALL ACTIONS NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HERBY AND PROVIDING FOR RELATED MATTERS.

ACTION: DISCUSSION AND POSSIBLE ACTION

PURPOSE/BACKGROUND

On June 19, 2014 Town Council approved the First Reading of Ordinance No. 812, *An ordinance of the Town of Pagosa Springs, Authorizing the execution and delivery by the Town of Pagosa Springs of a Lease Purchase Agreement between the Town, as Lessee, and the Pagosa Springs Chamber of Commerce, as Lessor, for the purposes of financing the acquisition of the Visitor's Center Property; Authorizing officials of the Town to take all actions necessary to carry out the transactions contemplated herby and providing for related matters, And FURTHER provided direction to staff to bring a budget amendment to Town Council for the \$90,000 down payment expense prior by the end of the 2014 fiscal year, AND, Approve in concept, a lease back option for the Chamber of Commerce to occupy a portion of the building for a period of up to 6 months after the execution of the Lease Purchase Agreement.*

The Chamber of Commerce Board has approved the Revised DRAFTED Lease Purchase Agreement.

ANALYSIS

The Town's attorney drafted a "Lease Purchase Agreement", attached, to ensure the Town complied with Colorado TABOR Law requirements. Some highlights of the agreement included:

- ~ Allows the Town to conduct remodeling and improvements of the building and property.
- ~ There is NO early payoff penalty.
- ~ The \$90,000 down payment serves as the first 6 month lease rent payment.
- ~ Semi-annual rent payments are due January 1st and July 1st of each years.
- ~ Approximate semi-annual payments are \$9,073.46.
- ~ The Chamber can only terminate the agreement if the Town defaults on the agreement payment terms.
- ~ Town will provide maintenance of the property and structure.
- ~ Town will pay property taxes.
- ~ Town will pay property and flood insurance premiums.
- ~ Utilities will be in the Town's name.

The Chamber is currently analyzing the furniture and fixtures for determining ownership of specific items. The Chamber has indicated they will not remove any furniture and fixtures from the building until they identify a new location for their operations. Both the Chamber and the Visitors center have plans for upgrading all fixtures and furnishings in their respective new locations.

Town Staff will maintain the property. The Town's Parks staff will maintain the grounds, Streets Department will maintain the parking lot and Facilities Maintenance Department will maintain the building. Based on industry standards for asset management costs, the general rule of thumb is up to 10% of the initial investment is required each year for general maintenance.

We did receive a value determination for the property at \$330,000.

ATTACHMENT(S):

- ~ Ordinance No. 812, An ordinance of the Town of Pagosa Springs, Authorizing the execution and delivery by the Town of Pagosa Springs of a Lease Purchase Agreement between the Town, as Lessee, and the Pagosa Springs Chamber of Commerce, as Lessor, for the purposes of financing the acquisition of the Visitor's Center Property; Authorizing officials of the Town to take all actions necessary to carry out the transactions contemplated hereby and providing for related matters.
- ~ Final Lease Purchase Agreement.

FISCAL IMPACT

The Town will provide a \$90,000 payment at the time of executing the Lease Purchase Agreement, which will also be consider the first semi-annual rent payment. After such time, Semi-Annual rent payments of \$ are due January 1st and July 1st of each year through 2029.

Town Council has already approved \$30,000 for renovations for the previous selected 1500 square foot unit in the former city Market Center. Additional analysis is needed regarding costs associated with future remodeling of the Chamber Building.

- ~ Property insurance premium (includes Flood Insurance): Approximately \$500./year
- ~ Property taxes are \$4,404/yr, however, would be \$0.00 once the Town owns the property.
- ~ Total Utilities are approximately \$5,292.00/year.
- ~ The Chamber of Commerce has requested a Lease Back option for up to 6 months for the office space (672 sq ft) and meeting room (345 sq ft) for a total of 1017 square feet at a rate of \$1.15/sq ft. This lease back to the Chamber will generate approximately \$1,170.00 per month as well as cover 50% of the electric, natural gas and internet.
- ~ Town will be responsible for Trash Collection, water and sewer.
- ~ Building and property maintenance will be the responsibility of the Town.
- ~ Phones will be billed based on percentage of lines. Visitors Center = 1 line, Chamber = 5 lines.
- ~ 1-800 line: Approximately \$1,200.00/year
- ~ Restrooms: Staff recommends a simple short term remodel to accommodate ADA requirements. We can keep the current women's restroom as is, and convert the men's restroom to an ADA compliant unisex restroom by removing the partition and installing grab bars, estimated at a \$2,000.
- ~ Flags: Up-lighting the flags will permit displaying flags 24-7 without having the raise and remove daily.
- ~ New Visitors Center Building Sign: Approximately \$7,000.00
- ~ Results of the Building Inspection: Zach Richardson conducted a full building inspection on Wednesday June 18th. Zach identified only minor maintenance items and no major issues of concern.
- ~ Dennis Ford presented that some electrical issues were identified and an Electrician will be accessing the issue.

Town provided general maintenance is currently estimated at \$30,000.00/year. Staff will prepare a budget for anticipated expenses for 2015 during the 2015 budget development process and may present a budget amendment later this year when true 2014 expenses are known.

RECOMMENDATION

It is recommended the Town Council:

Approve the Second Reading of Ordinance 812, An ordinance of the Town of Pagosa Springs, Authorizing the execution and delivery by the Town of Pagosa Springs of a Lease Purchase Agreement between the Town, as Lessee, and the Pagosa Springs Chamber of Commerce, as Lessor, for the purposes of financing the acquisition of the Visitor's Center Property; Authorizing officials of the Town to take all actions necessary to carry out the transactions contemplated hereby and providing for related matters. FURTHER providing direction to staff to bring a budget amendment to Town Council for the \$90,000 down payment expense prior by the end of the 2014 fiscal year, AND, Approve in concept, a lease back option for the Chamber of Commerce to occupy a portion of the building for a period of up to 6 months after the execution of the Lease Purchase Agreement.

TOWN OF PAGOSA SPRINGS, COLORADO

**ORDINANCE NO. 812
(SERIES 2014)**

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY BY THE TOWN OF PAGOSA SPRINGS OF A LEASE PURCHASE AGREEMENT BETWEEN THE TOWN, AS LESSEE, AND THE PAGOSA SPRINGS CHAMBER OF COMMERCE AS LESSOR FOR THE PURPOSES OF FINANCING THE ACQUISITION OF THE VISITOR'S CENTER PROPERTY; AUTHORIZING OFFICIALS OF THE TOWN TO TAKE ALL ACTION NECESSARY TO CARRY OUT THE TRANSACTIONS CONTEMPLATED HEREBY AND PROVIDING FOR RELATED MATTERS

WHEREAS, the Town of Pagosa Springs (the "Town") is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Pagosa Springs Home Rule Charter of 2003 (the "Charter"); and

WHEREAS, pursuant to Section 1.4 of the Charter, the Town has all the power of local self-government and home rule and all power possible for a municipality to have under the Constitution and laws of the State of Colorado; and

WHEREAS, pursuant to Section 10.6 of the Charter, the Town has full authority, power and control over all Town owned property, including but not limited to, all power and authority to sell and lease such property; and

WHEREAS, in order to provide for the capital asset needs of the Town, the Town Council of the Town (the "Council") has previously determined and hereby determines that it is necessary and in the best interests of the Town and its citizens that the Town undertake lease purchase financing of sites, buildings, equipment and other property for use by the Town for governmental or proprietary purposes; and

WHEREAS, the Pagosa Springs Chamber of Commerce is the fee simple owner of the land and improvements constituting the Pagosa Springs Visitor's Center located at 105 Hot Springs Boulevard, Pagosa Springs, Colorado (the "Property"); and

WHEREAS, the Chamber obtained the Property pursuant to a vacation of right-of-way by the Council and has operated the Visitor's Center in the building on the Property with financial support from the Town and County; and

WHEREAS, the Town desires to lease to purchase the Property to continue the operations of the Visitor's Center and for other municipal purposes for a price of three hundred thousand dollars (\$300,000.00) ("Acquisition Price"); and

WHEREAS, the Chamber desires to lease to sell the Property to the Town for the Acquisition Price with an upfront payment of ninety thousand dollars (\$90,000.00) plus annual rent payments ("Rent") and in accordance with the terms of a Lease Purchase Agreement (the "Lease"); and

WHEREAS, for the purpose of obtaining ownership and possession of the Property, the Council has determined to enter into the Lease with the Chamber.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS, COLORADO AS FOLLOWS:

Section 1. Ratification of Actions. All action heretofore taken, not inconsistent with the provisions of this ordinance (the “Ordinance”), by the Council or the officers of the Town, directed toward the implementation of the Lease and acquisition of the Property, including without limitation the preparation of the forms of Lease and related documents, are hereby ratified, approved and confirmed.

Section 2. Findings; Authorizations. The Council hereby finds and determines, pursuant to the Town’s home rule powers and all applicable laws of the State of Colorado, that the acquisition of the Property is necessary, convenient, and in furtherance of the governmental purposes of the Town and in the best interests of the Town and its inhabitants; and the Council hereby authorizes the Town to enter into the Lease. The Town hereby elects to apply all of the provisions of the Supplemental Public Securities Act, Part 2 of Article 57, Title 11, C.R.S. (the “Supplemental Securities Act”), to the extent applicable and not inconsistent herewith, to the Lease.

Section 3. Approval and Execution of Documents; Authorized Officers; Variations in Documents. The Lease, in substantially the form filed in the office of the Town Clerk prior to the final adoption of this Ordinance, is in all respects approved, authorized and confirmed, and the Mayor of the Town or any member of the Council are hereby authorized and directed to execute and deliver, and the Town Clerk of the Town or any Deputy or Assistant Town Clerk are hereby authorized and directed to affix the seal of the Town to, and attest, the Lease, in substantially the form so filed with the Town Clerk, with such changes as are not inconsistent with the intent of this Ordinance and are approved by the Town Attorney and any necessary escrow or financing agreements. The Council hereby designates the Town Manager and the Town Clerk/Finance Director (and any persons authorized by law to act on their behalf in their absence) to act as “Authorized Officers” under the Lease. Prior to the execution of the Lease or any other instrument contemplated by this Ordinance, the final Rent (as defined in the Lease) due under the Lease shall be approved by a resolution of the Council (a “Supplemental Resolution”).

Section 4. Additional Documents and Making an Appropriation. The Town Clerk is hereby authorized and directed to attest all signatures and acts of any official of the Town in connection with the matters authorized by this Ordinance. The Mayor and the Authorized Officers are hereby authorized to execute and deliver for and on behalf of the Town any and all additional certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized by this Ordinance. The appropriate officers of the Town are also authorized to execute on behalf of the Town agreements and checks concerning the payment of ninety thousand dollars (\$90,000.00) to the Chamber in connection with the transactions contemplated by this Ordinance and the acquisition of the Property.

Section 5. Lease Terms. The Lease shall provide for the payment of Rent consisting of an interest component and a principal component, and the schedule of Rent incorporated in the Lease shall be approved by Supplemental Resolution, subject to the following limitations:

- (a) the aggregate amount of the principal component of Rent shall be determined by Supplemental Resolution and shall not exceed \$210,000, which amount may be financed in one or more transactions;
- (b) the interest component of Base Rentals shall accrue at a rate or rates not to exceed 3.5%;
- (c) the Lease, including all renewal terms thereof, shall terminate not later than December 31, 2029, and may also be made subject to prepayment and termination in whole or in part without prepayment premium;

(d) the Town shall have the option to purchase the Property and terminate the Lease in the manner provided in the Lease; and

(e) the annual Rent due under the Lease shall not exceed \$18,147.00 in any year.

