AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Temporary Road Use Agreement; Rotary Club of Gunnison; Portion of County Road 49 from July 4, 2013 at 6:00 am to July 5, 2013 at 10:00 am; Annual Aerial Fireworks Display Event

Action Requested: County Manager Signature

Parties to the Agreement: Rotary Club and Gunnison County

Term Begins: 07/04/13 **Term Ends:** 7/5/2013 **Grant Contract #:** n/a

Summary:
Temporary road closure of County Rd 49 from 6am on 7/4/13 until 10am 7/5/13 for the 4th of July Fireworks Display

Fiscal Impact: none

Submitted by: CAO for Marlene Crosby **Submitter's Email Address:** mcrosby@gunnisoncounty.org

Finance Review: ○ Required ● Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ● Required ○ Not Required

Comments:

ok db 6/11/13 Please schedule for next BOCC agenda. thank you. db

Reviewed by: DBaumgarten Discharge Date: 6/11/2013 Certificate of Insurance Required Yes ● No ○

County Manager Review:

Comments:

Reviewed by: MBirnie Discharge Date: 6/12/2013

○ Consent Agenda ● Regular Agenda ○ Worksession Time Allotted: Marlene's Time

Agenda Date: 6/18/2013 Follow Up Agenda Date: N/A

Revised April 2013

O'HAYRE, DAWSON & NORRIS, P.C.
ATTORNEYS AT LAW
WWW.GUCLAW.COM

DIRECT (970) 641-3326 EXT. 2
EMAIL: BOHAYRE@GUCLAW.COM

ROBERT M. O'HAYRE

120 N. TAYLOR STREET
P.O. BOX 179
GUNNISON, CO 81230
TELEPHONE (970) 641-3326
FACSIMILE (970) 641-3094

June 11, 2013

David Baumgarten
Gunnison County Attorney
Gunnison County Courthouse
200 East Virginia Avenue
Gunnison, CO 81230

Hand Delivered

Re: Agreement with Rotary Club for Use of County Road 49 for Fireworks

Dear David:

Attached is the Temporary Road Use Agreement between the Rotary Club and Gunnison County signed by Pamela Christian, President of the Rotary Club of Gunnison, Co, USA, Inc.

We understand that you anticipate obtaining the Board of County Commissioners' approval of the Agreement at the Commissioners' meeting on June 18th. If the Commissioners approve the Agreement, I would appreciate you obtaining the signature of Matthew Birnie on the Agreement, and returning a copy to me at your earliest convenience.

We also understand that there are new insurance requirements due to the recent amendments to C.R.S. §24-10-114, which become effective July 1, 2013. Accordingly, we will make sure that our Certificate of Liability Insurance satisfies those new requirements, as set forth in C.R.S. §24-10-114 and as repeated in Paragraph 4c of the Agreement

Thank you for your assistance. Please call me if you have any questions.

Very truly yours,

Robert M. O'Hayre

RMO:cp
Enclosure
cc: Pamela Christian (w/encl.) - via email only
Bill Matthews (w/encl.) - via email only
DemaLou Coghill (w/encl.) - via email only

TEMPORARY ROAD USE AGREEMENT

THIS TEMPORARY ROAD USE AGREEMENT (hereinafter "Agreement") is made and entered into on this ___ day of June, 2013, by and between the ROTARY CLUB OF GUNNISON, CO, USA, INC., whose address is P.O. Box 1274, Gunnison, Colorado 81230-1274 (hereinafter "Rotary") and the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO, a political subdivision of the State of Colorado, whose address is 200 E. Virginia, Gunnison, Colorado 81230 (hereinafter "Gunnison County").

FOR AND IN CONSIDERATION of the mutual covenants and promises hereinafter set forth, the parties hereto agree as follows:

1. GRANT OF PERMISSION TO USE.

Gunnison County grants to Rotary temporary permission to use a portion of County Road 49 (the "Property") only as set forth herein.

2. TERM OF USE.

Rotary shall temporarily use a portion of County Road 49 from July 4, 2013 at 6:00am MDT to July 5, 2013 at 10:00a.m. MDT.

3. ROTARY'S USE LIMITED.

Rotary's use of County Road 49 shall be for and limited to a single special event for the benefit of the public, specifically limited to use of the Property for a fireworks aerial display special event in accordance with Rotary's historical use of the Property for such event.

