CITY OF CORTEZ
RESOLUTION NO. 27, SERIES 2023

A RESOLUTION APPROVING A LEASE OF REAL PROPERTY BY THE CITY OF CORTEZ TO MESA VERDE COUNTRY VISITOR INFORMATION BUREAU

WHEREAS, the City of Cortez, Colorado (the "City") is the owner of certain real estate and improvements thereon situated in the City of Cortez, County of Montezuma, State of Colorado, and located at 928 East Main Street, Cortez, Colorado (the "Real Estate"); and

WHEREAS, constructed on the Real Estate are certain improvements consisting of a building known as the Colorado Welcome Center – Cortez (the "Improvements"); and

WHEREAS, the Real Estate and the Improvements are collectively known as the "Property;" and

WHEREAS, City desires to lease to Mesa Verde Country Visitor Information Bureau ("MVC") and MVC desires to lease from the City a portion of the Property pursuant to the terms and conditions of a lease agreement, a copy of which is attached hereto and incorporated herein as Exhibit I (the "Lease").

NOW, THERFORE, BE IT RESOLVED BY THE CORTEZ CITY COUNCIL:

THAT, this Resolution No. 27, Series 2023 is approved and the City Council approves the Lease and rents the office space identified on Exhibit A of the Lease to Mesa Verde Country Visitor Information Bureau.

MOVED, SECONDED, AND ADOPTED THIS 24th DAY OF OCTOBER 2023

Arlina Yazzie, Mayor Pro-tem

ATTEST:

Linda L. Smith, City Clerk

LEASE AGREEMENT FOR THE COLORADO WELCOME CENTER BY AND BETWEEN THE CITY OF CORTEZ, COLORADO AND MESA VERDE COUNTRY VISITOR INFORMATION BUREAU

This Lease Agreement (this "Lease") is made and entered into effective April 1, 2023 (the "Effective Date"), by and between the City of Cortez, Colorado, a Colorado home rule municipality (the "Landlord"), and Mesa Verde Country Information Bureau, a Colorado nonprofit corporation (the "Tenant"). Landlord and Tenant may be referred to individually as a "Party," and collectively as the "Parties."

RECITALS:

WHEREAS, Landlord is the owner of certain real estate and improvements thereon situated in the City of Cortez, County of Montezuma, State of Colorado, and located at 928 East Main Street, Cortez, Colorado (the "Real Estate"); and

WHEREAS, constructed on the Real Estate are certain improvements consisting of a building known as the Colorado Welcome Center – Cortez (the "Improvements"); and

WHEREAS, the Real Estate and the Improvements are collectively known as the "Property;" and

WHEREAS, Landlord desires to lease to Tenant and Tenant desires to lease from Landlord a portion of the Property pursuant to the terms and conditions of this Lease.

NOW, THEREFORE in consideration of the payment of the rent and the keeping and performance of the covenants and agreements of this Lease, Landlord and Tenant agree as follows:

ARTICLE I - LEASE OF PREMISES

Landlord agrees to lease to Tenant and Tenant agrees to lease from Landlord the certain portion of the Property consisting of approximately 1,344 square feet of space inside the Colorado Welcome Center – Cortez, as more specifically described on the space diagram that is attached hereto and incorporated herein as **Exhibit A** (the "Premises").

ARTICLE II - TERM OF LEASE

2.1 The initial term of this Lease shall commence at 12:00 a.m. on the Effective Date and terminate at 11:59 p.m. on December 31, 2023. This Lease shall automatically renew for one additional one-year renewal term commencing at 12:00 a.m. on January 1, 2024, and terminating at 11:59 p.m. on December 31, 2024. The initial term and the renewal term shall be collectively referred to as the "Term."

2.2 If Tenant shall remain in possession of the Premises, or any part thereof, after the expiration of the Term of this Lease, or any authorized extension thereof, such holding over shall constitute and be construed as a tenancy from month-month only at a rental rate of One Hundred

Fifty percent (150%) of the annual installment of rent, which amount shall become a monthly installment of rent that shall be due and payable each month of such holding over. In the event of any such holding over, Tenant shall also continue to be subject to all of the conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy. Nothing contained herein shall constitute permission granted or inferred for Tenant to remain in possession beyond the end of the Term or of this Lease or any authorized extension thereof, unless permission is specifically granted by Landlord in writing.

