AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Memorandum of Agreement; Crested Butte/Mount Crest

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Crested Butte/Mt CB Bartenders' Association and BOCC

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

Summary:

Agreement with CB/MtCB Bartenders' Association

Fiscal Impact: $4,000

Submitted by: Laura Seymour **Submitter's Email Address:** lseymour@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
Included in 2017 budget. No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 12/21/2016

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

Comments:
ok - gs

Reveiwed by: GUNCOUNTY1\gstuhr Discharge Date: 12/22/2016 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 1/4/2017

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

Agenda Date: 1/10/2017

Revised April 2015

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("MOA") is made effective the 1st day of January, 2017, by and between the Board of County Commissioners of the County of Gunnison, Colorado, whose address is 200 East Virginia, Gunnison, CO 81230 ("Gunnison County") and the Crested Butte/Mount Crested Butte Bartenders and Servers Association, Inc., a Colorado Nonprofit Corporation, whose address is 230 Elk Avenue, Crested Butte, CO 81224 ("CB/MTCB Bartenders and Servers Association").

RECITALS

WHEREAS, CB/MTCB Bartenders and Servers Association has requested assistance from Gunnison County in financing a portion of operational costs; and

WHEREAS, Gunnison County is supportive of the objectives of CB/MTCB Bartenders and Servers Association in terms of assisting those in need of services in Gunnison County; and

WHEREAS, Gunnison County feels it is in the public's interest to provide financial assistance to CB/MTCB Bartenders and Servers Association.

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 MOA shall commence on the 1st day of January, 2017 and shall terminate on December 31, 2017, unless sooner terminated or replaced as provided herein.

2. COMPENSATION, BONUS AND EXPENSES.

(a) Gunnison County agrees to provide $4,000 in funds to CB/MTCB Bartenders and Servers Association. It is understood and recognized that these funds must be used for financing a portion of operational costs.

(b) The quarterly payments will be distributed by Gunnison County only upon submittal of the appropriate documentation pursuant to paragraph 5.

(c) CB/MTCB Bartenders and Servers Association agrees to submit a final written project report by October 1, 2017 that shall include, at a minimum, a summary of the projects or programs which utilized the financial assistance and how funds were utilized.

(d) The County's receipt of this final project report by the October 1, 2017 deadline will serve as a condition for future funding eligibility.

(e) This MOA is subject to Gunnison County making an annual budget appropriation in an amount sufficient to fund this MOA. If Gunnison County fails or refuses to make such an appropriation, Gunnison County reserves the right to terminate this MOA pursuant to paragraph 11 of this MOA.

(f) Gunnison County reserves the right to amend this agreement to reduce the contribution stated herein if the 2016 Gunnison County audit should result in a significantly lower fund balance than projected.

3. STRATEGIC RESULT.

Execution of this MOA will assist Gunnison County with its Promote Healthy Communities strategy, as outlined in the Gunnison County Strategic Plan.

4. INDEMNIFICATION.

(a) CB/MTCB Bartenders and Servers Association 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 CB/MTCB Bartenders and Servers Association or its employees, sub-contractors or agents in connection with this MOA.

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

5. INSURANCE.

CB/MTCB Bartenders and Servers Association agrees that at all times during the Term of this MOA that CB/MTCB Bartenders and Servers Association 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 MOA, CB/MTCB Bartenders and Servers Association 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 CB/MTCB Bartenders and Servers Association during the term of this MOA.

(b) Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than $350,000 for any injury to one person in any single occurrence and in an amount no less than $990,000 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 MOA, CB/MTCB Bartenders and Servers Association is acting as an independent contractor and not as an agent, partner, joint venture or employee of Gunnison County. CB/MTCB Bartenders and Servers Association does not have any authority to bind Gunnison County in any manner whatsoever.

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

7. AUTHORITY TO AUDIT RECORDS.

Gunnison County has the authority to audit CB/MTCB Bartenders and Servers Association's financial records, said audit to be performed by an employee, agent or designee of Gunnison County and at the expense of CB/MTCB Bartenders and Servers Association, upon seven days' notice to CB/MTCB Bartenders and Servers Association.

8. DELEGATION AND ASSIGNMENT.

This is a personal services contract with CB/MTCB Bartenders and Servers Association and, therefore, CB/MTCB Bartenders and Servers Association shall not delegate or assign its duties under this MOA 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 MOA shall be binding on the successors and assigns of either party.

9. IMMIGRATION COMPLIANCE CERTIFICATION.

(a) CB/MTCB Bartenders and Servers Association certifies that CB/MTCB Bartenders and Servers Association does not and will not knowingly contract with or employ illegal aliens to work under this MOA.

(b) CB/MTCB Bartenders and Servers Association certifies that CB/MTCB Bartenders and Servers Association has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work under this MOA.

(c) CB/MTCB Bartenders and Servers Association 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) CB/MTCB Bartenders and Servers Association 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) CB/MTCB Bartenders and Servers Association agrees to comply with the provisions of C.R.S. 8-17.5-101 et seq.

10. DISCRIMINATION.

CB/MTCB Bartenders and Servers Association agrees not to discriminate against any person or class of persons by reason of age, race, color, sex, creed, religion, disability, national origin, sexual orientation or political affiliation in providing any services or in the use of any facilities provided for the public in any manner prohibited by Part 21 of the

Regulations of the Office of the Secretary of Transportation. CB/MTCB Bartenders and Servers Association shall further comply with the letter and spirit of the Colorado Anti-Discrimination Act of 1957, as amended, and any other laws and regulations respecting discrimination in unfair employment practices. Additionally, CB/MTCB Bartenders and Servers Association shall comply with such enforcement procedures as any governmental authority might demand that Gunnison County take for the purpose of complying with any such laws and regulations.

11. 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

CB/MTCB Bartenders and Servers Association:
Joel Lewis
230 Elk Avenue
Crested Butte, CO 81224

With a copy to: Bookie Louise
PO BOX 762
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.

12. TERMINATION.

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

13. MISCELLANEOUS.

(a) SEVERABILITY. If any clause or provision of this MOA 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 MOA 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 MOA 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.

14. ATTORNEYS FEES.

If any party hereto shall bring any suit or action against another for relief, declaratory or otherwise, arising out of this MOA, 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 attorney's fees and expert witness fees.

15. GOVERNING LAW.

This MOA 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 MOA shall be in the state District Court governing Gunnison, Colorado.

16. ENTIRE AGREEMENT.

This MOA 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.

17. COUNTERPARTS: FACSIMILE TRANSMISSION.

This MOA 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 MOA as of the date set forth above.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Paula Swenson, Chairperson

ATTEST:

_____
Deputy Clerk

By: _____
CB/MTCB Bartenders and Servers Association