Section 6. No General Obligation or Other Indebtedness. The obligation of the Town to make rental payments under the Lease is subject to annual appropriation by the Council and constitutes an undertaking of the Town to make current expenditures. No provision of this Ordinance, the Lease shall be construed, individually or collectively with other provisions, as constituting or giving rise to a general obligation or other indebtedness or multiple fiscal year financial obligation of the Town within the meaning of any home rule, constitutional or statutory debt limitation nor a mandatory charge or requirement against the Town in any ensuing fiscal year beyond the current fiscal year. The Town shall have no obligation to make any payment except in connection with the payment of the Rent and certain other payments under the Lease, which payments shall be subject to termination and nonrenewal by the Town in accordance with the provisions of the Lease.

Section 7. Additional Findings; Expression of Need; Reasonable Rentals. The Town hereby declares its current need for the Property. It is hereby declared to be the present intention and expectation of the Council that the Lease will be renewed annually until it is terminated and all of the Chamber's interest in the Property is acquired by the Town pursuant to the Lease; but this declaration shall not be construed as contractually obligating or otherwise binding the Town.

The Council hereby determines and declares that the Rent due under the Lease, so long as they are within the limits provided in this Ordinance, will represent the fair value of the use of the Property, and that the Purchase Option Price (as defined in the Lease) will represent, as of any date upon which the Town may exercise its option to purchase the Investor's interest in such Property, the fair purchase price thereof. The Council further hereby determines and declares that the Rent due under the Lease and authorized hereby will not exceed a reasonable amount so as to place the Town under an economic or practical compulsion to renew the Lease or to exercise its option to purchase the Investor's interest in the Leased Property pursuant to the Lease. In making such determinations, the Council has given consideration to the cost of acquiring the Property, the uses and purposes for which the Property is employed by the Town, the use of the Property pursuant to the terms and provisions of the Lease, the Town's option to purchase the Chamber's interest in the Property, the Town's right to cause the termination of the Lease by declining to appropriate funds, and the expected eventual vesting in or to the Town of both title to and possession of the Property, free and clear of the Lease. The Council hereby determines and declares that, after execution and delivery of the Lease, the maximum duration of the Lease, or the portion thereof allocable to any item of Property separately identified in the Lease, will not exceed the weighted average useful life of the Property.

Section 8. Severability. If any section, paragraph, clause or provision of this Ordinance or the Lease (other than provisions as to the payment of Rent by the Town during the term of the Lease, provisions for the quiet enjoyment of the Property by the Town during the term of the Lease, and provisions for the conveyance or release of the Lessor's interest in the Property to the Town under the conditions provided in the Lease) shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 9. Repealer of Measures. All acts, orders, resolutions, ordinances or parts thereof, in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof heretofore repealed.

Section 10. Qualified Tax-Exempt Obligation. The Town Council hereby designates the Lease as a “qualified tax-exempt obligation” for purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended.

Section 11. Public Inspection. The full text of this Ordinance, with any amendments, is available for public inspection at the office of the Town Clerk.

Section 12. Public Hearing. A public hearing on this Ordinance shall be held on the 1st day of July, 2014, at 5:00 p.m. at the Town Hall.

Section 13. Effective Date. This Ordinance shall become effective and be in force immediately upon final passage at second reading.

INTRODUCED, READ, AND ORDERED PUBLISHED PURSUANT TO SECTION 3.9, B) OF THE PAGOSA SPRINGS HOME RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS, COLORADO UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF PAGOSA SPRINGS, ON THE 19TH DAY OF JUNE, 2014.

TOWN OF PAGOSA SPRINGS, COLORADO

By: _____
Don Volger, Mayor

Attest:

April Hessman, Town Clerk

FINALLY ADOPTED, PASSED, APPROVED, AND ORDERED PUBLISHED PURSUANT TO SECTION 3.9, D) OF THE PAGOSA SPRINGS HOME RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF PAGOSA SPRINGS, COLORADO UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF PAGOSA SPRINGS, ON THE 1ST DAY OF JULY, 2014.

TOWN OF PAGOSA SPRINGS, COLORADO

By: _____
Don Volger, Mayor

Attest:

April Hessman, Town Clerk

CERTIFICATE OF PUBLICATION

I, the duly elected, qualified and acting Town Clerk of the Town of Pagosa Springs, Colorado, do hereby certify the foregoing Ordinance No. 812 (Series 2014) was approved by the Town Council of the Town of Pagosa Springs on first reading at its regular meeting held on the ___ day of _____, 2014, and was published by title only, along with a statement identifying any fines or penalties for violation of the Ordinance, and that the full text of the Ordinance, including any amendments, is available at the office of the Town Clerk, on the Town's official website, on _____, 2014, which date was at least ten (10) days prior to the date of Town Council consideration on second reading.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Pagosa Springs, Colorado, this __ day of _____, 2014.

April Hessman, Town Clerk

(S E A L)

I, the duly elected, qualified and acting Town Clerk of the Town of Pagosa Springs, Colorado, do hereby certify the foregoing Ordinance No. 812 (Series 2014) was approved by the Town Council of the Town of Pagosa Springs on second reading, at its regular meeting held on the ___ day of _____, 2014, and was published by title only, along with a statement indicating the effective date of the Ordinance and that the full text of the Ordinance is available at the office of the Town Clerk, on the Town's official website, on _____, 2014.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town of Pagosa Springs, Colorado, this __ day of _____, 2014.

April Hessman, Town Clerk

(S E A L)

LEASE PURCHASE AGREEMENT

THIS LEASE PURCHASE AGREEMENT dated as of _____, 2014 (this "Lease"), between **PAGOSA SPRINGS CHAMBER OF COMMERCE**, a Colorado non-profit corporation, together with its successors and assigns, as lessor ("Lessor" or "Chamber"), and the **TOWN OF PAGOSA SPRINGS, COLORADO** (the "Lessee" or "Town"), a home rule municipality and political subdivision of the State of Colorado (the "State") organized and existing under Article XX of the Colorado Constitution and the Pagosa Springs Home Rule Charter of 2003 (the "Charter"), as lessee;

WITNESSETH:

WHEREAS, pursuant to Section 1.4 of the Charter, the Town has all the power of local self-government and home rule and all power possible for a municipality to have under the Constitution and laws of the State of Colorado; and

WHEREAS, pursuant to Section 10.6 of the Charter, the Town has full authority, power and control over all Town owned property, including but not limited to, all power and authority to purchase and/or lease such property; and

WHEREAS, in order to provide for the capital asset needs of the Town, the Town Council of the Town (the "Council") has previously determined and hereby determines that it is necessary and in the best interests of the Town and its citizens that the Town undertake lease purchase financing of sites, buildings, equipment and other property for use by the Town for governmental or proprietary purposes; and

WHEREAS, the Chamber is the fee simple owner of the land and improvements constituting the Pagosa Springs Visitor's Center located at 105 Hot Springs Boulevard, Pagosa Springs, Colorado as more particularly described in Exhibit A (the "Property"); and

WHEREAS, the Property consists of land that was a portion of San Juan Street that extended west of Light Plant Road to the center line of the San Juan River; and

WHEREAS, pursuant to Town of Pagosa Springs Ordinance No. 421 Series 1990, Council vacated that public right-of-way; and

WHEREAS, upon the adoption of Ordinance No. 421 and by virtue of their adjacent property ownership, the Town and JBM Enterprises, Inc. each become owners of a respective portion of San Juan Street; and

WHEREAS, the Town conveyed its respective portion of San Juan Street to the Chamber for a nominal amount pursuant to deed dated March 19, 1990, recorded on March 23, 1990 at Reception No. 01700087 in Book 287, Page 72, in the records of the Clerk and Recorder for Archuleta County; and

WHEREAS, JBM Enterprises, Inc. conveyed its respective portion of San Juan Street to the Chamber for a nominal amount pursuant to deed dated March 23, 1990, recorded on March 23, 1990 at Reception No. 0170090 in Book 287, Page 83, in the records of the Clerk and Recorder for Archuleta County; and

WHEREAS, the Chamber, upon obtaining the Property pursuant to Ordinance No. 421 and the subsequent gift conveyances from the Town and JBM Enterprises, Inc., constructed a building on the Property; and

WHEREAS, the Chamber has operated the Visitor's Center in the building on the Property with financial support from the Town and County; and

WHEREAS, the Town desires to lease with an option to purchase the Property to continue those operations and for other municipal purposes; and

WHEREAS, the Chamber desires to lease with an option to sell the Property to the Town for an initial lump sum payment of ninety thousand dollars (\$90,000.00) plus semi-annual Rent (as hereinafter defined) payments and in accordance with the terms of this Lease; and

WHEREAS, the obligation of the Town to pay Rent hereunder shall be from year to year only; shall constitute currently budgeted expenditures of the Town; shall not constitute a mandatory charge or requirement in any ensuing budget year; and shall not constitute a general obligation or a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the Town within the meaning of any constitutional or statutory limitation or requirement concerning the creation of indebtedness, nor a mandatory payment obligation of the Town in any ensuing fiscal year beyond any fiscal year during which this Lease shall be in effect; and

WHEREAS, the financing of the lease to purchase the Property, and the execution, performance and delivery of this Lease, have been authorized, approved and directed by the Council by an ordinance finally passed and adopted by the Council;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Terms Defined in Preamble and Recitals. The following terms shall have the meanings set forth in the preamble and recitals hereto:

Chamber	Charter
Council	Lease
Lessee	Lessor
Property	State
Town	

Section 1.02. Additional Definitions. The following additional terms shall have the meanings specified below:

“Additional Rentals” means the cost of all taxes, if any, utility charges, maintenance, upkeep, repair, improvement and replacement in respect of the Property.

“Authorized Officer of the Town” means the Mayor and the Town Manager and any person authorized by resolution or ordinance of the Council to perform any act or execute any document.

“Business Day” means any day other than a Saturday, a Sunday or a day on which banks in Pagosa Springs, Colorado are authorized by law to remain closed.

“County” means Archuleta County, Colorado.

“Environmental Regulations” means the provisions of any federal, state or local law, statute, code, ordinance, regulation, requirement or rule relating to any Hazardous Substances.

“Event of Default” means one or more events of default as defined in Section 13.01 of this Lease.

“Event of Nonappropriation” means a termination of this Lease by the Town, determined by the Town’s failure for any reason, to duly enact by the last day of each Fiscal Year an appropriation resolution for the ensuing Fiscal Year which includes reference amounts authorized and directed to be used to pay all Rent. The term also includes the giving of notice under Section 4.01 of this Lease of the Town’s intention to terminate and the occurrence of an event described in Section 6.06 of this Lease relating to the failure by the Town to appropriate amounts due as Additional Rentals at least equal to the amounts reasonably estimated to become due.

“Fiscal Year” means the fiscal or budget year of the Town.

“Force Majeure” means, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies or officials or any civil or military authority; insurrection; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accidents to machinery, transmission pipes or canals; or any other cause or event not within the control of the Town.

“Hazardous Substances” means any dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by Environmental Regulations, and also including urea-formaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner of the Property to any damages, penalties or liabilities under any Environmental Regulations.