ARTICLE III - RENT

3.1 From and after commencement of this Lease, Tenant shall pay to Landlord, as rent for the full Term, the sum of $8,268.00, payable in monthly installments of rent in the amount of $689.00 ("Rent"). Such monthly installments of Rent shall be payable commencing on the Effective Date and on or before the first day of each month of each subsequent month during the Term of this Lease. Installments of Rent shall be payable in advance and without notice, to Landlord at the address stated in this Lease for Notices, or at such alternate location as Landlord shall from time to time direct in writing.

3.2 If Tenant shall fail to pay any installment of Rent, or any other cost or charge described herein to be paid by Tenant to Landlord, such unpaid amounts shall bear interest at the maximum non-usurious rate of interest from the due date to the date of payment. In addition, if Tenant shall fail to pay when due any installment of Rent within ten (10) days after such installment is due, Tenant shall pay to Landlord a late charge equal to five percent (5%) of the installment of Rent to cover administrative expenses of Landlord, and not by way of forfeiture, it being agreed that the amount of damages to Landlord resulting from such late payment is difficult to determine.

ARTICLE IV - TRIPLE-NET LEASE

4.1 Tenant acknowledges that it has had the opportunity to inspect the Premises and accepts the same in an as is, where is, with all faults, in its current condition, without warranties or guarantees of any kind whatsoever, including, without limitation, that the Premises is fit for a particular purpose. Tenant acknowledges that it has had a reasonable opportunity to conduct an inspection of the Premises. This Lease is a pure triple-net lease. Except as set forth in Section 4.2 herein, Landlord shall have no obligation of any kind to make any expenditures of any nature upon the Premises. Tenant shall keep all improvements leased pursuant to this Lease in good repair at Tenant's sole expense. Upon the termination of this Lease, Tenant shall surrender and deliver up the Premises in good condition, ordinary wear excepted.

4.2 Tenant shall pay the actual cost of all operating expenses relating to the Premises, including, without limitation, heat, light, gas, water, sewer, waste disposal, janitorial services, telephone, internet, security, fire protection, window cleaning, air conditioning, landscaping maintenance and weed control, snow removal, maintenance and repair of all parking areas and sidewalks, materials and supplies, equipment and tools, service agreements on equipment, insurance, licenses, permits and inspections, employee wages and salaries,

employee benefits and payroll taxes, accounting and legal expenses relating to Tenant's use and occupancy of the Premises. (collectively the •operating Expenses"), at such time as the same become due and payable. Tenant shall be solely responsible for performing, obtaining, securing, and contracting for, the Operating Expenses to properly operate the Premises for Tenant's intended use. Obtaining, maintaining and paying for the Operating Expenses is a responsibility of Tenant, and the failure to do so shall be a breach of this Lease that may result in the termination of this Lease as provided herein. Notwithstanding anything herein to the contrary, Landlord, at its own cost and expense, shall maintain the structural soundness of the roof, foundation, and exterior walls, and all plumbing, sewer and storm water systems located on the exterior of the Premises, in good repair and in habitable condition. The term •exterior walls" as used herein shall not include windows, glass or plate glass, doors or overhead doors, store fronts, locks, lever handles and key ways, dock bumpers, dock plates or levelers, or office entries. Tenant shall be solely responsible for the repair and maintenance of the plumbing and sewer systems on the interior of the Premises. Tenant shall immediately give Landlord written notice of any defect or need for repairs, after which landlord shall have reasonable opportunity to repair same or cure such defect.

