AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Gunnison River Valley Local Marketing District; De

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

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

Summary:

This contract supports the Tourism Association with lodging information.

Fiscal Impact: $18,025

Submitted by: Katherine Haase **Submitter's Email Address:** khaase@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:

New Agreement includes 3% price increase, plus $5,950 previously deducted for refund of prior year. Total increase to budget including adjustment is 56%. Staff proposed budget did not anticipate this increase. However, the amount can be covered from available resources. Finance will update budget for review during next budget worksession. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 11/21/2016

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

Comments:

ok - gs

Reveiwed by: GUNCOUNTY1\gstuhr Discharge Date: 11/23/2016 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 12/2/2016

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: 1

Agenda Date: 12/6/2016

Revised April 2015

DestiMetrics – Client Agreement

This Agreement, executed on _____, is between DestiMetrics, LLC (DMX) and Gunnison County (Client), with Services (as identified below) beginning on January 1, 2017 (Service Start Date) and continuing thru December 31, 2017 (Service End Date), subject to the terms and conditions described herein. The Client, their participating properties (Client-Properties) along with their designated and authorized staff are collectively referred to herein as Subscribers.

The purpose of this Agreement is to plan, initiate and operate a destination-lodging research program for the Client, (collectively, Services) in conjunction with its Client-Properties, operated by DMX, utilizing its proprietary methods, systems, procedures and enabling technology as further described below:

I. Services:

Services Provided: Includes both one-time Startup and Ongoing Operations, along with the production and publication of related work product which are provided by DMX under the terms of this Agreement, as further described in "Attachment B – Products and Services, attached hereto and incorporated herein by reference.
Ongoing Operations: Begins with the completion of Startup (if applicable), continues thru the term of this Agreement and concludes with a final report, mid-month after the Service End Date. (Note: By way of example, using a 12 month Agreement, Ongoing Operations will begin after completion of Startup, which is typically 60 days after the Service Start Date, and completion of Startup, then will continue for 10 monthly reports thru Service End Date, with the final Report several weeks thereafter.)
Data Submission & Report Subscribers: This Agreement includes participation licenses for up to 14 Client-Properties as data submitters. Additionally, access to resulting reports is granted and provided via the DMX secure web portal for up to 29 Subscribers (which includes 2 representatives for each Client-Property, and 5 Subscriptions for Client representatives), subject to change by mutual agreement during the term of this Agreement. (For Example, an Agreement with 10 Data-Submitting Client-Properties, would result in 20 Subscriptions for them, and up to 5 provided for Client, totaling 25.

II. Client Responsibilities: Client will:

1. Compensate DMX annual fees of $18,025, payable at Service Start Date, and then quarterly in advance thru the Term of the Agreement, as further detailed below:

Invoice Date	Amt. Due	Description
January 1, 2017	$4,506.25	Service Start Date - First of four quarterly payments
April 1, 2017	$4,506.25	Second of four quarterly payments
July 1, 2017	$4,506.25	Third of four quarterly payments
October 1, 2017	$4,506.25	Fourth of four quarterly payments

Note: Fees are based on DMX standard policies and payment terms outlined above and will be subject to change if altered.

2. Designate a representative in the person of John Norton (Client Representative) to serve as primary contact for Client's performance of the responsibilities described herein.
3. Identify, recruit, and engage Client-Properties, by way of a related Client-Property Subscription Agreement (see Attachment C) and then assist DMX with their Startup and ongoing data submission in accordance with DMX standard procedures.
4. Acknowledge that this Agreement is part of a broader, cooperative industry destination/lodging research program, whose value increases with broader participation, and generally endorse and promote Program participation by any/all appropriate properties, similar comparative destinations

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and any others whose participation might be beneficial.

III. DMX Services and Responsibilities: DMX will:

1. Provide those products and Services further described in Attachment B, along with the use of its proprietary systems, procedures, policies and enabling technology.
2. Assist Client in their recruitment of Client-Properties and then provide Startup training/orientation and ongoing support of Client and Client-Subscribers.
3. Collect data provided by Client-Properties, evaluate and secure the resulting data, then produce and distribute requisite reports to all Subscribers by way of the DMX secure web portal to which Subscribers are provided access via individual Subscriber logons.
4. Provide Client-Properties with access to additional DMX products and services (beyond the scope of this agreement) on an a la carte basis, at best available rates, subject only to pre-existing commitments and in accordance with its standard Terms and Conditions.