“Interest Component of Rent Rate” means the per annum rate or rates of interest used to calculate the interest component of Rent. The Interest Component of Rent Rate shall be 3.50%.

“Lease Remedy” or “Lease Remedies” means any or all remedial steps provided in Section 13.02 of this Lease whenever an Event of Default hereunder has happened and is continuing.

“Lease Term” means the time during which the Town is the lessee of the Property under this Lease, including the Original Term and all Renewal Terms as provided in and subject to Article IV and Sections 6.01, 6.02 and 6.06 of this Lease; certain provisions of this Lease survive the termination of the Lease Term, as provided in Section 4.02 of this Lease.

“Original Term” means that portion of the Lease Term that commenced as of the date first written above and continuing through the last day of the current Fiscal Year of the Town, i.e. December 31, 2014.

“Net Proceeds” when used with respect to any proceeds of insurance, including self-insurance, required by this Lease, or proceeds from any condemnation award, or any proceeds resulting from default or breaches of warranty under any contract relating to the Property or proceeds from any Lease Remedy, means the amount remaining after deducting from such proceeds (a) all expenses (including, without limitation, attorneys’ fees and costs) incurred in the collection of such proceeds or award; and (b) all other fees, expenses and payments due to the Lessor

“Permitted Encumbrances” means, as of any particular time: (a) liens for taxes and assessments not then delinquent, or liens which may remain unpaid pending contest pursuant to the provisions of Article VII and Article VIII of this Lease; (b) this Lease; (c) utility, access and other easements and rights of way, restrictions and exceptions which an Authorized Officer of the Town certifies will not interfere with or impair the Property, including rights or privileges in the nature of easements as provided in Section 8.07 of this Lease; (d) any financing statements filed to perfect security interests pursuant to this Lease; (e) easements, covenants, restrictions, liens and encumbrances (if any) of record to which title to the Property was subject as of the date first written above.

“Purchase Option Price” means the amount payable, at the option of the Town, for the purpose of terminating this Lease with respect to the Property and transferring ownership of the Property pursuant to Articles IV and XI of this Lease. The Purchase Option Price shall consist of the Remaining Lease Balance shown in Exhibit B hereto as of the last Rent Payment Date preceding the termination of this Lease, plus the Interest Component of Rent Rate (3.5%) accrued through the date of such termination.

“Remaining Lease Balance” means, as of any particular date, the Remaining Lease Balance stated for such date in Exhibit B.

“Renewal Term” means any optional renewal of the Lease Term for the next Fiscal Year by the Town, as provided in Article IV of this Lease.

“Rent” means the payments payable by the Town during the Lease Term pursuant to Section 6.02 of this Lease and as set forth in Exhibit B, as it may be amended hereunder from time to time, which constitute the payments payable by the Town for and in consideration of the right to use the Property during the Lease Term.

“Rent Payment Dates” means semiannual payments due on January 1 and July 1 of each Fiscal Year during the Lease Term.

“Revenues” means (a) all monies currently budgeted and appropriated by the Town for the purpose of paying amounts pursuant to this Lease including, but not limited to, all Rent and Purchase Option Prices, but not including Additional Rentals; and (b) all other revenues of the Town payable pursuant to this Lease, excluding Additional Rentals.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.01. Representations, Covenants and Warranties of the Town. The Town represents, covenants and warrants as follows:

(a) The Town is a political subdivision of the State, duly organized and existing under the laws of the State and the Charter. The Town is authorized to enter into the transactions contemplated by this Lease and to carry out its obligations under this Lease. The Town has duly authorized and approved the execution and delivery of this Lease.

(b) The lease of the Property from the Lessor pursuant to this Lease serves a public purpose and is in the best interests of the Town, its residents and taxpayers.

Section 2.02. Representations, Covenants and Warranties of the Lessor. The Lessor represents, covenants and warrants as follows:

(a) The Lessor has all requisite power to execute, deliver, enter into and perform the transactions contemplated by this Lease and to carry out its obligations under this Lease, and has duly executed and delivered this Lease and all other documents related to this Lease.

(b) Except as expressly provided in this Lease, the Lessor will not pledge or assign its right, title and interest in and to any of its rights under this Lease or assign, pledge, mortgage, encumber or grant a security interest in its right, title and interest in, to or under this Lease or the Property. The Lessor represents that neither the Lease nor any interest therein will be transferred or resold.

(c) Neither the execution and delivery of this Lease nor the fulfillment of or compliance with the terms and conditions hereof and thereof, nor the consummation of the transactions contemplated hereby and thereby, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Lessor is now a party or by which the Lessor is bound, or constitutes a default under any of the foregoing.

(d) There is no litigation or proceeding pending or threatened against the Lessor or any other person affecting the right of the Lessor to execute this Lease and to perform its obligations hereunder and thereunder.

(e) The Lessor acknowledges that the obligations of the Town under this Lease shall not constitute or give rise to a general obligation or multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the Town within the meaning of any constitutional, charter or statutory provision or limitation nor a mandatory charge or requirement against the Town in any ensuing Fiscal Year beyond any Fiscal Year during which this Lease shall be in effect. The Lessor further acknowledges that the Town may elect not to renew this Lease by failure to budget and appropriate funds sufficient to meet its next Fiscal Year's Rent, and that the acts of budgeting and appropriating funds are legislative acts and, as such, are solely within the discretion of the Council.

(f) To the best knowledge of the Lessor, after due inquiry, (i) no Hazardous Substances are now or have been stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited or disposed of in, upon, under, over or from the Property in violation of any Environmental Regulations; (ii) no threat exists of a discharge, release or emission of a Hazardous Substance upon or from the Property into the environment; (iii) the Property has not been used as or for a mine, landfill, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline service station; (iv) no underground storage tank is located at the Property or has previously been located therein but has been removed therefrom; (v) no violation of any Environmental Regulation now exists relating to the Property, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now any investigation or report involving the Property by any governmental entity or agency which in any way relates to Hazardous Substances; (vi) no person, party or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (i) above; (vii) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under, over or from the Property; (viii) the Property is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any

other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and (ix) the Property is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release of any Hazardous Substance.

ARTICLE III

LEASE OF PROPERTY

The Lessor demises and leases the Property, including any interest of the Lessor in the Property, to the Town, and the Town leases the Property, including any interest in the Property, from the Lessor, in accordance with the provisions of this Lease, subject only to Permitted Encumbrances, to have and to hold for the Lease Term.

ARTICLE IV

LEASE TERM

Section 4.01. Duration of Lease Term; Town's Annual Right to Renew Lease. The Lease Term shall commence as of the date first written above and continue through the last day of the current Fiscal Year of the Town. Subject to the provisions of Section 4.02 hereof, the Lease Term may be renewed at the end of the Original Term and at the end of each renewal term thereafter for a term of twelve months coinciding with the next succeeding Fiscal Year of the Town. The Town shall have the right to annually renew the Lease Term through Fiscal Year 2029 unless (a) the Town gives written notice to the Lessor not less than 30 days prior to the end of the Original Term or the then current Renewal Term of the Town's intention not to renew this Lease at the end of the Original Term or the then current Renewal Term, or (b) an Event of Nonappropriation shall have occurred with respect to a Renewal Term occurring after the Original Term or any then current Renewal Term. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except for the amount of Rent to be paid during such Renewal Term if adjusted pursuant to Section 6.01(a) or (c).

Section 4.02. Termination of Lease Term. The Lease Term shall terminate upon the earliest of any of the following events:

- (a) the last day of any Fiscal Year during which there has occurred an Event of Nonappropriation pursuant to Section 4.01 and Article VI of this Lease (provided that the Lease Term will be deemed to have been renewed and, therefore, not terminated if the Event of Nonappropriation is cured as provided in Section 6.06 hereof); or
- (b) the conveyance of the Property to the Town upon payment of the Purchase Option Price or all Rent and Additional Rentals as provided in Section 11.02 of this Lease; or
- (c) an Event of Default and termination of this Lease under Article XIII of this Lease.

An election not to renew the Lease Term shall terminate all unaccrued obligations of the Town under this Lease, and shall terminate the Town's rights of possession under this Lease at the end of the last day of the Fiscal Year for which this Lease shall be in effect (except to the extent of the holdover provisions of Section 13.02(d) hereof, and except for any conveyance pursuant to Article XI of this Lease). Except for an event described in subparagraph (b) above, upon termination of this Lease, the Town agrees to peaceful delivery of the Property to the Lessor.

ARTICLE V

ENJOYMENT OF PROPERTY

The Lessor hereby covenants that the Town shall during the Lease Term peaceably and quietly have, hold and enjoy the Property without suit, trouble or hindrance from the Lessor, except as expressly required or permitted by this Lease. The Lessor shall, at the request of the Town and at the cost of the Town, join and cooperate fully in any legal action in which the Town asserts its right to such possession and enjoyment, or which involves the imposition of any taxes or other governmental charges on or in connection with the Property. In addition, the Town may at its own expense join in any legal action affecting its possession and enjoyment of the Property and shall be joined in any action affecting its liabilities hereunder.

ARTICLE VI

PAYMENTS BY THE TOWN

Section 6.01. Payments to Be Paid From Currently Budgeted Expenditures of the Town.

The Town and the Lessor acknowledge and agree that the Rent hereunder during the Original Term and all of the Renewal Terms, if any, shall be paid from then currently budgeted Revenues of the Town, using any legally available funds of the Town. The Town's obligations to pay Rent under this Lease during the Original Term and all of the Renewal Terms, if any, shall be subject to the Town's annual right to renew this Lease (as further provided in Article IV and Sections 6.02 and 6.06 hereof), and shall not constitute a mandatory charge, requirement or liability in any ensuing Fiscal Year beyond the then current Fiscal Year. No provision of this Lease shall be construed or interpreted as a delegation of governmental powers or as creating indebtedness or a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the Town within the meaning of any constitutional or statutory debt limitation, including without limitation, Article XI, Sections 1, 2 and 6, and Article X, Section 20, of the Colorado Constitution. This Lease shall not directly or indirectly obligate the Town to make any payments of Rent or Additional Rentals beyond the Revenues for the then current Fiscal Year. The Town shall be under no obligation whatsoever to exercise its option to purchase the Property. No provision of this Lease shall be construed to pledge or to create a lien on any class or source of Town moneys, nor shall any provision of this Lease restrict the future issuance of any bonds or obligations of the Town payable from any class or source of moneys of the Town.

Section 6.02. Rent and Additional Rentals.

(a) The Town shall pay all Rent directly to the Lessor during the Original Term and all Renewal Terms, on the Rent Payment Dates and in the "Total Rent" amounts set forth in Exhibit B, attached hereto and made a part hereof, as it may be amended from time to time hereunder by written agreement signed by the Lessor and the Town Manager of the Town.

(b) The Town may, at any time during the Lease Term, pay the then applicable Purchase Option Price related to the Property for the purpose of terminating this Lease and purchasing the Property, as further provided in Article XI of this Lease. The Town shall give the Lessor notice of its intention to exercise its option not less than 15 days in advance of the date of exercise and shall deposit with the Lessor on or prior to a Rent Payment Date an amount equal to the Purchase Option Price.