4.3 Tenant may use and occupy the Premises for any lawful purpose, including, without limitation, at Tenant's sole discretion, the operation of a senior meals program. Tenant shall be responsible for obtaining all permits, licenses and other required permissions for any operations or uses it makes of the Premises. Tenant shall not allow its employees, customers, visitors, vendors, licensees, agents, subtenants or invitees to: (i) do or permit to be done in or about the Premises, nor bring to, keep or permit to be brought or kept in or on the Premises anything that is prohibited by or will in any way conflict with any law, statute, ordinance or governmental rule or regulation which is now in force or which may be enacted or promulgated after the Effective Date of this lease; (ii) do or permit anything to be done in or about the Premises which will unreasonably obstruct or interfere with the rights of others or unreasonably inconvenience, injure, damage or annoy any of them, including but not limited to, excess noise vibration or odors or any others acts which may disturb other properties adjacent to or near the Premises; (iii) use or allow the Premises to be used for any immoral, improper or objectionable purpose; (iv) cause, maintain or permit any nuisance, as defined by applicable laws or ordinances, in, on or about the Premises: or (v) permit any act or thing to occur which may cause damage or waste to the Premises.

4.4 Tenant and Tenant's subtenants shall obtain all permits and/or licenses required by applicable law, ordinance, resolution and rules for the specific use of the Premises. Tenant will provide copies of said permits and/or licenses upon request. Any and all taxes, fees and assessments, including but not limited to license fees, fees for permits, profits, sales or use taxes, real property and personal property taxes or any other taxes that may be levied or assessed on the assets or improvements on the Premises, and the business or capital of Tenant's income, or on the equipment used, by and duly constituted local, city, county, state, federal, or other governmental authority, shall be borne and paid by Tenant.

ARTICLE V - IMPROVEMENTS TO PREMISES

5.1 Tenant shall not make any major alterations or changes to any improvements, or construct any major new improvements, on the Premises, or to the building or ground footprints or infrastructure on the Premises, without prior written approval from Landlord. Along with its request for approval from Landlord, Tenant shall submit plans and specifications to Landlord for any such work. The written approval of Landlord may, at Landlord's discretion, require Tenant to obtain, or require any of its contractors or subcontractors to obtain, such insurance and/or payment or performance bonding or other appropriate security as Landlord, in its sole discretion, may deem necessary. All improvements, additions, or alterations shall be constructed, installed and made in a good workmanlike manner in full conformity with all applicable laws and regulations, including, without limitation, the applicable regulations of the City of Grand Junction, the Mesa County Land Development Code, and Mesa County building regulations.

5.2 Tenant shall, at all times, keep the Premises free and clear of any and all mechanic's, laborer's or materialmen's' liens, or other claims arising out of any work performed, material furnished or obligations incurred by Tenant, its subtenants, or others using the Premises. If a notice of lien or other form of claim shall be filed against the Premises, or is otherwise asserted against landlord regarding the Premises, and such lien or claim is for, or purports to be for labor, or material, alleged to have been furnished to, delivered to, installed upon, or constructed upon, the Premises to or for Tenant, or anyone claiming under Tenant, then Tenant shall cause such lien or claim to be discharged or bonded over within the earlier of thirty (30) days after Tenant receives notice of such lien or claim from the claimant, or within thirty (30) days after Tenant receives notice of such lien or claim from Landlord. If Tenant shall fail to discharge or bond over any such lien as required, then Landlord shall have the right, but not the obligation, to either pay or discharge any such lien or claim of lien, or treat such lien or claim of lien as a default under the terms of this Lease. If Landlord elects to pay or discharge any such lien or claim of lien, then Tenant shall pay to Landlord all of Landlord's expenses incurred, including reasonable attorney's fees, together with interest on the funds so advanced at the highest rate permissible by law, which payment shall be deemed additional rent payable on demand. In addition to the forgoing, Landlord may, at its option, and with full cooperation of Tenant, timely post and record, if permitted by applicable state law, such notices, including notices of non-responsibility for materials and labor delivered to or performed upon the Premises, to protect Landlord, Landlord's interest in the Premises and Landlord's interest in this Lease from Tenant's activity on or about the Premises and from the filing of mechanic's, laborer's or materialmen's liens.