IV. Client-Property Responsibilities: In the performance of their obligations under this Agreement, both DMX and Client rely on participating properties the terms and responsibilities for which are defined in a separate but related Client-Property Subscription Agreement (see Attachment C), where:

1. Client-Properties agree to execute and abide by the Client-Property subscription agreement, participate by submitting their reservation activity data according to DMX standard terms, conditions and procedures in a manner that is both timely and accurate.
2. Earn Subscription rights and access to resulting reports (see Attachment B)
3. Receive right to purchase additional DMX products and services on an a la carte basis pursuant to a separate agreement between DMX and the Client-Properties

V. Terms and Conditions:

1. **Billing Procedures:**
   a. Fees related to this Agreement are due and payable as described in the Client Responsibilities section of this Agreement and are delinquent if not received within 30 days of invoice date. Delinquent payments are subject to interest charges at 1.5% per month until received and if not cured within 30 days of notice, are grounds for default under this Agreement and the right to pursue applicable remedies.
   b. Expenses associated with the performance of this Agreement are included, except as follows: Travel related expenses, when at Client's request and pre-approved, will be charged at the costs incurred, along with half the related travel time to/from DMX Office in Denver.
   c. No taxes or other similar surcharges are anticipated, but if imposed or assessed by an authorized taxing authority, will be treated as expenses and become the Client's responsibility to pay and/or reimburse.
   d. Any/all additional work requested by Client and not already included in this Agreement, will be performed, subject to pre-existing commitments, and charged at DMX standard rates, terms and conditions.
2. **Confidentiality and Distribution**: Data Provided by Client-Properties, and resulting reports are CONFIDENTIAL INFORMATION, as subject to the following:
   a. Client/Client-Property data will be treated as Confidential Information by DMX, not to be published or distributed unless/until aggregated with other similar data and indistinguishable as a result. DMX will retain all data in its secure web portal, produce and distribute agreed upon

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reports for Client and Client-Properties and retain exclusive rights to the data and various reports, provided that no individual Client-Property data is disclosed, nor any aggregated data made public. For example Client and Client-Property data might be combined with other similar data as part of a broader regional or industry-wide report set.

b. As part of the Separate-but related Client-Property Subscription Agreement (Attachment C), Client Properties and their respective Subscribers, acknowledge and agree that all information, reports and related data posted within the DMX web portal and/or otherwise provided by DMX is CONFIDENTIAL INFORMATION, to which access is restricted, and reproduction, distribution or sharing of this CONFIDENTIAL INFORMATION is STRICTLY PROHIBITED and enforceable by law excepting only when specific written agreement provides otherwise.

3. **Inherent Limitations and Restrictions**: Notwithstanding the reasonable and best efforts undertaken by the parties to fully perform their respective obligations as provided for herein, the parties acknowledge and agree that there are inherent limitations and/or restrictions which may alter, influence and otherwise affect the results and the success of this Agreement and may thereby provide justifiable cause and reason for inability to perform certain obligations by a given party. These limitations and restrictions include, without limitation, the following:
   a. Client-Property Subscribers submission of timely and accurate data is vital to the performance of this Agreement, but beyond the control or direction of either DMX or the Client, and could result in a failure to start or maintain the minimum thresholds of sufficient quantity or quality of data (Data Integrity) to publish viable reports in which case:
      1. Parties will utilize best efforts to restore minimum Data Integrity.
      2. DMX may evoke a limited report production process, where data will be collected, aggregated, and reports produced, but distributed only to Client on a Confidential basis, until Data Integrity is restored.
      3. If Data Integrity is not achieved within 4 months of Service Start Date, or not maintained for any consecutive 3 month period during the term of this Agreement, then this Agreement may be cancelled by either party by providing 30 days written notice as provided for herein.
   b. The existence of minimum Data Integrity will be determined and established by DMX, in accordance with its standard procedures and at its sole discretion.

a. Responsibility: All Program participants understand and acknowledge that DMX reports are based on data provided by participating program Client-Properties and that DMX will use its best efforts to assure the accuracy of the data and resulting reports, but DMX will not be responsible or liable for accuracy of the data, resulting reports, or any decisions made as a result.

b. Cancellation: This Agreement shall terminate upon completion of all Services provided for herein, or sooner if mutually agreed upon by the parties, or cancelled by either party with 30 days written notice, whereupon this Agreement shall be terminated and wound down by the parties, in which case:
   a. All Startup fees will be retained by DMX.
   b. DMX will be compensated for all Services performed including for any/all monthly report production that had been performed prior to the date of Cancellation.
   c. If this Agreement includes a multi-year price discount, a cancellation by Client for any reason, will invalidate the multi-year discount and require a reimbursement of any/all discounts taken by Client thru term of cancellation, as an early cancellation fee. (For example if the Client received a discount of $3,000/year/$250/month, cancelled the Agreement after 15

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months, their cancellation fee would be an amount equal to the discount over those 15 months ($250 x 15= $3,750).

d. Any remaining obligations and/or fees associated with this Agreement will be terminated and no further obligations will remain in force or effect, excepting those related to Confidential Information as set forth above.