(c) The Town may pay and apply any amount above the Rent toward the reduction of the Remaining Lease Balance and direct the Lessor to amend the Schedule attached hereto as

Exhibit B in accordance with paragraph (a) of this Section to reflect such reduced Remaining Lease Balance, but only upon a finding by the Town that (i) the Rent due under such amended schedule represents the fair value of the use of the Property, (ii) the Purchase Option Price will represent, as of any date that the Town may exercise its option to purchase the Lessor's interest in the Property, the fair purchase price thereof, and (iii) the Rent due under such amended schedule does not exceed a reasonable amount so as to place the Town under an economic or practical compulsion to renew this Lease or to exercise its option to purchase the Lessor's interest in the Property. Payments made pursuant to this Section 6.02(c) shall not be subject to a prepayment premium.

(d) The Town shall pay Additional Rentals during the Original Term and all Renewal Terms, if any, as herein provided. All Additional Rentals shall be paid by the Town on a timely basis directly to the person or entity to which such Additional Rentals are owed.

Section 6.03. Interest Component. A portion of each payment of Rent is paid as, and represents payment of, interest, and Exhibit B hereto, as may be amended from time to time hereunder by written agreement signed by the Lessor and the Town Manager of the Town, sets forth the interest component of each payment of Rent.

Section 6.04. Manner of Payment. The Rent and, if paid, the Purchase Option Price, shall be paid by the Town by certified funds or other method of payment acceptable to the Lessor in lawful money of the United States of America to the Lessor. The obligation of the Town to pay the Rent and Additional Rentals, during the Original Term and each Renewal Term, shall be absolute and unconditional, payable from all legally available sources, and payment of the Rent and Additional Rentals shall not be abated through accident or unforeseen circumstances, or for any other reason, including without limitation, any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Property, commercial frustration of purpose, or failure of the Lessor to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Lease, it being the intention of the parties that the payments required by this Lease will be paid in full when due without any delay or diminution whatsoever, subject only to the special and limited nature of the Town's obligation to make payments hereunder as set forth in Section 6.01 above, and further subject to the Town's rights under Section 8.04 hereof. Notwithstanding any dispute between the Town and Lessor, the Town shall, during the Original Term and all Renewal Terms, make all payments of Rent and Additional Rentals when due and shall not withhold any Rent or Additional Rentals pending final resolution of such dispute (except to the extent permitted by Sections 7.02 and 8.04 hereof with respect to certain Additional Rentals), nor shall the Town assert any right of set-off or counterclaim against its obligation to make such payments required hereunder. No action or inaction on the part of the Lessor shall affect the Town's obligation to pay all Rent and Additional Rentals (except to the extent provided by Sections 7.02 and 8.04 hereof with respect to certain Additional Rentals), during the Lease Term.

Section 6.05. Expression of Town's Need for the Property. As of the date of this Lease, the Town declares its current need for the Property, that the leasing of the Property is beneficial to the Town, and that the Property is necessary and essential to the Town's purpose and operations. It is hereby declared to be the present intention and expectation of the Council that this Lease will be renewed annually until the Property is acquired by the Town pursuant to this Lease; but this declaration shall not be construed as contractually obligating or otherwise binding the Town or any Council following the end of the Original Term.

Section 6.06. Nonappropriation. In the event that the Council shall not specifically budget and appropriate, on or before the last day of each Fiscal Year, moneys to pay all Rent and the reasonably estimated Additional Rentals coming due for the next ensuing Fiscal Year as provided in Section 4.01

hereof and this Article, an Event of Nonappropriation shall be deemed to have occurred, subject, however, to each of the following provisions:

(a) The Lessor shall declare an Event of Nonappropriation on any earlier date on which the Lessor receives specific written notice from the Town that this Lease will be terminated.

(b) Absent such notice from the Town, the Lessor shall give written notice to the Town of any Event of Nonappropriation, on or before the fifth day of the next following Fiscal Year; but any failure of the Lessor to give such written notice shall not prevent the Lessor from declaring an Event of Nonappropriation or from taking any remedial action which would otherwise be available to the Lessor.

(c) The Lessor shall waive any Event of Nonappropriation which is cured by the Town within a reasonable time.

(d) The Lessor shall waive any Event of Nonappropriation which is cured by the Town, within ten days of the giving of notice by the Lessor as provided in (b) above, by inclusion in a duly enacted appropriation resolution, (i) by specific line item, amounts authorized and directed to be used to pay all Rent and (ii) sufficient amounts to pay reasonably estimated Additional Rentals coming due for such Fiscal Year.

In the event that during any Fiscal Year, any Additional Rentals shall become due which were not included in a duly enacted appropriation resolution then, in the event that moneys are not specifically budgeted and appropriated to pay such Additional Rentals within 45 days subsequent to the date upon which such Additional Rentals are due, an Event of Default under Section 13.01(c) shall be deemed to have occurred, upon notice by the Lessor to the Town to such effect (subject to waiver by the Lessor as hereinbefore provided).

Notwithstanding any provision to the contrary herein, if an Event of Nonappropriation occurs, the Town's rights of possession of the Property under this Lease shall terminate at the end of the last day of the Fiscal Year for which this Lease shall be in effect, and the Town shall not be obligated to make payment of the Rent, Additional Rentals or any other payments provided for herein which accrue after the end of the last day of the Fiscal Year for which this Lease shall be in effect; provided, however, that, subject to the limitations of Sections 6.01 and 13.03 hereof, the Town shall continue to be liable for Rent and Additional Rentals allocable to any period during which the Town shall continue to occupy, use or retain possession of the Property, beginning with the first day of the Fiscal Year in respect of which the Event of Nonappropriation occurs. The Town shall in all events vacate or surrender possession of the Property by the tenth Business Day of the Fiscal Year in respect of which the Event of Nonappropriation has occurred.

After the tenth Business Day of the Fiscal Year in respect of which an Event of Nonappropriation has occurred, the Lessor may proceed to exercise all or any Lease Remedies. All property, funds and rights acquired by the Lessor upon the termination of this Lease by reason of an Event of Nonappropriation as provided herein, less any moneys due and owing to the Lessor, shall be held by the Lessor.

ARTICLE VII

TITLE TO THE PROPERTY; LIMITATIONS ON ENCUMBRANCES

Section 7.01. Title to the Property. Title to the Property shall remain in the Lessor subject to this Lease.

Except as expressly set forth in this Lease , the Town shall have no right or interest in the Property or any additions and modifications thereto or replacements thereof.

Section 7.02. No Encumbrance, Mortgage or Pledge of Property. Except as may be permitted by this Lease, the Town shall not permit any mechanic's or other lien to remain against the Property; provided that, if the Town shall first notify the Lessor of the intention of the Town to do so, the Town may in good faith contest any mechanic's or other lien filed or established against the Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom. The Lessor will cooperate fully with the Town in any such contest, upon the request and at the expense of the Town. Lessor shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property. The Town and the Lessor shall promptly, at their own respective expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above which each shall respectively have created, incurred, or suffered to exist.

ARTICLE VIII

MAINTENANCE; TAXES; INSURANCE AND OTHER CHARGES

Section 8.01. Maintenance of the Property by the Town. The Town agrees that at all times during the Lease Term the Town will maintain, preserve and keep all portions of the Property or cause the Property to be maintained, preserved and kept, in good repair, working order and condition, and that the Town will from time to time make or cause to be made all necessary and proper repairs, except as otherwise provided in Sections 9.02 and 10.03 of this Lease. The Lessor shall not have any responsibility for such maintenance or repairs or for the making of any additions, modifications or replacements to the Property.

Section 8.02. Modification of the Property, Installation of Furnishings and Machinery of the Town. The Town shall have the privilege of making substitutions, additions, modifications and improvements to any portion of the Property, at its own cost and expense without prior notification to and approval by the Lessor; and the same shall become part of the Property, subject to this Lease and shall be included under the terms of this Lease; provided, however, that such substitutions, additions, modifications and improvements shall not in any way damage the Property or cause the Property to be used for purposes other than lawful governmental or proprietary functions of the Town (except to the extent of subleasing permitted under Section 12.01 hereof).

The Town may also, from time to time in its sole discretion and at its own expense, install machinery, equipment, and other tangible personal property in or on any Property. All such machinery, equipment, and other tangible personal property shall remain the sole property of the Town in which the Lessor shall have not any interest.

Section 8.03. Taxes, Other Governmental Charges and Utility Charges. In the event that the Property or any portion thereof shall, for any reason, be deemed subject to taxation, assessments or charges lawfully made by any governmental body, the Town shall pay the amount of all such taxes, assessments and governmental charges when due as Additional Rentals. The Town shall not allow any liens for taxes, assessments or governmental charges to exist with respect to the Property or any portion thereof (including, without limitation, any taxes levied upon the Property or any portion thereof which, if not paid, will become a charge on the rentals and receipts from the Property or any portion thereof, or any interest therein, including the interest of the Lessor), or the rentals and revenues derived therefrom or hereunder. The Town shall also pay as Additional Rentals, as the same respectively become due, all utility and other charges incurred in the maintenance and upkeep of the Property.

Section 8.04. Provisions Regarding Liability, Property and Worker's Compensation Insurance. Upon the delivery and acceptance of the Property as provided in this Lease, the Town shall, at its own expense, cause casualty and property insurance to be carried and maintained with respect to the Property in an amount equal to the lesser of the next succeeding Purchase Option Price or the maximum insurable value of the Property. The Town may, in its discretion, insure the Property under blanket insurance policies which insure not only the Property, but other property as well, as long as such blanket insurance policies otherwise comply with the requirements hereof.

Section 8.05. Granting of Easements. As long as no Event of Nonappropriation or Event of Default shall have happened and be continuing, the Lessor shall at any time or times, but only upon the request of the Town, grant easements, licenses, rights-of-way and other rights or privileges in the nature of easements with respect to any property or rights included in this Lease, free from this Lease and any security interest or other encumbrance created hereunder or thereunder, and the Lessor shall release existing easements, licenses, rights-of-way, and other rights and privileges with respect to such property or rights, with or without consideration, and shall execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other grant or privilege upon receipt of: (a) a copy of the instrument of grant or release; and (b) a written application signed by an Authorized Officer of the Town requesting such instrument and stating that such grant or release will not impair the economic value or effective use or interfere with the operation of the Property.

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 9.01. Damage, Destruction and Condemnation. If, during the Lease Term (a) the Property or any portion thereof shall be destroyed (in whole or in part), or damaged by fire or other casualty; or (b) title to, or the temporary or permanent use of, the Property or any portion thereof or the estate of the Town or the Lessor in the Property or any portion thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority; or (c) the title to or the use of all or any portion of the Property shall be lost by reason of a defect in title thereto; then the Lease shall terminate.

Section 9.02. Obligation of the Town to Repair and Replace the Property. The Town and, to the extent such Net Proceeds are within their control, the Lessor, shall cause the Net Proceeds of any insurance policies, performance bonds or condemnation awards to be deposited in a separate trust fund held by the Lessor. Unless the Town shall certify in writing to the Lessor that all of the Net Proceeds are to be used for the prompt repair, restoration, modification, improvement or replacement of the Property by the Town, such Net Proceeds shall be applied to the prompt payment of all Rent and Additional Rentals. Subject to the receipt of the certificate required by the preceding sentence, all Net Proceeds so deposited shall be applied to the prompt repair, restoration, modification, improvement or replacement of the Property by the Town upon receipt of requisitions acceptable to the Lessor signed by an Authorized Officer of the Town stating with respect to each payment to be made; (a) the requisition number; (b) the name and address of the person, firm or corporation to whom payment is due; (c) the amount to be paid; and (d) that each obligation mentioned therein has been properly incurred, is a proper charge against the separate trust fund and has not been the basis of any previous withdrawal and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation.