5.3 Tenant shall comply with all applicable federal laws pertaining to the use, storage, generation or disposal of any hazardous materials or wastes on the Premises. Tenant shall not, without the prior written consent of Landlord, cause or permit, knowingly or unknowingly, any Hazardous Material (hereinafter defined) to be brought or remain upon, kept, used, discharged, leaked, or omitted in or about, or treated at the Premises. As used in this Lease, "Hazardous Material(s)" shall mean any hazardous, toxic or radioactive substance material, matter or waste which is or becomes regulated by any federal, state or local law, ordinance, order, rule, regulation,

code or any other governmental restriction or requirement, and shall include asbestos, petroleum products and the terms "Hazardous Substance" and "Hazardous Waste" as defined in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C 9601, *et seq.*, and the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C 6901, *et seq.*

5.4 SPECIFIC HAZARDOUS MATERIALS INDEMNIFICATION: Tenant shall indemnify, protect, save harmless and defend Landlord and its agents, employees, officials, insurers and attorneys, if any, from and against any and all claims, demands, damages, expenses, fees (including, without limitation, attorney's fees), costs, fines, penalties, suits, proceedings, actions, causes of action, and losses of any and every kind and nature which may arise from or are related to, either during or after the Term of this Lease or any extension to the Term thereof, as a result of any Hazardous Material(s) contamination caused by the actions or inactions of Tenant. This includes, without limitation, costs and expenses, incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because the presence of Hazardous Material(s) on or about the Premises, or because of the presence of Hazardous Material(s) anywhere else which came or otherwise emanated from Tenant or the Premises. Without limiting the foregoing, if the presence of any Hazardous Material(s) on or about the Premises caused or permitted by Tenant results in any contamination of the Premises, Tenant shall, at its sole expense, promptly take all actions and expense as are necessary to return the Premises to a condition in compliance with applicable laws provided, however, that Landlord's approval of such actions shall first be obtained in writing which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Landlord shall be responsible for the correction, removal, or to otherwise render harmless Hazardous Materials that existed in or on the Premises prior to the commencement of this Lease. This indemnity by Tenant shall survive the expiration or termination of this Lease.

ARTICLE VI - SECURITY DEPOSIT

6.1 Tenant shall not be required to pay a security and damage deposit pursuant to this Lease. The exemption from the requirement of a security and damage deposit does not relieve the Tenant from its obligations to maintain the Premises in a commercially reasonable manner, and to comply with all terms and conditions of this Lease.

6.2 Upon the expiration or termination of this Lease, Tenant and Landlord shall inspect the Premises to determine the extent of any damage, loss or uncleanliness, and Tenant shall be responsible to pay the cost to repair any damage, loss or uncleanliness of the Premises, beyond ordinary wear and tear.

ARTICLE VII - INDEMNIFICATION AND INSURANCE

7.1 Tenant shall indemnify, protect, save harmless and defend Landlord and its elected officials, employees, agents, insurers and attorneys, from and against any and all claims, demands, damages, expenses, fees (including, without limitation, attorney's fees), costs, fines, penalties, suits, proceedings, causes of action, and losses of any and every kind and

nature which may arise from or are related to the occupation of the Premises by Tenant or any subtenant, and from any activity occurring on the Premises. This indemnity by Tenant shall survive the expiration or termination of this Lease.

7.2 At all times during the Lease Term and any extensions thereof, Tenant, at Tenant's sole expense, shall maintain a policy or policies of: (1) Comprehensive all risk" insurance on the Premises for hazard, fire and flood in an amount not less than 100% (less a reasonable deductible) of the replacement cost of the Premises and the installations, equipment and improvements thereon; (2) Commercial General Liability insurance on an occurrence basis, with minimum limits of $1,000,000 per occurrence and $2,000,000 aggregate for bodily injury, personal injury and property damage; and (3) such workers' compensation and employers' liability insurance as may be legally required in the minimum statutory amount, including a waiver of subrogation in favor of Landlord and Landlord's insurer. Tenant shall provide Landlord with certificates of insurance evidencing such insurance coverages prior to commencing operation of the Premises. The required policies shall be endorsed to specify Mesa County, its officials, employees and agents as Additional Insureds.

7.3 All insurance policies required herein shall include a 30-day notification to Landlord of cancellation clause. In addition, Landlord shall be notified in writing thirty (30) days prior to any material changes in the insurance policy(s), including, without limitation, any cancellation, non-renewal, reduction in coverage or alteration of coverage.