6. **Independent Contractor**: DMX and the Client shall be considered independent contractors. Neither DMX nor the Client is an employee, agent, joint venturer or partner of the other entity. Nothing shall be interpreted as creating an employment relationship between or among DMX and the Client. DMX shall have control of the manner and means by which its services are provided to the Client subject to the terms and provisions of this Agreement.

7. **Controlling Law**: This Agreement shall be construed in accordance with, and governed by, the laws of the State of Colorado.

8. **Dispute Resolution:** Any disputes arising out of this Agreement shall be subject to arbitration. As a pre-condition to the filing of any such arbitration, all claims, disputes, and other matters in question between the parties arising out of, or relating to, this Agreement shall first be submitted to non-binding mediation prior to initiation of any arbitration unless the parties mutually agree otherwise. The cost of said mediation shall be split equally between the parties. This Agreement to mediate shall be specifically enforceable under the prevailing laws of the State of Colorado.

   The parties agree that any disputes or claims concerning the terms and conditions of this Agreement that cannot be resolved after consultation and discussion between the parties or by mediation shall be submitted to binding arbitration through either the American Arbitration Association or the Judicial Arbiter Group in accordance with commercial arbitration rules and the Colorado Arbitration Act, with the tribunal being selected by the party filing the demand for Arbitration. Any such arbitration shall be conducted at Denver, Colorado. The parties shall select one mutually agreeable arbitrator from the candidates available through the arbitration tribunal. The arbitrator shall have the power to grant interim and injunctive relief, provided that any party may apply to any court of competent jurisdiction to enjoin a breach of confidential information obligation(s). Judgment upon the award rendered by the arbitrator may be entered into any court having jurisdiction. In connection with any arbitration, the prevailing party shall be awarded and shall recover from the other non-prevailing party all costs and expenses, including reasonable attorney's fees, as may be incurred.

9. **Additional Provisions** (If Any):

10. **General Provisions:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, successors and assigns. This Agreement, and Attachments hereto, embodies the entire understanding and agreement between the parties concerning the subject matter hereof and supersedes any and all prior negotiations, understandings or agreements concerning the subject matter hereof. This Agreement shall be deemed for all purposes to have been prepared through the joint efforts of the parties hereto and shall not be construed for or against one party or any other party as a result of the preparation, submittal, drafting, execution or other event of negotiation hereof. This Agreement may be executed in counterparts, but such counterparts shall constitute one and the same instrument. This Agreement may be executed by telefax signature which shall be binding as original signatures for all purposes (evidentiary otherwise).

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EXECUTED as of the ____ day of _____, 2016

CLIENT:

_____

By: _____

Name: _____

Title: _____

DMX:

DestiMetrics, LLC,

By: _____

Name: Ralf Garrison

Title: Director

Attachment A: Billing Information
Attachment B: Products and Services

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DestiMetrics™ LLC
Resort Intelligence.

ATTACHMENT A: BILLING INFORMATION

Send Invoice by: _____ Email/PDF _____ Postal Mail

Client Company Name: _____

Authorized Representative Name: _____

Phone: _____ Email Address: _____

Mailing Address: _____
(PO Box or Street Address)

City: _____ State/Province: _____

Country: _____

Zip/Postal Code: _____

Invoices are to be sent to the attention of: _____

Accounting Contact Email Address: _____Phone_____

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ATTACHMENT B - DMX PRODUCTS AND SERVICES

This Attachment B is an integral part of the Client Agreement dated January 1, 2017 by and between DestiMetrics, LLC (DMX) and Gunnison County (Client) and further describes the Services that are being provided pursuant to the Client Agreement. The prices, terms and conditions described below are based on the total number of Data Submitting Client-Properties and Subscribers (including Client/Client-Property Subscribers) and data submitting Client-Properties as well as the overall term of this Agreement.