Section 9.03. Insufficiency of Net Proceeds. If the Net Proceeds (plus any amounts withheld from such Net Proceeds by reason of any deductible clause) shall be insufficient to pay in full the cost of

any repair, restoration, modification, improvement or replacement of the Property required under Section 9.02 of this Lease, the Town may elect to:

(a) complete the work or replace such Property (or portion thereof) with similar property of a value equal to or in excess of such Property or portion thereof and pay as Additional Rentals, to the extent amounts for Additional Rentals which have been specifically appropriated by the Town are available for payment of such cost, any cost in excess of the amount of the Net Proceeds, and the Town agrees that, if by reason of any such insufficiency of the Net Proceeds, the Town shall make any payments pursuant to the provisions of this Section 9.03(a), the Town shall not be entitled to any reimbursement therefor from the Lessor, nor shall the Town be entitled to any diminution of the Rent and Additional Rentals payable under Section 6.02 of this Lease; or

(b) apply the Net Proceeds to the payment of the Purchase Option Price in accordance with Article XI of this Lease. In the event of an insufficiency of the Net Proceeds for such purpose, the Town shall, subject to the limitations of Section 6.01 hereof, pay such amounts as may be necessary to equal that portion of the Purchase Option Price which is attributed to the Property for which the Net Proceeds have been received (as certified to the Lessor by the Town); and in the event the Net Proceeds shall exceed such portion of the Purchase Option Price, such excess shall be retained by the Town; or

(c) if the Town does not timely budget and appropriate sufficient funds to proceed under either (a) or (b) above, an Event of Nonappropriation will be deemed to have occurred and, subject to the Town's right to cure, the Lessor may pursue remedies available to it following an Event of Nonappropriation.

The above referenced election shall be made by the Town within 90 days of the occurrence of an event specified in Section 9.01 of this Lease.

If the Town elects to replace the Property with similar property pursuant to subparagraph (a) above, the Town shall give notice thereof to Lessor prior to such substitution.

Section 9.04. Cooperation of the Parties. The Town and Lessor shall cooperate in filing any proof of loss with respect to any insurance policy or performance bond covering the events described in Section 9.01 of this Lease and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Property or any portion thereof and in the enforcement of all warranties relating to the Property. In no event shall the Lessor voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim, performance or payment bond claim, prospective or pending condemnation proceeding, or any portion thereof without the written consent of the Town.

ARTICLE X

DISCLAIMER OF WARRANTIES; OTHER COVENANTS

Section 10.01. Town Responsible for Construction and Maintenance. The Town hereby acknowledges and declares that the Town is solely responsible for the use, construction, improvement, equipping, maintenance and operation of the Property. For the purpose of enabling the Town to discharge such responsibility, the Lessor constitutes and appoints the Town as its attorney in fact for the purpose of constructing, improving, equipping, maintaining and operating the Property, and asserting and enforcing, at the sole cost and expense of the Town, all constructor's or manufacturer's warranties and guaranties, express or implied, with respect to the Property, as well as any claims or rights the Lessor may have in respect of the Property against any manufacturer, supplier, contractor or other person.

Section 10.02. Further Assurances and Corrective Instruments. The Lessor and the Town agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property hereby leased or intended so to be, or for otherwise carrying out the intention hereof.

Section 10.03. Compliance With Requirements. During the Lease Term, the Town and the Lessor shall observe and comply promptly to the extent possible with all current and future orders of all courts having jurisdiction over the Property or any portion thereof, provided that either the Town or the Lessor, with notice to the other, may contest or appeal such orders so long as they are in compliance with such orders during the contest or appeal period, and all current and future requirements of all insurance companies writing policies covering the Property or any portion thereof.

Section 10.04. Immunity and Indemnification.

To the extent permitted by law, the Town shall indemnify the Lessor and its employees or agents against all claims arising from: (a) the conduct, management, operation or use of, or from any work or thing done on, the Property during the Lease Term; (b) any condition of the Property; and (c) any act of negligence of the Town or of any of its agents, contractors or employees or any violation of law by the Town or breach of any covenant or warranty by the Town hereunder. Notwithstanding any other provision herein to the contrary, the Town does not waive its protections afforded under the Colorado Governmental Immunity Act.

Section 10.05. Access To Property. The Town agrees that the Lessor and its authorized representatives shall have the right at all reasonable times to examine and inspect the Property. The Town further agrees that the Lessor and any such representative shall have such rights of access to the Property as may be reasonably necessary to cause the proper maintenance of the Property in the event of failure by the Town to perform its obligations under this Lease.

Section 10.06. Environmental Covenant. The Town shall not store, locate, generate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit or dispose of any Hazardous Substance in, upon, under, over or from the Property in violation of any Environmental Regulation, shall not permit any Hazardous Substance to be stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited, disposed of or to escape therein, thereupon, thereunder, thereover or therefrom in violation of any Environmental Regulation, shall cause all Hazardous Substances to be properly removed therefrom and properly disposed of in accordance with all applicable Environmental Regulations, shall not install or permit to be installed any underground storage tank therein or thereunder in violation of any Environmental Regulation and shall comply with all other Environmental Regulations which are applicable to the Property.

Subject to the limitations of Section 6.01 hereof and to the extent permitted by law, in the event any Hazardous Substance is found upon, under, over or from the Property in violation of any Environmental Regulation or if any lien or claim for lien in favor of any governmental entity or agency as a result of any release of any Hazardous Substance is threatened, the Town, at its sole cost and expense, shall, within ten days of such finding, deliver written notice thereof to the Lessor and shall promptly remove such Hazardous Substances and prevent the imposition of any liens against the Property for the cleanup of any Hazardous Materials. Such removal shall be conducted and completed in compliance with all applicable Environmental Regulations in accordance with the orders and directives of all federal, state and local governmental authorities.

Subject to the limitations of Section 6.01 hereof and to the extent permitted by law, the Town further agrees to reimburse the Lessor for any and all claims, demands, judgments, penalties, liabilities, costs, damages and expenses, including court costs and attorneys' fees directly or indirectly incurred by the Lessor in any action against or involving the Lessor, resulting from any breach of the foregoing covenants or the representations and warranties in Section 2.01(e) hereof, or from the discovery of any Hazardous Substance, in, upon, under or over, or emanating from, the Property.

The representations and warranties in Section 2.01(e) hereof and the covenants of this Section 10.06 shall be deemed to be for the benefit of the Lessor and any successors and assigns of the Lessor permitted hereunder.

ARTICLE XI

PURCHASE AND CONVEYANCE OF THE PROPERTY

Section 11.01. Purchase Option. The Town shall have the option to purchase the interest of the Lessor in the Property and terminate this Lease, but only if it is not then in default under this Lease. The Town may exercise its option on any date by complying with one of the conditions set forth in Section 11.02. The Town shall give the Lessor notice of its intention to exercise its option not less than 15 days in advance of the date of exercise. If the Town shall have given notice to the Lessor of its intention to purchase the Property, but shall not have deposited the amounts with the Lessor on the date specified in such notice, the Town shall continue to pay Rent as if no such notice had been given.

Section 11.02. Conveyance of the Property. The Lessor shall transfer and convey its interest in the Property to the Town in the manner provided for in Section 11.03 of this Lease; provided, however, that prior to such transfer and conveyance, either:

- (a) the Town shall have paid the then applicable Purchase Option Price; or
- (b) no Event of Default shall have occurred and be continuing, and the Town shall have paid all Rent set forth in Exhibit B hereto and all then current Additional Rentals required to be paid hereunder, in which case the Lessor shall transfer and convey the Property to the Town.

The Town is hereby granted the option to terminate this Lease and to purchase the interest of the Lessor in the Property upon payment by the Town of the then applicable Purchase Option Price. It is the intent of this Section to provide for and allow the purchase of the Property that is the subject of this Lease if the Town has fulfilled all payment obligations with respect hereto and is not then in default hereunder.

Section 11.03. Escrowed Release and Deed. In order to facilitate the enforcement by the Town of the obligation of the Lessor to convey its interest in the Property to the Town under the circumstances provided in Section 11.01 of this Lease, the Lessor shall deposit in escrow with the Escrow Agent, concurrently with the execution of this Lease, a Release and Termination of Lease Purchase Agreement (the "Release") in substantially the form attached as Exhibit C hereto and a Special Warranty Deed ("Conveyance Deed") in substantially the form attached as Exhibit D hereto. The Escrow Agent shall, upon the happening of an event described in Section 11.02 of this Lease, date and release the Release and the Conveyance Deed to the Town for recording. Upon recording by the Town, such Release and Conveyance Deed shall be binding on the Lessor, its successors, assigns, and transferees with respect to its interest in the Property. The Escrow Agent shall be under no obligation to release the Release and the Conveyance Deed prior to the time identified in this Section.

ARTICLE XII

ASSIGNMENT AND SUBLEASING BY TOWN

Section 12.01. Assignment and Subleasing. This Lease may not be assigned by the Town for any reason other than to a successor by operation of law. However, the Property may be subleased to any other person or entity, as a whole or in part, by the Town, but without the necessity of obtaining the consent of the Lessor, subject, however, to each of the following conditions:

- (a) this Lease, and the obligations of the Town hereunder, shall, at all times during the Lease Term remain obligations of the Town subject to Section 6.01 of this Lease, and the Town shall maintain its obligations to the Lessor, notwithstanding any sublease; and
- (b) no sublease by the Town shall violate the Constitution or laws of the State.

ARTICLE XIII

EVENTS OF DEFAULT AND REMEDIES

Section 13.01. Events of Default Defined. Any one of the following shall be an “Event of Default” under this Lease:

- (a) failure by the Town to pay any Rent or Additional Rentals during the Lease Term within five days after the same become due;
- (b) failure by the Town to vacate or surrender possession of the Property by the tenth Business Day of the Fiscal Year in respect of which an Event of Nonappropriation has occurred;
- (c) failure by the Town to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder or under any certificates executed and delivered by the Town in connection with the execution and delivery of this Lease, other than as referred to in (a) or (b), for a period of 60 days after written notice, specifying such failure and requesting that it be remedied shall be given to the Town by the Lessor, unless the Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period, the Lessor shall not withhold its consent to an extension of such time if corrective action is instituted by the Town within the applicable period and diligently pursued until the default is corrected. Such consent by the Lessor shall not be unreasonably withheld; or
- (d) the Town (i) files a petition or application seeking reorganization, arrangement under federal bankruptcy law, or other debtor relief under the laws of the State or (ii) is the subject of such a petition or application which is not contested by the Town, or otherwise dismissed or discharged, within 30 days.

The foregoing provisions of this Section 13.01 are subject to the following limitations: (a) the Town shall be obligated to pay the Rent and Additional Rentals only during the Original Term or current Renewal Term, except as otherwise expressly provided in this Lease; and (b) if, by reason of Force Majeure, the Town shall be unable in whole or in part to carry out any agreement on its part herein contained, other than the obligations on the part of the Town contained in Article VI of this Lease, the Town shall not be deemed in default during the continuance of such inability. The Town agrees, however, to remedy, as promptly as legally and reasonably possible, the cause or causes preventing the Town from carrying out its agreement;

provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Town.

Section 13.02. Remedies on Default. Whenever any Event of Default referred to in Section 13.01 of this Lease shall have happened and be continuing, the Lessor shall notify the Escrow Agent and, without any further demand or notice, take one or any combination of the following remedial steps:

(a) The Lessor may terminate the Lease Term and give notice to the Town to vacate and surrender possession of the Property within ten Business Days of such notice.

