AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Memorandum of Agreement; City of Gunnison; Sources

Action Requested: County Manager Signature

Parties to the Agreement: City of Gunnison

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

City of Gunnison is supporting Sources of Strength leadership training.

Fiscal Impact: adding $3,800

Submitted by: Kari Commerford **Submitter's Email Address:** kcommerford@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 9/14/2016

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

Comments:
ok - gs

Reveiwed by: GUNCOUNTY1\gstuhr Discharge Date: 9/13/2016 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 9/14/2016

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 9/20/2016

Revised April 2015

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("MOA") made effective this 9th day of August, 2016, is by and between CITY OF GUNNISON, a Colorado home-rule municipality, existing under the laws of the State of Colorado, hereinafter called "CITY", and Board of County Commissioners of the County of Gunnison, Colorado, hereinafter called "COUNTY".

RECITALS

WHEREAS, COUNTY believes it to be in the interest of the citizens of the City of Gunnison for CITY to contract for COUNTY to perform certain services to the community; and

WHEREAS, CITY has budgeted certain funds for said services to be provided in the agreed time period; and

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 January 1, 2016 and shall terminate on December 31, 2016, unless sooner terminated or replaced as provided herein.

2. COMPENSATION, BONUS AND EXPENSES.

(a) CITY hereby agrees to provide the funds previously appropriated and budgeted to COUNTY in the amount of Three Thousand Eight Hundred Dollars and No Cents ($3,800.00), within thirty (30) days of execution of this agreement to be used for funding the Sources of Strength summer program to prevent suicide by increasing help seeking behaviors and promoting connections between peers and caring adults.

(b) This Agreement is subject to CITY making an annual budget appropriation in an amount sufficient to fund this Agreement. If CITY fails or refuses to make such an appropriation, CITY reserves the right to terminate this Agreement without penalty to COUNTY pursuant to paragraph 10 of this Agreement.

(c) CITY reserves the right to amend this agreement to reduce the contribution stated herein if the 2015 CITY audit should result in a significantly lower fund balance than projected.

3. CONSIDERATION.

(a) COUNTY agrees acknowledge the financial support of the City of Gunnison in advertising and promotional literature. Copies of such advertising and literature must be provided to the Finance Director of the CITY pursuant to paragraph 9 of this Agreement and may be submitted in an electronic format. Photos will be accepted as satisfaction of this requirement.

(b) COUNTY agrees to provide the CITY with a synopsis of the program's accomplishments during the term of this agreement no later than October 31, 2016, which includes the program's actual revenues and expenditures for 2015 and estimated revenues and expenditures for 2016. The synopsis must also include GUNNISON COUNTY's assessment of progress toward the objectives submitted in the Contract for Service Application. Such written synopsis must be provided to the Finance Director of the CITY pursuant to paragraph 9 of this Agreement and may be submitted in an electronic format.

(c) COUNTY agrees to demonstrate on-going efforts to cooperate and collaborate with other community based organizations and groups.

(d) COUNTY agrees to demonstrate financial support (both cash and in-kind) from other resources (exclusive of the City of Gunnison).

4. INDEMNIFICATION.

(a) Without waiving its rights under the Colorado Governmental Immunity Act, COUNTY agrees to indemnify, defend and hold harmless CITY, its Council, 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 COUNTY 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.

5. INSURANCE.

COUNTY agrees that at all times during the Term of this Agreement that COUNTY 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, COUNTY will provide insurance certificates to CITY, listing CITY 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 CITY.

(a) Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by COUNTY 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 Fifty 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 Ninety 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 Three Hundred Fifty Thousand and No/100 U.S. Dollars

($350,000.00) for any injury to one person in any single occurrence and in an amount no less than Nine Hundred Ninety Thousand and No/100 U.S. Dollars ($990,000.00) for any injury to two or more persons in any single occurrence.

6. INDEPENDENT CONTRACTOR.

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

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

7. DELEGATION AND ASSIGNMENT.

This is a personal services contract with COUNTY and, therefore, COUNTY shall not delegate or assign its duties under this Agreement without the prior written consent of CITY which consent CITY 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.

8. ILLEGAL ALIEN CERTIFICATION.

The Following Certifications are made by COUNTY pursuant to C.R.S. 8-17.5-101, et seq.:

(a) COUNTY shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to COUNTY that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Contract;

(b) COUNTY has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either the e-verify program or the department program;

(c) COUNTY certifies that it will use either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Contract is being performed;

(d) If COUNTY obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, COUNTY shall be required to: (1) notify the subcontractor and the CITY within three days that COUNTY has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (2) terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to subsection (1), the subcontractor does not stop employing or contracting with the illegal alien; except that COUNTY shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien;

(e) COUNTY shall comply with any reasonable request by the department made it the course of an investigation that the department is undertaking pursuant to the authority established in Section 8-17.5-102(5).

(f) If COUNTY violates a provision of this Contract regarding requirements under Section 8-17.5-102(2), C.R.S., the CITY may terminate this Contract for a breach of the Contract. If the Contract is so terminated, COUNTY shall be liable for actual and consequential damages to the CITY. In the event of termination under this provision, the CITY is required to notify the Secretary of State.

9. 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:

CITY: Finance Director
City of Gunnison
201 W. Virginia Ave.
Gunnison, Colorado 81230
Phone: 970-641-8162

COUNTY: GUNNISON COUNTY
Kari Commerford
200 E. Virginia Ave.
Gunnison, CO 81230

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.

10. 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.

11. 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 CITY or COUNTY of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

12. 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.

13. 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.

14. 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.

15. COUNTERPARTS: FACSIMILE TRANSMISSION.

This Agreement may be executed by facsimile and/or in any number of counterparts, any or all of which may 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.

CITY OF GUNNISON, COLORADO CITY SEAL INCORPORATED FEBRUARY 28, 1880

CITY OF GUNNISON, a Colorado home-rule municipality

By: Richard Hagan
Richard Hagan
Mayor

ATTEST:

Gail A. Davidson
Gail A. Davidson
City Clerk

GUNNISON COUNTY

By: _____