ARTICLE VIII - FIRE AND CASUALTY DAMAGE

8.1 If the Premises, or any portion thereof, should be damaged or destroyed by fire, tornado, or other casualty, Tenant shall give immediate written notice to Landlord.

8.2 If the Premises, or any portion thereof, should be so damaged that rebuilding or repairs cannot reasonably be completed within ninety (90) days from the date of written notification by Tenant to Landlord of the happening of the damage, this Lease shall terminate effective as of the date of the happening of the damage.

ARTICLE IX - INSPECTION OF PREMISES BY LANDLORD

9.1 Tenant agrees to permit Landlord, or Landlord's authorized representative, to enter the Premises at any time for the purpose of inspecting the Premises, making repairs and performing any work which may be necessary as a result of Tenant's default or otherwise. Landlord may, during the progress of any work on the Premises, keep and store therein any necessary materials, tools, and equipment in a reasonable manner so as not to interfere with Tenant's occupancy of Premises.

9.2 Tenant agrees to permit Landlord to re-key the entire Premises as deemed necessary at Landlord's expense. Landlord will issue appropriate keys for use by Tenant.

ARTICLE X - PEACEFUL ENJOYMENT

Provided is Tenant is not then default under this Lease and there is no existing material

breach of any agreement, covenant, warranty, or representation of Tenant hereunder. Landlord shall take commercially reasonable actions to ensure the peaceful and quiet enjoyment of the Premises by Tenant during the Term and any extension thereof, of this Lease.

ARTICLE XI - SUBLET AND ASSIGNMENT

Tenant shall not sell, assign, mortgage, pledge, hypothecate, encumber, or otherwise assign this Lease or transfer any interest therein, and shall sublet the Premises, in whole or in part, or suffer or permit the Premises or any part thereof to be occupied by any third person (the agents, employees, invitees, and customers of Tenant excepted), without the prior written consent of Landlord, and any attempt to do so shall be voidable and, at Landlord's election, shall constitute a non-curable default under this Lease. Landlord specifically authorizes the subletting of the Premises by Tenant, at Tenant's sole discretion, to the Gray Gourmet, or other non-profit senior meal program. Any attempt to otherwise assign this Lease or sublet the Premises without prior written approval of Landlord shall render the assignment or sublease void. Any assignment of this Lease or a sublease of the Premises shall obligate the assignee or subtenant to the terms and conditions of this Lease.

ARTICLE XII - TERMINATION, DEFAULT

12.1 Prior to the expiration of the Term of this Lease, upon mutual agreement of the parties, and conditioned upon Tenant not being in default under this Lease, this Lease may be extended for such additional short-term periods as the parties may agree upon.

12.2 This Lease may be terminated at any time during the Term or any extension thereof, by either party, without cause, upon advance notice of ninety (90) days, in the manner of giving notice as provided herein.

12.3 This Lease and all rights of Tenant herein shall terminate without notice at the option of Landlord if:

A. Any delinquent installment of Rent is not paid within thirty (30) days after Landlord has notified Tenant in writing that the Rent is delinquent.

B. Tenant shall default in the performance or observation of any conditions, act, or thing required that is specifically identified in this Lease and shall fail to remedy or cure such default within thirty (30) days after receipt from Landlord or written notice of the existence of such default.

C. Landlord determines that the health, safety or welfare of the community is in jeopardy as a result of the activities conducted or authorized by Tenant or Tenant's subtenant, assignee or invitees.

D. Upon verification that Tenant has engaged, or is about to participate, in fraudulent or illegal acts on the Premises.

12.4 No assent, expressed or implied, to any breach of any one or more of the covenants or agreements contained in this Lease shall be deemed or taken to be a waiver of any succeeding or other breach.

12.5 Upon expiration or termination of this Lease, Tenant shall remove all of the fixtures and

equipment identified on the Kitchen Equipment Inventory attached hereto and incorporated herein as **Exhibit A.** Such fixtures and equipment shall be removed by Tenant, at Tenant's sole cost and expense, within thirty (30) days of the expiration or termination of this Lease, and Tenant shall return the Premises to the condition as It existed prior to the construction or installation of any such fixtures and equipment, insofar as reasonably possible.