1. MARKET INTELLIGENCE PACK: Designed to provide a broad, contextual overview of the destination leisure travel ecosystem, and destination travel marketplace, the "Intel-Pak" includes a family of information related services, bundled into a comprehensive package that provides "what you ought to know…" to do business better. All Intel-Pak products are available through the DestiMetrics Secure Web Portal, and the Mountain Travel News and Monthly Briefing are delivered by email for added convenience. Quarterly webinars and the annual ASSEMBLY complete the elements of the Intel Pak.

- **1.1 The Economy**: A collection of national and local economic and travel indicators as well as comparative sales/lodging tax and airport enplanement data, collected and updated monthly from publicly available sources and presented on DMX's secure web portal.
- **1.2 Monthly Briefing (Mountain Destinations Only)** A monthly narrative summary of DMX Travel News Talker, The Economy and DMX "industry-wide" econometric data, with expert interpretation and supporting economic indicator dashboard graphics.
- **1.3 Travel News Talker:** A synopsis of current economic and destination travel news, aggregated from various 3rd party sources and selected for the destination travel industry marketing and management professionals, and updated regularly and posted on DMX's secure web portal.
- **1.4 Mountain/Vacation Travel News**: A monthly newsletter, featuring the top stories from the daily News Talker, and distributed to all Subscribers.
- **1.5 Quarterly Market Update Webinars**: A 60 minute web/phone based presentation by DestiMetrics analysts, provided several times per year, and including strategic assessment and interpretation of market conditions and trends as well as industry lodging metrics for the past season and upcoming season. Webinars are exclusively for Subscribers only.
- **1.7 Library**: A collection of articles, reports and other market intelligence along with copies of various DMX presentations are found in the DMX Subscriber Library.

Annual Price: <u>$2,575</u>

Distribution Rights: The Market Intelligence Pak is only available to individual Subscribers up to the number of subscribers listed in the Agreement.

Publication: Theses reports/products will be posted on DestiMetrics web portal and will be accessible by all Subscribers.

2. RESERVATION ACTIVITY OUTLOOK REPORT SET: Client-Property data is collected at a monthly level of granularity and aggregated to create a destination-wide monthly report set of paid lodging reservation activity and related revenue,

2.1 Reservation Activity Outlook (RAO) Report. The number of available units, room nights and related revenue are collected, from which Occupancy average daily rate (ADR), and revenue per available room night (RevPAR) are calculated. Results are then aggregated in a report format that provides graphic summaries, charts and supporting tables of business on the books for the forward looking 6 months and total business

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for the trailing 6 months. Current year data is overlaid against previous year-to-date and previous seasons-end data, when sufficient data exists. Three views of the resulting data are provided in chart form with supporting tables, including 6 month forward-looking view, fixed winter view (Nov. – Apr.), and fixed summer view (May – Oct.). Additionally, pacing of current year vs. previous year reservation activity is provided in chart and detailed table view. From this information, destinations can track their performance against their previous history and properties can see how the aggregate of other properties in their destination are performing. Distribution rights include all Subscribers. **Annual Price:** $10,558 per year**.**
Note: Additional Client-Property data submission licensing is available in increments for an additional fee.
Publication: This report will be posted on DestiMetrics web portal and will be accessible by all Subscribers.

2.2 RAO Segment Reports: When sufficient participation is obtained, Client may purchase reports that compare a portion of their participating properties (example: properties within a specific geographical location or unit type) against their own year over year performance or to another segment of participating properties. These reports will provide the same metrics as the RAO (2.1) and will be in the same format as described above. Distribution rights include all Subscribers. **Annual Price:** $2,060 per year for 2 Segment Reports subject to participation in the RAO (2.1) above, and under the same terms and conditions.

Publication: Theses reports will be posted on DestiMetrics web portal and will be accessible by all Subscribers.

2.3 Multi-Destination Comparative Report (MDC): A destination-wide view of paid occupancies is created from data provided as part of the RAO (2.1) report, the result of which is displayed against all other individual participating DMX destinations (which are kept anonymous) in bar chart format, in both current year occupancy and year-over-year comparative change. A third report shows Average Daily Rate in similar format and also includes the trailing months and forward –looking 6 months. Distribution rights include all Subscribers. This report will be posted on DestiMetrics web portal and will be accessible by all Subscribers.
Annual Price: $2,833 subject to participation in the RAO (2.1) above, and under the same terms and conditions.

Publication: This report will be posted on DestiMetrics web portal and will be accessible by all Subscribers.

TOTAL PACKAGE PRICE: 1 Year Agreement

Total - Ongoing Annual Fees: $18,025

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