AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Memorandum of Agreement; LMD & TA

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Gunnison River Valley LMD and Tourism Association

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

Summary:

Memo of Agreement between Gunnison River Valley LMD and Gunnison/CB Tourism Association

Fiscal Impact: $1,900,000

Submitted by: Laura Stanley **Submitter's Email Address:** lstanley@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
This amount is included in the 2019 adopted budget. No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 12/14/2018

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

Comments:

Reveiwed by: Discharge Date: Certificate of Insurance Required

Yes ( ) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\emense Discharge Date: 12/14/2018

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

Agenda Date: 12/18/2018

Revised April 2015

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("Agreement"), is made effective the 1st day of January, 2019, by and between the Board of the Gunnison River Valley Local Marketing District and the Gunnison/Crested Butte Tourism Association, a Colorado non-profit corporation, and provides that:

A. RECITALS

WHEREAS, the public purposes and powers of the Gunnison River Valley Local Marketing District, declared pursuant to C.R.S. §29-25-1 02, are that it "will promote the health, safety, prosperity, security, and general welfare of the inhabitants thereof, the property owners therein, and all the people of the state; will promote the continued vitality of commercial business areas within local governments; and will be of special benefit to the property within the boundaries of any district created pursuant to this article .... and is essential to the continued economic growth of the state."; and

WHEREAS, pursuant to C.R.S. §29-25-111, the provision of services within the

Gunnison River Valley Local Marketing District, are:

A. Organization, promotion, marketing, and management of public events;
B. Activities in support of business recruitment, management, and development; and
C. Coordinating tourism promotion activities.

WHEREAS, the Board of the Gunnison River Valley Local Marketing District is responsible for the administration of funds collected from the Local Marketing District lodging tax and is supportive of the objectives of the Gunnison/Crested Butte Tourism Association; and

WHEREAS, Gunnison/Crested Butte Tourism Association has been working with the

Crested Butte-Mt. Crested Butte Chamber of Commerce, Gunnison Country Chamber of Commerce, local elected officials and the private sector to coordinate the marketing efforts of the Gunnison County community; and

WHEREAS, the Board of the Gunnison River Valley Local Marketing District feels that it is in the public interest and meets the goals of the Gunnison River Valley Local Marketing District to enter into this Agreement with the Gunnison/Crested Butte Tourism Association to support the implementation of its 2019 Work Program.

B. AGREEMENT

NOW, THEREFORE, the Board of the Gunnison River Valley Local Marketing District and the Gunnison/Crested Butte Tourism Association, in consideration of the recitals above and the obligations and mutual covenants contained herein below, agree as follows:

1. TERM.

The term of the Agreement shall begin on January 1, 2019 and end on December 31, 2019, unless sooner terminated or replaced as provided herein.

2. CONSIDERATION.

During the Term of this Agreement,

A. The Board of the Gunnison River Valley Local Marketing District shall:

Provide support funds to the Gunnison/Crested Butte Tourism Association, according to the 2019 Budget attached hereto and incorporated herein by reference as Appendix "A", in the amount of One Million Nine Hundred Thousand and No/100 U.S. Dollars ($1,900,000.00).

It is expressly agreed that these funds must be used exclusively for costs identified in the 2019 Budget attached as Appendix "A". Adjustments among budget line items may be at the Gunnison/Crested Butte Tourism Association's discretion as appropriate to achieve the overall marketing goals represented by the budget. The funds **will** be provided via monthly installments in the amount of One Hundred Fifty-Eight Thousand Three Hundred and Thirty Three and 33/1 00 U.S. Dollars ($158,333.33). The approved 2019 Gunnison County budget identifies the support funds and expenditures.

B. The Gunnison/Crested Butte Tourism Association shall:

1. Implement the 2019 Work Plan reflected by the budget in Appendix A.

2. During the Term of this Agreement, enter into individual funding agreements with:

a. Gunnison Country Chamber of Commerce to provide funding for tourism services during the year 2019 in an amount no less than Twenty Five Thousand and No/100 U.S. Dollars ($25,000.00); and

b. Mt. Crested Butte/Crested Butte Chamber of Commerce to provide funding for tourism services during the year 2019 in an amount no less than Twenty Five Thousand and No/100 U.S. Dollars ($25,000.00).