(b) The Lessor may proceed to foreclose through the courts on or otherwise sell, trade-in, repossess or liquidate the Town's leasehold interest in the Property, or any part thereof in any lawful manner; provided, however, that the Lessor may not recover from the Town any deficiency which may exist following the liquidation of the Town's leasehold interest in the Property in excess of Rent and Additional Rentals for the then current Fiscal Year and in excess of amounts payable under subparagraph (d) of this Section 13.02.

(c) The Lessor may lease or sublease the Property or any portion thereof or sell any interest the Lessor has in the Property.

(d) The Lessor may recover from the Town the portion of Rent and Additional Rentals which would otherwise have been payable hereunder, during any period in which the Town continues to occupy, use or possess the Property.

Section 13.03. Limitations on Remedies. A judgment requiring a payment of money may be entered against the Town by reason of an Event of Default only as to the Town's liabilities described in paragraph (d) of Section 13.02 of this Lease. A judgment requiring a payment of money may be entered against the Town by reason of an Event of Nonappropriation only to the extent that the Town fails to vacate and surrender possession of the Property as required by Section 6.06 of this Lease, and only as to the liabilities described in paragraph (d) of Section 13.02 of this Lease.

Section 13.04. No Remedy Exclusive. Subject to Section 13.03 hereof, no remedy herein conferred upon or reserved to the Lessor is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lessor to exercise any remedy reserved in this Article XIII, it shall not be necessary to give any notice, other than such notice as may be required in this Article XIV.

Section 13.05. Waivers. The Lessor may waive any Event of Default under this Lease and its consequences. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 13.06. Agreement to Pay Attorneys' Fees and Expenses. To the extent permitted by law and subject to the provisions of Section 6.01 hereof, in the event that either party hereto shall default under any of the provisions hereof and the nondefaulting party shall employ attorneys or incur other expenses for the collection of Rent and Additional Rentals, or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the

defaulting party agrees that it shall on demand therefor pay to the nondefaulting party the fees of such attorneys and such other expenses so incurred by the nondefaulting party, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction.

ARTICLE XIV

MISCELLANEOUS

Section 14.01. Sovereign Powers of Town. Nothing in this Lease shall be construed as diminishing, delegating, or otherwise restricting any of the sovereign powers of the Town. Nothing in this Lease shall be construed to require the Town to occupy and operate the Property other than as lessee, or to require the Town to exercise its right to purchase the Property as provided in Article XI hereof.

Section 14.02. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified or registered mail, postage prepaid, addressed as follows: if to the Town of Pagosa Springs, Colorado, P.O. Box 1859, Pagosa Springs, Colorado 81147, Attention: Town Manager, with a copy to the Town Attorney; if to the Lessor, Pagosa Springs Chamber of Commerce, Attention: President, P.O. Box 787 Pagosa Springs, CO 81147. The Town and the Lessor may, by written notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 14.03. Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the Lessor and the Town and their respective successors and assigns, subject, however, to the limitations contained in Article XII and Section 14.05 of this Lease.

Section 14.04. Amendments, Changes and Modifications. Except as otherwise provided in this Lease, this Lease may not be effectively amended, changed, modified or altered without the written consent of the parties hereto.

Section 14.05. Memorandum of Lease Purchase. The Town and Lessor shall execute the Memorandum of Lease Purchase attached hereto as Exhibit E and the Town may cause the same to be recorded in the official records for Archuleta County, Colorado. The Town shall pay the cost of recordation.

Section 14.06. No Assignment by Lessor. The Lessor agrees that it shall not assign or transfer this Lease or any interest herein.

Section 14.07. Net Lease. This Lease shall be deemed and construed to be a "triple net lease," and the Town shall, subject to Section 6.01 hereof, pay absolutely net during the Lease Term, the Rent, Additional Rentals and all other payments required hereunder, free of any deductions, and without abatement, deduction or setoff (other than credits against Rent expressly provided for in this Lease).

Section 14.08. Payments Due on Holidays. If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Lease, shall be a day other than a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day, with the same force and effect as if done on the nominal date provided in this Lease.

Section 14.09. Severability. In the event that any provision of this Lease, other than the requirement of the Town to pay Rent in accordance with Section 6.01 and the requirement of the Lessor to provide quiet enjoyment of the Property and to convey the Property to the Town under the conditions

set forth in Article XI of this Lease, and the requirement that the obligation of the Town to pay Rent, Additional Rentals and other amounts under this Lease are subject to the limitations of Section 6.01 hereof, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 14.10. Execution in Counterparts. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14.11. Applicable Law/Venue. This Lease shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any dispute concerning this Lease shall be in the District Court for Archuleta County.

Section 14.12. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

[Signature Page to Lease Purchase Agreement follows]

WITNESS the due execution hereof as of the day and the year first mentioned above.

PAGOSA SPRINGS CHAMBER OF COMMERCE,
as Lessor

By _____

STATE OF COLORADO)
) ss.
COUNTY OF ARCHULETA)

This instrument was acknowledged before me this ____ day of _____, 2014, by
_____, as _____ the Pagosa Springs Chamber of
Commerce, a Colorado non-profit corporation.

Witness my hand and official seal.

[SEAL]

Notary Public

My Commission Expires:

[SEAL]

TOWN OF PAGOSA SPRINGS, COLORADO,
as Lessee

Attest:

By _____
April Hessman, Town Clerk

By _____
Don Volger, Mayor

STATE OF COLORADO)
) ss.
COUNTY OF ARCHULETA)

This instrument was acknowledged before me this ____ day of _____, 2014, by Don Volger, as Mayor of the Town of Pagosa Springs, Colorado, as attested by April Hessman, as Town Clerk of said Town.

Witness my hand and official seal.

[SEAL]

Notary Public for the State of Colorado

My Commission Expires:

EXHIBIT A

DESCRIPTION OF PROPERTY

105 Hot Springs Boulevard, Pagosa Springs, Colorado and further described as that portion of San Juan Street in the Town of Pagosa Springs, Archuleta County, Colorado, lying West of Hot Springs Boulevard (formerly known as Light Plant Road) and extending to the center line of the San Juan River, as vacated by the Board of Trustees of the Town of Pagosa Springs, Colorado by Ordinance No. 421 recorded January 5, 1990 as Reception No. 168303 in Book 278 at Page 114.

EXHIBIT C
FORM OF RELEASE

[to be held in escrow]

After Recording, Return To:
Town Manager
Town of Pagosa Springs
PO BOX 1859
Pagosa Springs, Colorado 81147

RELEASE AND TERMINATION OF LEASE PURCHASE AGREEMENT

WHEREAS, the Town of Pagosa Springs, Colorado and Pagosa Springs Chamber of Commerce, entered into that certain Lease Purchase Agreement dated as of _____ and recorded on _____ at Reception No. _____ in the public records of Archuleta County, Colorado (the "Lease Purchase Agreement"); and

WHEREAS, all amounts due under the Lease Purchase Agreement have been paid in full.

NOW, THEREFORE, the Lease Purchase Agreement are hereby terminated and any security interest of Pagosa Springs Chamber of Commerce, its successors, assigns, and transferees in the property described in the Lease Purchase Agreement is hereby released.

[Signature Page Follows]

IN WITNESS WHEREOF, this Release and Termination of Lease Purchase Agreement has been executed on the date written below.

Pagosa Springs Chamber of Commerce,
a Colorado non-profit corporation

By: _____
Name: _____
Title: _____
Date: _____

STATE OF COLORADO)
)
COUNTY OF ARCHULETA) ss.

Subscribed and sworn to before me this ____ day of _____, 2014.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT D
FORM OF SPECIAL WARRANTY DEED
[to be held in escrow]

EXHIBIT E
MEMORANDUM OF LEASE PURCHASE

After Recording, Return To:
Town Manager
Town of Pagosa Springs
PO BOX 1859
Pagosa Springs, Colorado 81147

MEMORANDUM OF LEASE PURCHASE

This **MEMORANDUM OF LEASE PURCHASE** (“**Memorandum**”) is made as of the ___ day of _____ 2014, by and between the TOWN OF PAGOSA SPRINGS CHAMBER OF COMMERCE, a Colorado nonprofit corporation (the “**Landlord**”) and the Town of Pagosa Springs, Colorado home-rule municipality (the “**Tenant**”).

RECITALS

A. Landlord is the owner of the certain real property located in the County of Archuleta, State of Colorado, which is more particularly described on Exhibit I attached hereto and incorporated herein by this reference (the “**Property**”);

B. Landlord and Tenant entered into a certain Lease Purchase (“**Lease**”) on the ___ day of _____ 2014, for the purpose of leasing the Property to Tenant with an option to purchase and right of first refusal. All of the foregoing is set forth in the Lease and, among other things, outlines the terms under which Tenant may purchase the Property from Landlord; and,

C. Under the terms of the Lease, the parties have agreed that this Memorandum may be recorded in the real property records for Archuleta County, Colorado.

In consideration of the Recitals set forth above, together with other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

MEMORANDUM

1. Demise. The Landlord hereby demises and leases the Property to the Tenant, and the Tenant hereby accepts such demise and lease, to have and to hold for the “**Term**” (as defined below) and upon the terms and conditions set forth in the Lease.

2. Term. The Term of the Lease and of this Memorandum shall commence on _____, 2014 and shall continue until terminated in accordance with the provisions thereof.

3. Inquiry Address. All inquiries concerning the Lease should be sent to the following addresses:

If to Tenant:

Town of Pagosa Springs
Attn: Town Manager
PO Box Box 1859
Pagosa Springs, CO 81147

With copy to:

Robert G. Cole
Collins Cockrel & Cole
390 Union Blvd.
Denver, CO 80226 Keith King

If to Landlord:

Pagosa Springs Chamber of Commerce
Attn: President
PO Box 787
Pagosa Springs, CO 81147

With a copy to:

4. Landlord's Obligations. During the Lease Term, Landlord agrees to not permit any new mortgages, deeds of trust or liens to be recorded against the Property.

5. Tenant's Obligations. During the Lease Term, Tenant agrees to not permit any mortgages, deeds of trust or liens to be recorded against the Property.

6. Other Provisions. In addition to those terms referred to above, the Lease contains numerous other terms, covenants, conditions, and provisions which affect the Property, and notice is hereby given that reference should be had to the Lease directly with respect to the details of such other terms, covenants, conditions, and provisions. This Memorandum does not alter, amend, modify, or change the Lease in any respect and is executed by the parties hereto for the purpose of recordation in the real property records of the county in which the Property is located to give notice of the Lease. In the event of any conflicts between the provisions of this Memorandum and those of the Lease, the provisions of the Lease shall control.

7. Counterparts. This Memorandum may be executed in any number of counterparts, each of which shall be an original, and all of such counterparts when together shall constitute but one and the same instrument.

PAGOSA SPRINGS CHAMBER OF COMMERCE,
as Landlord

By _____

STATE OF COLORADO)
) ss.
COUNTY OF ARCHULETA)

This Memorandum of Lease Purchase was acknowledged before me this ____ day of _____, 2014, by _____, as _____ the Pagosa Springs Chamber of Commerce, a Colorado nonprofit corporation.

Witness my hand and official seal.