ARTICLE XIII - LANDLORD NOT PARTNER OR JOINT VENTURER

Nothing contained in this Lease, and no statements by Landlord or Tenant, whether written or verbal, shall be deemed to constitute or create a partnership or joint venture between Landlord and Tenant, or between Landlord and any third party claiming an interest in the use or occupation of the Premises, unless such statements are contained within a written agreement executed by both parties. It is expressly understood that Tenant and tenant's subtenants and invitees, are, and shall at all times be, considered and construed to be a tenants, subtenants, or Invitees of Tenant or a subtenant, and not employees, agents or partners of Landlord.

ARTICLE XIV - ADDITIONAL PROVISIONS

14.1 The primary contact for Landlord shall be: The City Manager or Landlord's designee in writing. The primary contact for Tenant shall be: Brian Bartlett or Tenant's designee in writing.

14.2 It is further understood and agreed that, except as otherwise expressly provided herein, all of the covenants and agreements contained in this Lease shall extend to and be binding upon the executors, legal representatives, successors and assigns of the parties hereto.

14.3 The duties contemplated by this Section shall survive the expiration or termination of this Lease.

14.4 Any notice required or authorized under the terms of this Lease shall be given in writing and addressed as follows:

Landlord:
City of Cortez
c/o Drew Sanders, City Manager
123 Roger Smith Avenue
Cortez, Colorado 81321

Tenant:
Mesa Verde Country Visitor Information Bureau
c/o Brian Bartlett
928 E. Main Street
Cortez, Colorado 81321

14.5 The parties hereto agree that no amendment or modification of this Lease shall be valid or binding unless in writing and executed by the parties hereto in the same manner as the execution of this Lease.

14.6 This Lease is and shall be deemed to be performable in the Montezuma County, Colorado. Venue and Jurisdiction for any dispute hereunder shall be in the Colorado State

District Court for Montezuma County, Colorado.

14.7 In the event any party shall bring any action, arbitration or legal proceeding alleging a breach of any provision of this Lease, or in any manner to determine the rights or duties hereunder of either party, the substantially prevailing party shall be entitled to recover from the other party as a part of such action or proceeding, or in a separate action (brought within one year from the determination of such proceeding), reasonable attorneys' fees, expert witness fees, court costs and other reasonable expenses incurred by the substantially prevailing party. In the event that either party shall be required to retain counsel to enforce any provision of this Lease, and if the other party shall thereafter cure (or desire to cure) such default, the party so retaining counsel shall be conclusively deemed the substantially prevailing party and the other party shall pay to the substantially prevailing party all attorneys' fees, expert witness fees, court costs and other reasonable expenses so incurred by such partypromptly upon demand.

14.8 This Lease shall be governed by and construed and enforced in accordance with the laws of the State of Colorado, without regard to conflicts of law principles that might result in the application of any law other than Colorado law.

14.9 If Tenant is a corporation or other entity (including but not limited to a limited liability company, trust, association, foundation or a similar organization), the individual executing this Lease on behalf of said entity warrants that Tenant is validly formed and duly authorized and existing, that Tenant is qualified to do business in the State of Colorado, that Tenant has the full right and legal authority to enter into this Lease, that the individual is duly authorized to execute and deliver this Lease on behalf of Tenant in accordance with the appropriate entity documents and/or an appropriate resolution of Tenant or other valid and legally binding documentation of Tenant, and that this Lease is binding upon Tenant in accordance with its terms. The individual executing this Lease on behalf of said entity represents and warrants that Tenant will not fraudulently convey any assets of Tenant so as to hinder, delay or avoid any rights of Landlord. These warranties, representations and guarantees are of importance to Landlord and are material to Landlord entering into this Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease effective as of the Effective Date first written above.

LANDLORD:
City of Cortez, Colorado

By: Drew C. Sanders, City Manager

ATTEST:

Linda L. Smith, City Clerk

TENANT:

Mesa Verde Country Information Bureau

By: Brian Bartlett
Title: Tourism Director, C.E.O

Exhibit A
Lease Agreement for the Colorado Welcome Center