AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Memorandum of Agreement; Western State Colorado University; Digital Advertising Campaign; 1/7/14 thru 12/31/14; $20,000

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Gunnison County and Western State Colorado University

Term Begins: 1/1/2014 **Term Ends:** 12/31/2014 **Grant Contract #:**

Summary:
During the December 10, 2013 work session, the BOCC preliminarily agreed to provide funding for WSCU's advertising campaign in the amount of $20,000 from their 2014 Economic Development budget (the 2013 unspent amount rolled forward to the 2014 budget).

Fiscal Impact: $20,000

Submitted by: Ben Cowan **Submitter's Email Address:** bcowan@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:

Reviewed by: GUNCOUNTY1\LNIENHUESER Discharge Date: 12/23/2013

County Attorney Review: (●) Required ( ) Not Required

Comments:

ok db 12/24/13

Reviewed by: GUNCOUNTY1\DBAUMGARTEN Discharge Date: 12/24/2013 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reviewed by: GUNCOUNTY1\MBIRNIE Discharge Date: 12/24/2013

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: 3

Agenda Date: 1/7/2014 Follow Up Agenda Date:

Revised April 2013

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("MOA") made effective this _____ day of _____, 2014, is by and between the Board of County Commissioners of the County of Gunnison, Colorado, whose address is 200 East Virginia Ave., Gunnison, CO 81230 ("Gunnison County") and Western State Colorado University ("WSCU") whose address is 600 N. Adams St., Gunnison, CO 81230.

RECITALS

WHEREAS, WSCU has requested assistance from Gunnison County in financing a portion of the cost of a digital advertising campaign designed at raising awareness of WSCU's brand among college-bound high school students and their parents in geographically targeted areas that have produced Western students in the past; and

WHEREAS, in the Fall of 2013, WSCU launched an advertising campaign targeted at 20 high schools that have sent more than 6 students to Western in the past 3 years. The $50,000 campaign runs from October of 2013 through January of 2014. The campaign consists of website banner advertisements, paid Google search results, and YouTube pre-roll video advertisements produced by Matchstick Productions. The campaign serves ads up to 15-18 year old college bound high school students in specific zip codes. It has enjoyed a click-through-rate (or CTR, which is how advertising success is measured) of 4 times the industry standard. WSCU measures success by the CTR and by gauging website traffic from targeted zip codes. The campaign has generated a significant increase in web traffic from targeted zips; and

WHEREAS, WSCU would not have advertised during "yield season" because the current operating budget for marketing has been expended and this contribution from Gunnison County should generate more than 1,000,000 impressions (or views) from college-seeking high schoolers in target markets, and

WHEREAS, Gunnison County is supportive of the objectives of WSCU because the recently adopted Gunnison County Strategic Plan, revised June 4, 2013, has a specific strategic result stating "Gunnison County will provide economic development leadership in the following areas…Growing community and Western State Colorado University relationships…"; and

WHEREAS, Gunnison County feels it is in the public's interest to provide financial assistance to WSCU.

AGREEMENT

NOW THEREFORE, in consideration of the Recitals and the mutual covenants and obligations hereinafter set forth, the parties agree as follows:

1. TERM.

The term of this Agreement shall commence on the date first set forth above and shall terminate on December 31, 2014, unless sooner terminated or replaced as provided herein.

2. COMPENSATION, BONUS AND EXPENSES.

(a) Gunnison County agrees to provide $20,000 in funds to WCSU upon execution of this agreement from its 2014 Economic Development budget. It is understood and recognized that these funds, along with a $10,000 contribution from the City of Gunnison, must be used to continue an advertising campaign in 2014.

(b) WSCU agrees to provide a full accounting of specifically how dollars were spent and how the advertising impacted website traffic and applications. WSCU will either provide this report in writing, in person or both by the discretion of the Board of County Commissioners by October 31, 2014.

(c) This Agreement is subject to Gunnison County making an annual budget appropriation in an amount sufficient to fund this Agreement. If Gunnison County fails or refuses to make such an appropriation, Gunnison County reserves the right to terminate this Agreement without penalty to WSCU pursuant to paragraph 11 of this Agreement.

(d) Gunnison County reserves the right to amend this agreement to reduce the contribution stated herein if the 2013 Gunnison County audit should result in a significantly lower fund balance than projected.

3. INDEMNIFICATION.

(a) WSCU agrees to indemnify, defend and hold harmless Gunnison County, its Commissioners, agents and employees of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) arising out of or related to any loss, cost, damage or injury, including death, of any person or damage to property of any kind caused by the misconduct or negligent acts, errors or omissions of WSCU or its employees, sub-contractors or agents in connection with this Agreement.