[SEAL]

Notary Public

My Commission Expires:

[SEAL]

TOWN OF PAGOSA SPRINGS, COLORADO,
as Tenant

Attest:

By _____
April Hessman, Town Clerk

By _____
Don Volger, Mayor

STATE OF COLORADO)
) ss.
COUNTY OF ARCHULETA)

This Memorandum of Lease Purchase was acknowledged before me this ____ day of _____, 2014, by Don Volger, as Mayor of the Town of Pagosa Springs, Colorado, as attested by April Hessman, as Town Clerk of said Town.

Witness my hand and official seal.

[SEAL]

Notary Public for the State of Colorado

My Commission Expires:

EXHIBIT 1

PROPERTY DESCRIPTION

105 Hot Springs Boulevard, Pagosa Springs, Colorado and further described as that portion of San Juan Street in the Town of Pagosa Springs, Archuleta County, Colorado, lying West of Hot Springs Boulevard (formerly known as Light Plant Road) and extending to the center line of the San Juan River, as vacated by the Board of Trustees of the Town of Pagosa Springs, Colorado by Ordinance No. 421 recorded January 5, 1990 as Reception No. 168303 in Book 278 at Page 114.



AGENDA DOCUMENTATION

OLD BUSINESS: VIII.2

PAGOSA SPRINGS TOWN COUNCIL
JULY 1, 2014

FROM: JAMES DICKHOFF, PLANNING DEPARTMENT

PROJECT: LEASE AGREEMENT FOR THE CHAMBER OF COMMERCE TO LEASE 1,017 SQUARE FEET OF THE VISITOR'S CENTER AFTER THE TOWN APPROVES SECOND READING OF ORDINANCE NO. 812
ACTION: DISCUSSION AND POSSIBLE ACTION

PURPOSE/BACKGROUND

On June 19, 2014, Town Council approved the first reading of Ordinance No. 812, authorizing the Town to enter into a Lease Purchase Agreement for the Chamber of Commerce property at 105 Hot Springs Blvd. TC also directed staff to bring a future budget amendment for the lease purchase agreement to TC, and approved, in concept, a lease back arrangement for the chamber to lease space in the Visitor's Center Building for a period of time.

The Chamber Lease Agreement includes:

1. Term of six (6) months with the opportunity to renew for an additional six (6) months upon notice to Town and approval by Council. The term should not be dated prior to the date of the closing of the Lease with Option to Purchase closing providing the Town with possession of the property.
2. Rent of \$1,169.55 per month. This is based on a rate of \$1.15 per square foot with a total rental space of 1,017 square feet.
3. The Chamber is responsible for fifty percent (50%) of the electric, natural gas and internet utilities. The Town is responsible for the other fifty percent.
4. The Chamber will pay 5/6ths of telephone charges during the lease.
5. The Town is responsible for all other charges and expenses including building and property maintenance, property insurance, property taxes, sewer and water, etc.
6. The Chamber can terminate the lease on fourteen (14) days written notice to the Town. The Town can terminate the lease for cause during the initial or renewal term of the lease.
7. If the Chamber does not renew the lease and/or does not obtain the approval of Town Council to renew the lease, the Chamber may still "holdover," i.e., stay past the lease term. Upon holding over, the lease converts to a month-to-month tenancy. The Town may terminate the month-to-month tenancy by providing one (1) months written notice to the Chamber.
8. The Chamber will be required to obtain sufficient insurance based on the limits in the Colorado Governmental Immunity Act, i.e., \$350,000.00 per occurrence and \$990,000.00 in the aggregate.

The Chamber Board has received the DRAFT Lease Agreement for their review. Results of such review will be presented at the July 1, 2014 TC meeting. The only initial comment pertains to allowing the Chamber "The option to extend month to month lease for up to 1 year after the first 6 month lease period", as directed by TC.

ATTACHMENT(S):

- ~ Memo from Bob Cloe regarding Lease Back Agreement.
- ~ DRAFT Lease Agreement.

FISCAL IMPACT

The fiscal impact of the Lease Back Agreement includes:

- ~ \$1,169.55 revenue per month.
- ~ Reimbursement of 50% of the Electric/Natural Gas/Internet utilities.

RECOMMENDATION

It is recommended that Town Council consider the information and facts presented by all parties and provide a motion and vote on this matter. Below are a four alternative actions for TC's consideration.

- 1) **APPROVE the proposed Lease Agreement for the Chamber of Commerce to lease back 1,017 square feet of space in the Visitors Center building with the terms as described in such agreement, amending Section 2 of the agreement to allow the Chamber two additional 6 month terms.**
- 2) APPROVE the proposed Lease Agreement for the Chamber of Commerce to Lease Back 1017 square feet of the Visitors Center building with the terms as described in such agreement, with no revisions to the agreement.
- 3) APPROVE the proposed Lease Agreement for the Chamber of Commerce to Lease Back 1017 square feet of the Visitors Center building with the terms as described in such agreement, with the following revisions to the agreement (to be determined at the TC meeting).....
- 4) DENY the proposed Lease Agreement as presented.

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into this ____ day of _____, 2014, by and between the Town of Pagosa Springs ("Landlord"), and the Pagosa Springs Chamber of Commerce ("Tenant"). Landlord and Tenant are singularly referred to as "Party" and collectively referred to as the "Parties."

The Landlord has leased from Tenant, with the option to purchase, certain real property currently occupied by Tenant, and the Parties wish to enter into this Lease to allow for Tenant's continued occupancy of the property while transitioning to another location. For and in consideration of the mutual covenants hereinafter contained, and each act performed hereunder by either of the Parties, Landlord and Tenant agree as follows

1. Premises. Landlord leases to Tenant and Tenant leases from Landlord office and meeting space in the building located at 105 Hot Springs Boulevard, Pagosa Springs, Colorado, 81147, consisting of approximately 672 square feet of office space and 345 square feet for a total of 1,017 square feet (the "Premises").
2. Term. The term of this Lease shall be six (6) months, commencing at 12:01 a.m. on the ____ day of _____, 2014 ("Initial Term"). The Lease may be renewed for one (1) additional six (6) month term ("Renewal Term") upon submitting a request to the Town thirty (30) days prior to the expiration of the Initial Term and upon approval of Town Council, which approval will not be unreasonably withheld.
3. Rent. As rent, Tenant will pay the sum of \$1.15 per square foot (\$1,169.55) per month payable in advance on the first day of each and every month.
4. Use. Tenant intends to use and occupy the Premises for its business operations.
5. Tenant Maintenance. Tenant agrees that it will keep the Premises in good order and condition and will, at the expiration or other termination of the Lease, surrender and deliver up the same in like condition as the same now is or shall be at the commencement of the Initial Term hereof subject to ordinary wear and tear and damage by the elements, fire, and other unavoidable casualty.
6. Landlord Maintenance. Landlord agrees that it is responsible for all repairs and maintenance of the Premises and the property on which the building is located including without limitation, the structure, exterior, roof, HVAC systems, plumbing, electrical, landscaping, snow removal, lighting and parking area.
7. Use of Common Areas. Tenant and customers and agents of Tenant shall be entitled to the nonexclusive use in common with others of any driveways, sidewalks, footways and parking areas.
8. Subletting. Tenant is not permitted to sublet the Premises or any part thereof.
9. Landlord Access. Tenant further agrees that it will be sharing the occupation of the Premises with Landlord and that Landlord, its officials, agents or employees are permitted to enter the Premises without additional notice to Tenant.
10. Prohibited Uses. Tenant will not use or permit the demised Premises, any part thereof, or Landlord's property in the vicinity of Premises to be used for any disorderly, unlawful, or extra hazardous purpose or for any purpose other than hereinbefore specified and will not manufacture any commodity

therein. This provision shall require Tenant to control and be responsible for the conduct of Tenant's customers, patrons, or clients while said persons are in or about the Premises.

11. **Damage to Premises.** All injury to the Premises or the building of which they are a part caused by Tenant its agents, servants, employees, and visitors shall be repaired by Tenant at its sole expense. In the event that Tenant shall fail to do so, Landlord shall have the right to make such necessary repairs, alterations, and replacements (structural, nonstructural, or otherwise), and any charge or cost so incurred by Landlord shall be paid by Tenant within twenty (20) days thereafter. This provision shall be construed as an additional remedy granted to Landlord and not in limitation of any other rights and remedies that Landlord has or may have in said circumstances.

12. **No Partnership.** Landlord assumes no liability or responsibility whatsoever with respect to the conduct and operation of the business to be conducted in the Premises. Landlord shall not be liable for any accident to or injury to any person or persons or property in or about the Premises that are caused by the conduct and operation of said business or by virtue of equipment or property of Tenant in said Premises.

13. **Utility and Other Charges.**

(a) Tenant covenants and agrees to pay within ten (10) days of being billed by the Landlord: (a) fifty percent (50%) of all charges for electric, natural gas and internet utilities; and (b) five-sixths (5/6th) of all telephone utility charges.

(b) All other utilities and maintenance costs shall be the responsibility of the Landlord including, but not limited to, property taxes, property insurance, trash collection, and water and sewer charges.

(c) Should Tenant desire cleaning services for the Premises it shall give written notice to Landlord specifying the frequency, and shall reimburse the Landlord at a rate of twenty-five dollars (\$25) per hour. Cleaning services which shall be provided by the Landlord or its cleaning contractor, in a similar fashion provided to the remainder of the property.

14. **Default.** It is agreed that if Tenant shall fail to pay the rent or any utility or other charge at the time the same shall become due and payable or if Tenant shall violate or fail or neglect to keep and perform any of the covenants, conditions, and agreements herein contained on the part of Tenant to be kept and performed or if the demised Premises shall become vacant or deserted, then, and in each and every such event from thenceforth and at all times thereafter, at the option of Landlord, Tenant's right of possession shall thereupon cease and terminate, and Landlord shall be entitled to the possession of the Premises and to re-enter the same without demand of rent or demand of possession of said Premises and may forthwith proceed to recover possession of the Premises by process of law.

15. **No Trial by Jury.** Landlord and Tenant waive any right either may have to trial by jury in any action arising under this Lease or pertaining to the Premises.

16. **Insurance.**

(a) Tenant shall maintain with respect to the leased Premises general liability insurance with minimum limit of \$350,000 per person per occurrence and \$990,000 per occurrence in the aggregate or in such other amounts as provided under the Colorado Governmental Immunity Act, 24-10-101 *et seq.* Tenant shall name Landlord as an additional named insured. Tenant shall deliver a certificate of such insurance to Landlord upon the commencement of the Initial Term of this Lease and continuing

evidence of such coverage as so requested by Landlord. Such insurance policy shall provide that it cannot be cancelled without at least thirty (30) days' prior notice to Landlord. Landlord may but is not obligated to pay any premium not timely paid by Tenant or perform or cause to be performed any acts that are required by the company issuing the insurance policy. Any payment made by Landlord and the cost of performing or causing to be performed any acts that are required by the insurance carrier shall become immediately due and owing from Tenant to Landlord as additional rent and shall be collectible as such.

(b) Landlord shall maintain property insurance in amounts sufficient to protect its interests with such amounts to be determined in its sole discretion. Property insurance maintained by Landlord will not cover Tenant's personal property and any such losses incurred by Tenant are its sole responsibility.

17. **Casualty.** If the Premises shall be so damaged by fire or other casualty as to be untenantable, then, unless said repair begins within twenty (20) days thereafter, either Party hereto, upon written notice to the other Party given at any time following the expiration of twenty (20) days after said fire or other major casualty, may terminate this Lease.