4. OBLIGATIONS OF THE RESPECTIVE PARTIES.

a. Rotary shall ensure closure of County Road 49 from its intersection with Teller Street to all traffic, including but not limited to foot, bicycle and vehicle traffic, with the exception of Gunnison County personnel, emergency vehicles, law enforcement, and Rotarian traffic for the set up, conduct and clean up of fireworks aerial display special event.

b. Rotary agrees to indemnify, defend and hold harmless Gunnison County, its 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 Rotary or its employees, sub-consultants or agents in connection with Rotary's use of the Property pursuant to this Agreement. This provision 4.b. shall survive any termination or expiration of the

Term of Use period or this Agreement with respect to any liability, injury or damage caused or occurring prior to such termination.

c. Rotary shall ensure that Gunnison County is named as an additional insured, or has the named benefit of, the insurance coverage of Rotary regarding the fireworks aerial display special event, with limits no less than:

i. For any injury to one person in any single occurrence, Three Hundred Fifty Thousand and No/100 U.S. Dollars ($350,000.00); and

ii. 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).

Rotary shall furnish to Gunnison County current certificates of such insurance to Gunnison County no later than Friday, June 28, 2013.

Nothing in this Agreement, including but not limited to the required or the existence of the insurance required hereunder is or shall be deemed a waiver by the Rotary or Gunnison County of any defense or claim of sovereign immunity, nor a waiver of any other provision of law relating to the liability of governmental units or the limits thereof.

This provision 4.c. shall survive any termination or expiration of this Agreement with respect to any liability, injury or damage caused or occurring prior to such termination.

d. Rotary shall be responsible for, and shall promptly pay to Gunnison County, all reasonable costs to repair any damage to County Road 49 caused by Rotary's use of the Property under this Agreement.

e. Rotary shall shoot the fireworks vertically to keep FOD to a minimum on the Airport Safety and Movement Areas. Gunnison County will continue to work with the Rotary on FOD issues.

f. Rotary will need to keep emergency access routes open through San Juan and Teller streets and keep an emergency access route down County Road 49.

g. Rotary will be responsible for communicating with the I-Bar for access needs they have during the road closure period. Gunnison County will notify the lessees of the ranch that could possibly have animals in the pastures along County Road 49.

h. Should any damage happen to adjacent fences, Rotary will be responsible for fixing the damage.

i. Gunnison County will NOTAM the fireworks.

j. Instead of closing the Airport runway on July 4, 2013, Gunnison County will close the easterly 1,000 feet of the Airport runway and NOTAM that approaches on Runway 24 and Departures on Runway 06 will be out of service from 8:00 p.m. until 11:00 p.m. on July 4th.

k. There is not a commercial plane scheduled to arrive during the fireworks display time period, however, Gunnison County shall notify the local station and local pilots of the firework activities.

l. Gunnison County shall coordinate fire protection, with the Gunnison Fire Department and the ARFF crew.

m. Gunnison County Airport Personnel will monitor UNICOM and area traffic during the fireworks display time period.

5. NON-WAIVER.

No covenant or condition of this Agreement may be waived except by the written consent of the parties hereto. Forbearance or indulgence by either party in any regard whatsoever shall not constitute a waiver of the term or condition to be performed by the other party to which the same may apply, and, until complete performance of said term or condition, the parties shall be entitled to invoke any remedy available under this Agreement or by law or in equity despite said forbearance or indulgence.

6. NOTICES.

Service of all notices under this Agreement shall be sufficient if sent via hand delivery or certified registered mail as follows:

Rotary:
Gunnison Rotary Club
c/o Bob O'Hayre
O'Hayre, Dawson and Norris
PO Box 179
Gunnison, CO 81230

Gunnison County:
Board of County Commissioners
of the County of Gunnison, Colorado
c/o County Manager
200 East Virginia Avenue
Gunnison, CO 81230

7. SEVERABILITY.

In the event any term, condition or provision contained in this Agreement is held by any court of competent jurisdiction to be invalid, the invalidity of such term, condition or provision shall in no way affect any other covenant, condition or provision herein contained. Provided, however, that if the invalidity of such term, condition or provision causes material prejudice to either party hereto with respect to its respective rights and obligations contained in the remaining valid portions of this Agreement, then at the option of such party, this Agreement may be declared to be terminated.

8. GOVERNING LAW - BINDING AGREEMENT.

This Agreement shall be deemed to have been made in and be construed in accordance with the laws of the State of Colorado and be binding upon the parties hereto, their successors and assigns.

9. ENTIRE AGREEMENT.

This instrument constitutes the entire Agreement between Gunnison County and Rotary, and it shall not be amended, altered, or changed except by a written agreement signed by the parties hereto.

10. VENUE.

Venue for any and all legal actions regarding this Agreement shall lie in the District Court in and for the County of Gunnison and State of Colorado.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first set forth above.

ROTARY CLUB OF GUNNISON, CO, USA, INC.

By:_____
Pamela Christian, President

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Matthew Birnie, County Manager

ATTEST:

_____
Deputy County Clerk