(b) This provision shall survive any termination or expiration of this Agreement with respect to any liability, injury or damage occurring prior to such termination.

4. INSURANCE.

WSCU agrees that at all times during the Term of this Agreement that WSCU shall carry and maintain, in full force and effect and at its sole cost and expense, the following insurance policies. Within thirty (30) days of the execution of this Agreement, WSCU will provide insurance certificates to Gunnison County, listing Gunnison County as an additional insured, for the coverage's required herein which shall state that such policies shall not be materially changed or cancelled without thirty (30) days prior notice to Gunnison County.

(a) Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by WSCU during the term of this Agreement.

(b) Comprehensive General Liability Insurance or the equivalent for any injury to one person in any single occurrence, Three Hundred Ninety Thousand and No/100 U.S.

Dollars ($350,000.00); and For an injury to two or more persons in any single occurrence, the sum of Nine Hundred Fifty Thousand and No/100 U.S. Dollars ($990,000.00).

(c) Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than $150,000 for any injury to one person in any single occurrence and in an amount no less than $600,000 for any injury to two or more persons in any single occurrence.

5. INDEPENDENT CONTRACTOR.

(a) In carrying out its obligations and activities under this Agreement, WSCU is acting as an independent contractor and not as an agent, partner, joint venture or employee of Gunnison County. WSCU does not have any authority to bind Gunnison County in any manner whatsoever.

(b) WSCU acknowledges and agrees that WSCU is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County. Further, WSCU is obligated to pay federal and state income tax on any moneys paid it related to the services.

6. DELEGATION AND ASSIGNMENT.

This is a personal services contract with WSCU and, therefore, WSCU shall not delegate or assign its duties under this Agreement without the prior written consent of Gunnison County which consent Gunnison County may withhold in its discretion. Subject to the foregoing, the terms, covenants and conditions of this Agreement shall be binding on the successors and assigns of either party.

7. IMMIGRATION COMPLIANCE CERTIFICATION.

(a) WSCU certifies that WSCU does not and will not knowingly contract with or employ illegal aliens to work under this Agreement.

(b) WSCU certifies that WSCU has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work under this Agreement.

(c) WSCU certifies that it has attempted to verify the eligibility of its employees and subcontractors to work through the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security.

(d) WSCU agrees to comply with all reasonable requests made in the course of an investigation under C.R.S. 8-17.5-102 by the Colorado Department of Labor and Employment.

(e) WSCU agrees to comply with the provisions of C.R.S. 8-17.5-101 et seq.

8. NOTICES.

Any notice, demand or communication which either party may desire or be required to give to the other party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally or sent by certified first class US mail, postage prepaid, addressed as follows:

Gunnison County:	County Manager Gunnison County 200 E. Virginia Gunnison, Colorado 81230 Phone: 970-641-0248
With a copy to:	Board of County Commissioners of the County of Gunnison, Colorado 200 E. Virginia Gunnison, Colorado 81230
WSCU:	Western State Colorado University Office of Marketing and Media Relations 600 N. Adams St. Gunnison, CO 81231

Either party has the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

9. TERMINATION.

Either party shall have the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other.

10. MISCELLANEOUS.

(a) SEVERABILITY. If any clause or provision of this Agreement shall be held to be invalid in whole or in part, then the remaining clauses and provisions, or portions thereof, shall nevertheless be and remain in full force and effect.

(b) AMENDMENT. No amendment, alteration, modification of or addition to this Agreement shall be valid or binding unless expressed in writing and signed by the parties to be bound thereby.

(c) NO WAIVER OF GOVERNMENTAL IMMUNITY. Nothing in this Agreement is, or shall be construed to be, a waiver, in whole or part, by Gunnison County of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

11. ATTORNEYS FEES.

If any party hereto shall bring any suit or action against another for relief, declaratory or otherwise, arising out of this Agreement, the prevailing party shall have and recover against the other party, in addition to all court costs and disbursements, such sum as the court may adjudge to be reasonable attorneys fees and expert witness fees.

12. GOVERNING LAW.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Exclusive jurisdiction and venue for any legal proceedings related to this Agreement shall be in the state District Court governing Gunnison, Colorado.

13. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, proposals, negotiations and representations pertaining to the obligations to be performed hereunder.

14. COUNTERPARTS: FACSIMILE TRANSMISSION.

This Agreement may be executed by facsimile and/or in any number of counterparts, any or all of which my contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the parties as though originally executed on one originally executed document. All facsimile counterparts shall be promptly followed with delivery of original executed counterparts.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Paula Swenson, Chairperson

ATTEST:

_____
Deputy Clerk

Western State Colorado University

By: _____
Dan Byers