

**AGREEMENT FOR USE OF THE NEWCOMB COMMUNITY CENTER AS AN
EMERGENCY SHELTER**

This Agreement for Use of the Newcomb Community Center as an Emergency Shelter (“Agreement”) is entered into this ____ day of _____, 2023, by and between the Pitkin Historical and Community Association (“PHCA”) and the Board of Trustees for the Town of Pitkin (“Town” or “Board”).

RECITALS

WHEREAS, PHCA is the owner of real property located at 800 State Street, Pitkin, Colorado 81241, otherwise known as the Newcomb Community Center (“Community Center”); and,

WHEREAS, the Board is desirous of using the Community Center as a temporary shelter in case of an emergency; and,

WHEREAS, PHCA believes that it is in the best interests of the Town of Pitkin (“Town”) to have an emergency shelter; and,

WHEREAS, PHCA and the Board wish to have an agreement defining and describing their cooperative efforts.

NOW THEREFORE, for and in consideration of the mutual obligations contained herein, PHCA and the Board agree as follows:

AGREEMENT

1. Use.

- 1.1 PHCA agrees to let the Community Center be used as a temporary emergency shelter in case of an emergency.
- 1.2 An emergency shall be defined as any natural or manmade event, or act of god, that is declared as an emergency, disaster, or other equivalent by either the Mayor of the Town, Mayor pro tem of the Town, the Board, Gunnison County Sheriff's Office, Gunnison County Commissioners, the State of Colorado, or the Federal Government of the United States of America.
- 1.3 PHCA agrees to the reasonable use of the Community Center by the Town during an emergency. Reasonable use includes, but is not limited to, use of the Community Center for: communications, shelter, warmth, distribution of food and water, medical care, distribution of medicine, and information and/or meetings. Use of the Community Center must be commensurate with the emergency.
- 1.4 PHCA agrees that the Community Center may be used by the Town and by the

Town's residents and guests during an emergency.

2. **Costs.** The Town will bear all costs and expenses associated with use of the Community Center during an emergency. The Town will also bear the cost and expense of any equipment for use during an emergency.
3. **Term.** The term of this Agreement shall be for one year commencing on the effective date as first stated above. This Agreement shall be automatically renewed for successive one-year terms upon the anniversary of the effective date, unless either party provides written notice of nonrenewal to the other party at least thirty (30) days before said anniversary date.
4. **Indemnification.**
 - 4.1 **PHCA.** PHCA agrees to indemnify and hold harmless the Town, its officers, employees, agents and insurers, from and against any and all liabilities, claims, and demands, on account of injury, loss, or damage, including without limitation, claims arising from bodily injury, sickness, disease, death, property loss, or damage or any other loss of any kind whatsoever, which arises out of, or is in any manner connected to the Town's use of the Community Center pursuant to this Agreement, if such injury, loss or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, mistake, negligence, or other fault of the Town, any subcontractor of the Town, or any officer, employee, representative, or agent of the Town, or which arises out of any worker's compensation claim of any employee of the Town or of any employee of any subcontractor of the Town.
 - 4.2 **Town.** The Town agrees to indemnify and hold harmless PHCA, its officers, employees, agents and insurers, from and against any and all liabilities, claims, and demands, on account of injury, loss, or damage, including without limitation, claims arising from bodily injury, sickness, disease, death, property loss, or damage or any other loss of any kind whatsoever, which arises out of, or is in any manner connected to the emergency use of the Community Center pursuant to this Agreement, if such injury, loss or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, mistake, negligence, or other fault of PHCA, any subcontractor of PHCA, or any officer, employee, representative, or agent of PHCA, or which arises out of any worker's compensation claim of any employee of PHCA or of any employee of any subcontractor of PHCA.
5. **Governmental Immunity.** Nothing in this Agreement is, or shall be construed to be a waiver, in whole or in part, by the Town of the governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.
6. **Waiver.** Waiver of any breach under a term, provision, or requirement of this Agreement,

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

7. **Venue.** Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be brought in a court of competent jurisdiction in Gunnison County, Colorado.
8. **Notices.** All notices given pursuant to this Agreement shall be in writing and signed by the party or a duly authorized representative of the party making the same. All notices shall be deemed given when delivered personally, or three (3) days after deposit of the same in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed to the applicable party as follows:

Notice to the Town: Board of Trustees for the Town of Pitkin
P.O. Box 9
Pitkin, CO 81241

Notice to PHCA: Pitkin Historical and Community Association
P.O. Box 218
Pitkin, CO 81241

9. **Severability.** If any term or provision of this Agreement shall be determined to be invalid or unenforceable, the remainder of this Agreement and the terms or provisions it contains shall not be affected and all other terms and provisions shall be valid and enforceable to the full extent permitted by law.
10. **Choice of Law.** This Agreement shall be governed by the laws of Colorado.
11. **Assignment.** PHCA and the Town respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither PHCA nor the Town shall assign this Agreement without the written consent of the other.
12. **Entire Agreement.** This Agreement represents the entire and integrated agreement between PHCA and the Town and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the PHCA and the Town.

IN WITNESS WHEREOF, the parties have affixed their signatures, effective on the date first written above.

TOWN:

BOARD OF TRUSTEES
TOWN OF PITKIN, COLORADO

By: _____
Eddy Balch, Mayor

Attest: _____
Sara Gibb, County Clerk

PHCA:

PITKIN HISTORICAL AND COMMUNITY ASSOCIATION

By: _____
Linda Cole, President