18. **Successors and Assigns.** It is agreed that all rights, remedies, and liabilities herein given to or imposed on either of the Parties hereto shall extend to their respective successors, and assigns.

19. **Mechanic's Liens.** Tenant will not permit any mechanic's lien or liens to be placed on the Premises or any improvement thereof and agrees, if any such lien be filed on account of the acts of Tenant, promptly to pay the same. In the event Tenant fails to pay any such lien, it may be paid by Landlord and charged to Tenant as additional rent hereunder.

20. **Holdover Tenancy.** If Tenant shall continue to remain in the Premises after the expiration of the Initial Term or Renewal Term of this Lease, Tenant shall, by virtue of this Lease, become a tenant by the month at the same rental rate as the last monthly rental installment having been paid or payable by Tenant prior to the expiration of this Lease.

21. **Termination.**

(a) **By Tenant.** Tenant, in its sole discretion, may terminate this Lease at the end of any month upon fourteen (14) days prior written notice to Landlord without any additional fees or rents payable to Landlord beyond the date of termination. Tenant shall be responsible for all rent and other charges through the date of termination.

(b) **By Landlord.** If a month-to-month tenancy results from Tenant's holding over, as described in Paragraph 20, Landlord may terminate this lease upon providing Tenant with one (1) month's prior written notice of the same.

22. **Entire Agreement.** This Lease contains the entire and only agreement between the Parties, and no oral statements or representations or prior written matter not contained or referred to in this instrument shall have any force or effect. This Lease shall not be modified in any way except by a writing subscribed by both Parties hereto. The failure of Landlord or Tenant to insist on strict performance by the other of any of the covenants or conditions of this Lease in any one or more instances shall not be construed as a waiver of relinquishment for the future of any such covenants or conditions, but the same shall be and remain in full force and effect. No waiver of any provision of this Lease shall be deemed to have been made unless in writing and signed by the Party to be charged therewith.

23. Law. This Lease and all amendments thereof shall be governed and construed in accordance with the laws of the State of Colorado.

24. Notices. All notices required or desired to be given hereunder by either Party to the other shall be given by certified or registered mail. Notices to the respective Parties shall be addressed as follows:

To Landlord:
Town of Pagosa Springs
Attention: Town Manager
PO Box 1859
551 Hot Springs Blvd.
Pagosa Springs, CO 81147

With Copy To:
Collins Cockrel & Cole
Attn: Robert G. Cole
390 Union Boulevard, Suite 400
Denver, CO 80228

To Tenant:
Pagosa Springs Chamber of Commerce
Attention: President
P.O. Box 787
Pagosa Springs, CO 81147

Either Party may, by like written notice, designate a new address to which said notices shall be directed.

25. Headings. All headings preceding the text of the paragraphs of this Lease are inserted solely for convenience of reference, and none of them shall constitute a part of this Lease or affect its meaning, construction, or effect.

26. Interpretation. Interpretation based on drafting the terms of the Lease shall not be interpreted in favor of or against either Party based on who drafted the document.

27. Indemnification. To the fullest extent permitted by law, Tenant shall indemnify and hold harmless Landlord, its officials, contractors and employees and any of them from and against all claims, losses, liabilities, damages and costs (including all attorney fees) which are incurred as a result of Tenant's use of the Premises whether any such loss or liability was caused by the negligence of Tenant, its agents, employees, customers or members. Landlord shall not be liable for any damage or injury to Tenant or any other person or to any property located or occurring on the Premises, or any part thereof, or in common areas thereof, unless such damage is the proximate result of the unlawful act of Landlord, its agents or its employees and Landlord is not otherwise immune from liability under the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S.

28. Annual Appropriation. Pursuant to Article X, Section 20 of the Colorado Constitution, Landlord's obligations hereunder are subject to the annual appropriation of funds necessary for the performance thereof, which appropriations will be made in the sole discretion of the Town Council of the Town of Pagosa Springs. In the event that sufficient funds for the obligations contemplated in this Lease are not made, such event shall trigger termination.

29. Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original, and all of such counterparts when together shall constitute but one and the same instrument.

30. Subject to Lease Purchase Agreement. Notwithstanding any other provision to the contrary herein, this Lease is subject to the terms of, including termination and expiration of, the Lease Purchase Agreement between the Tenant as Lessor and the Landlord as Lessee, associated with the property of which the Premises is a portion.

IN WITNESS WHEREOF, Landlord and Tenant have hereunto set their hands and seals all as of the day and year first written above.

LANDLORD:
TOWN OF PAGOSA SPRINGS, by and through its
Town Council

By: _____
Don Volger, Mayor

Attest:

April Hessman, Town Clerk

TENANT:
PAGOSA SPRINGS CHAMBER OF COMMERCE

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF ARCHULETA)

Subscribed and sworn to before me by _____ as _____ of the
Pagosa Springs Chamber of Commerce this _____ day of _____, 2014.

Witness my hand and official seal.

My commission expires: _____

Notary Public



AGENDA DOCUMENTATION

OLD BUSINESS: VIII.3

PAGOSA SPRINGS TOWN COUNCIL

JULY 1, 2014

FROM: JAMES DICKHOFF, PLANNING DEPARTMENT

PROJECT: 6TH STREET PEDESTRIAN BRIDGE AND RAMP STRUCTURE OPTIONS

ACTION: DISCUSSION AND POSSIBLE ACTION

PURPOSE/BACKGROUND

On May 22, 2014, Town Council had considered the Bridge design for the new 6th Street Pedestrian Bridge. The project had been previously approved by Town Council securing Town funding in addition to receiving \$242,519.07 in GOCO grant funds. The total estimated budget for the project is \$734,000.00. For the record, the GOCO Board has officially confirmed the \$242,519.07 grant award on June 20, 2014.

On May 22, 2014, Town Council was given information to consider 4 different bridge styles/widths, with varying pricing. Given the reduction in GOCO funding, TC directed staff to order the same bridge style and width as our other Town Pedestrian Bridges. Staff initiated the bridge order with BIG R Bridge out of Greeley Colorado, the same manufacturer of the town's two existing pedestrian bridges, for the same style of bridge that the town has now. Staff was alerted the following week regarding a discrepancy with the bridge quote that was considered by TC, was actually for the previously bridge design the town initiated in early 2012, which at that time was a trestle style bridge with a 7 foot tall top cord. BIG R then provided a quote for the TC approved bridge style that was \$21,000 higher than that originally conveyed to TC by staff. Staff reported this to Town Council on June 19th, and was requested to include on the July 1 TC agenda and provide more information. **Since then, Staff was able to negotiate a reduction of the \$21,000 increased cost, to just \$2,100 over the original budgeted amount.**

The design committee working on the project has considered the exterior look of the bridge and ramp structures, and have a few exterior renderings to consider. This committee has also been apprised of the quote vs design discrepancy, and have provide their recommendation to keep the new bridge look the same as the other Town Pedestrian bridges for consistency. **This committee is seeking input and direction from Town Council regarding the exterior visual treatments of the ramp structures and railings. Staff will present Ramp Structure Visual options at the Town Council meeting.**

To ensure final plans are completed in time to construct the project in 2014, we need to make a final determination on a bridge design as soon as possible to allow Davis Engineering to complete the Final project plans and ready the project for advertising the Request For Contractor Bids. A grand opening of the bridge could occur by the end of 2014 with landscaping finished in early 2015.

Bridge Option #1: \$140,000.00, Originally Budgeted and Designed Trestle Style Bridge:

130 long bridge with 8 foot wide wood travel deck with 48"-54" high railings.

Same bridge design as existing Town Pedestrian Bridges except for the railing height.

No cost increase for Option #1.

Original budgeted amount of \$734,000 used as base point for price increases below

Bridge Option #2: Same design style as existing Town Pedestrian Bridges:

130 long bridge with 8 foot wide wood travel deck with 54" high Top Cord and railing.

Same bridge design and railing height as existing Centennial Pedestrian Bridge.

Estimated Bridge Cost: \$161,000.00,

Estimated bridge ramp and abutment cost over original budget: \$0.

Estimated Total increase over original budget: \$2,100.00

Bridge Option #3: Same design style as existing Town Pedestrian Bridges with 10' wide travel deck.

130 long bridge with 10 foot wide wood travel deck with 54" high railings.

Same bridge as existing Town Pedestrian Bridges except for the railing height and deck width. **Estimated Bridge Cost: \$148,000.00**

Estimated bridge ramp and abutment cost over original budget: \$35,000.

Estimated Total increase over original budget: \$43,000.00

Bridge Option #4: Modified Bowstring Bridge with 8' wide travel deck.

130 long with 8 foot wide wood travel deck with 48" high railings and mid-span observation deck with 48" high railings.

Revised bridge ramp and abutment cost over original budget:

Estimated Bridge Cost: \$155,000.00.

Estimated bridge ramp and abutment cost over original budget: \$40,000.

Estimated Total increase over original budget: \$55,000.00

Option #5: Modified Bowstring Bridge with 10' wide travel deck.

130 long with 10 foot wide wood travel deck with 48" high railings and mid-span observation deck with 48" high railings.

Estimated Bridge Cost: \$163,000.00

Estimated bridge ramp and abutment cost over original budget: \$40,000.

Estimated Total increase over original budget: \$63,000.00

ATTACHMENT(S):

Power point of bridge design styles as well as options for exterior surface treatment designs for the bridge ramp structure will be presented at the TC meeting.

FISCAL IMPACT

The following are budget increases for each option presented above:

Option # 1: Originally budgeted bridge style, \$0 dollar increase over original budget.

Option #2: Total increase over original budget: \$2,100.00

Option #3: Total increase over original budget: \$43,000.00

Option #4: Total increase over original budget: \$55,000.00

Option #5: Total increase over original budget: \$63,000.00

RECOMMENDATION

It is the recommendation of the Planning Department Director that Town Council discuss the bridge options reviewed above and confirm direction for staff regarding the pedestrian bridge design and possible additional funding.

Staff recommends TC consider their original bridge selection at a total of \$2,100 increase over the original budgeted bridge expense.

Additionally, it is recommended Town Council consider the ramp structure options presented at the meeting and provide direction to staff on the preference of options for the visual appearance of the ramp structure.

- 1) **Approve option #2, directing staff to confirm the bridge order with Big R Bridge and further direct staff to bring a 2014 capital budget amendment to Town Council at a future meeting for the amount of \$2,100, if needed. Additionally, direct staff to proceed with the (TBD) _____ ramp structure design.**
- 2) **Approve option #____, directing staff to confirm the bridge order with Big R bridge and further direct staff to bring a 2014 capital budget amendment to Town Council at a future meeting for the amount of \$_____. Additionally, direct staff to proceed with the (TBD) _____ ramp structure design.**
- 3) **Other direction as determined.**



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**PAGOSA SPRINGS SANITATION
GENERAL IMPROVEMENT DISTRICT
MEETING AGENDA
TUESDAY, JULY 1, 2014
Town Hall Council Chambers
551 Hot Springs Blvd
5:00 p.m.**

- I. CALL MEETING TO ORDER**
- II. APPROVAL of MEETING MINUTES FROM JUNE 19, 2014**
- III. NEW BUSINESS**
- IV. OLD BUSINESS**
 - 1. TOWN/PAWSD Pipeline Update**
- V. NEXT BOARD MEETING JULY 17, 2014 AT 12:00PM**
- VI. ADJOURNMENT**