

**Fox Theatre Walsenburg Phase 2 Rehabilitation Project
Memorandum of Understanding**

This Memorandum of Understanding regarding the rehabilitation of the Fox Theatre Walsenburg (this “**Agreement**” or “**MOU**”) is made as of this 14th day of January 2025 the “**Effective Date**”) by and between the following entities:

- A. Huerfano County, a political subdivision of the State of Colorado (the “**County**”)
- B. Spanish Peaks Community Foundation Inc., a Colorado Non-Profit Corporation (the “**FTW**”)

The above-listed parties may be referred to individually as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, The County owns the Fox Theatre Walsenburg (“the Theatre”) and contracts with the FTW for operation of the Theatre; and

WHEREAS, The Parties have worked collaboratively over the last several years to develop this Rehabilitation Project, now in Phase 2, for the Theatre (the “project”); and

WHEREAS, The County has been awarded a grant from the Colorado Department of Local Affairs (“DOLA”) for architectural and construction activities to rehabilitate the Theatre; and

WHEREAS, The County has been awarded a grant from the Colorado Energy Office (“CEO”) for design and construction activities to rehabilitate the Theatre; and

WHEREAS, the County serves as the fiscal agent for this grant and is responsible for financial management of the grant; and

WHEREAS, The FTW has been awarded a History Colorado State Historical Fund (“SHF”) grant for design and construction activities to rehabilitate the Fox Theatre Walsenburg; and

WHEREAS, the FTW has contracted with Colorado Preservation, Inc. (“CPI”) to manage the SHF Grants; and

WHEREAS, the Parties must adhere to the terms and conditions of these grant awards in order to receive reimbursement from the agencies making those awards; and

WHEREAS, the County has competitively procured a prime contractor and project manager for the project, McKinstry, and the FTW and the County intend to enter into an agreement with the Contractor to complete the construction activities for this project; and

WHEREAS, the FTW has contracted with Form+Works Design for architectural services and Barbizon for lighting, curtains, and other elements for the stage and performance aspects of the venue (together with McKinstry the “Contractors”); and

WHEREAS, the Parties have agreed that the FTW will pay the contractors directly and be reimbursed by the County so that the FTW may apply for State Historic Tax Credits for the Project; and

WHEREAS, the Parties desire to formalize and reduce to writing the processes by which they will cooperate to ensure grant compliance and a successful project that benefits Huerfano County residents and brings the Theatre closer to a state of good repair.

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AGREEMENT

In consideration for the promises herein, the recitals, and other good and valuable consideration, the Parties agree as follows.

Section 1. Authorizations

- A. The County hereby grants the FTW the authority to proceed with the project as outlined in the construction documents attached hereto as Exhibit A.
- B. The FTW agrees to continue to coordinate with the County on the project and keep the County informed of project progress and any issues or concerns that might arise during the project.
- C. The County agrees to provide guidance and oversight of the project and allow the FTW or the Contractor use of County resources including, but not limited to, staff time and equipment for the project subject to availability and approval of the County Administrator.
- D. The FTW agrees to provide the County with copies of all plans, designs, and project closeout materials.

Section 2. Financial Considerations.

- A. The FTW will invoice the County for all project activities eligible for reimbursement through the DOLA grant. The reimbursement requests will include copies of all invoices from and supplemental materials provided by the Contractors as well as any breakdown provided by CPI for SHF reimbursement.
- B. The County will reimburse the FTW within 10 business days for construction activity expenses up to a maximum of \$2,030,352. The County may increase this maximum without further amendment of this contract, subject to approval of the Board of County Commissioners.
- C. The County will be responsible for coordinating reimbursement requests with DOLA. As the County will be reimbursing the FTW as expenses occur, these reimbursements will remain with the County.
- D. The FTW will return the funds in excess of the DOLA award, 26% of the reimbursements issued by the County to FTW. The County will invoice the FTW on a regular basis not less than quarterly. The County will adjust these invoices to account for the CEO grant. The total amount of the funds to be returned to the County will not exceed \$530,352.
- E. The County agrees to work with the FTW to ensure adequate cash flow to complete the project.

Section 3. Oversight.

- A. The County, through the Administrator or his designee, will review and monitor the operations and performance of the FTW under this agreement and the grant agreements, including but not limited to review of financial records and programmatic documents.
- B. The parties agree to comply with the oversight and compliance guidance from CPI.

Section 4. Term and Termination.

- A. Term. This Agreement shall be in full force and effect from January 1, 2025 until the end of the Day on December 31, 2025.
- B. Extension. This agreement may be extended by mutual agreement of the parties if the project continues past the project end date.

Section 5. General Provisions.

- A. Amendments. Any amendment or addition to this Agreement must be in writing, approved and signed by both Parties to this Agreement.
- B. Further Assurances. Each Party shall execute all further documents and take all further acts reasonably necessary or appropriate to carrying out the intent of this Agreement.
- C. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.
- D. Venue. Venue to any action arising from this Agreement shall lie in the state courts in Huerfano County, Colorado. Each Party submits to the jurisdiction and venue of this court and waives any objection to which it otherwise might be entitled regarding such jurisdiction or venue and any right it may have to remove an action to federal court.
- E. Waiver of Right to Jury Trial. Each party waives any right it has or may have to a jury trial in any action, suit, or proceeding arising out of or in connection with this Agreement.
- F. Independent Contractors. The Parties are independent contractors in all matters concerning this Agreement. Nothing in this Agreement creates a joint venture, partnership, or employment relationship between the Parties. No Party will be liable for the debts, liabilities, or obligations of the other Parties. No Party is acting as the agent of partner of the other Parties or any of them and no Party will hold itself out as such. No Party has the authority to bind the other Parties or any of them.
- G. Force Majeure. No Party will be considered in default under this Agreement to the extent that such performance is delayed or prevented by fire, flood, hurricane, tornado, earthquake, other natural disaster, pandemic or other state or county declared health emergency, riot, war, terrorism, labor disputes, or civil strife.
- H. Entire Agreement. This Agreement states the entire agreement among the Parties with respect to the subject matter of this Agreement and supersedes and replaces all previous discussions, negotiations, and agreements.
- I. Waiver. The failure of any Party to insist upon the performance of any provision of this Agreement or to exercise any right or privilege granted to such Party under this Agreement will not be construed as waiving such provision or any other provision of this Agreement.
- J. Severability. If any provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability will not invalidate the remaining provisions of this Agreement.
- K. Counterparts. This Agreement may be executed and delivered in counterparts (including by means of electronic signature), all of which taken together will constitute one and the same agreement.

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The Parties are executing this Agreement to signify their acceptance of all the terms and conditions stated above, to be effective as of the Effective Date, regardless of the date of actual signature.

Huerfano County, Acting by and through its Board of County Commissioners

By: _____

Date Signed: _____

Name:

Title: Chairman, Board of County Commissioners

Attest:

By: _____

Date Signed: _____

County Clerk and Recorder

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Spanish Peaks Community Foundation, Inc. dba Fox Theatre Walsenburg.

By: _____

Date Signed: _____

Name: Sarah Jardis

Title: President

Attest:

By: _____

Date Signed: _____

Name: Mike Peters

Title: Executive Director