3. Create and utilize a comprehensive grant application process to ensure that the funds provided during the term and by this contract are strategically and equitably applied to diverse tourism efforts in the Gunnison Valley, pursuant to C.R.S. §29-25-111 with particular emphasis on the following funding structure and reporting:

a. Events. Support of existing independent and organization sponsored events, with a clear formula for deciding which events to support, metrics

for determining positive impacts to the economy and community vitality, and total dollars spent to support each event.

b. Economic Development. Support of programs, events and opportunities with a focus toward developing and maintaining a diverse economic base in the valley.

c. Marketing. Support of all marketing efforts that support the Gunnison/Crested Butte Tourism Association's mission, in addition to the following categories:

i. Sustainable Tourism. Work closely with the Sustainable Tourism and Outdoor Recreation Committee (STORC) to consider and support resolution of issues related to infrastructure and signage necessary to promote and sustain recreational uses of areas throughout the valley.

ii. Co-Marketing with Western State Colorado University (WSCU). Work closely with WSCU marketing professionals to consider and support cooperative efforts to recruit and retain students at the institution.

iii. Seasonal Expenditures. Equitably support winter and summer seasons to maintain balance in the diverse types of visitors to and uses of our valley.

4. Provide biannual reports to the Gunnison River Valley Local Marketing District to minimally include:

a. Performance information and metrics related to the funding structure outlined in Section 3 above;

b. Performance of the Gunnison/Crested Butte Tourism Association's adopted strategic business plan for 2019, including the plan's specific metrics and trend data that illustrate performance levels being achieved; and

c. Accompanying budget for the current year and of the previous six months showing alignment between the expenditures and the authorized spending categories outlined in Paragraph 3 above.

5. Pursuant to the Gunnison/Crested Butte Tourism Association bylaws, no later than October 1, submit a tentatively adopted strategic business plan and accompanying budget for the 2019 calendar year that, at a minimum, addresses the following:

a. Proposed results and measurements for those results consistent with the purpose of the Gunnison/Crested Butte Tourism Association;

b. Proposed strategies and associated budgets to achieve the proposed results;

c. Strategies for creation, maintenance and coordination of an effective digital presence for the County;

d. Strategies for marketing in-valley experiences and fulfillment;

e. Proposed performance-based contracts with vendors and subcontractors that contract with the Gunnison/Crested Butte Tourism Association; and

f. Coordination with strategic partners including, but not limited to, Crested Butte Mountain Resort, Western State Colorado University; Gunnison Country Chamber of Commerce, Mt. Crested Butte/Crested Butte Chamber of Commerce, major businesses and employers, municipalities, public land agencies, and event promoters.

6. Permit auditing by the Gunnison River Valley Local Marketing District of all the Gunnison/Crested Tourism Association's books, accounts, and financial transactions.

It is further recognized and understood by the parties to this Agreement that the financial obligations under this Agreement are contingent upon the receipt of tax revenues by Gunnison County from the lodging tax and, if there are insufficient revenues to support the estimated expenditures for 2019, the financial obligation will be reduced accordingly.

3. DESIGNATION OF COUNTY MANAGER

The Board of the Gunnison River Valley Local Marketing District designates the Gunnison County Manager as the Administrator for this Agreement, and all questions in regard to this Agreement shall be referred to the Gunnison County Manager.

4. INDEMNIFICATION

Gunnison/Crested Butte Tourism Association agrees to indemnify, defend and hold harmless the Board of the Gunnison River Valley Local Marketing District of Gunnison County, Colorado and Gunnison County, its elected officials, 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 Gunnison/Crested Butte Tourism Association or its employees, subcontractors or agents in connection with this Agreement.

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. RELATIONSHIP AMONG PARTIES

The relationship of the Gunnison/Crested Butte Tourism Association to the Board of the Gunnison River Valley Local Marketing District is that of an independent contractor, performing marketing functions pursuant to this Agreement. Gunnison/Crested Butte Tourism Association is not an agent of the Board of the Gunnison River Valley Local Marketing District, and the Board of the Gunnison River Valley Local Marketing District is not responsible for the acts or omissions of Gunnison/Crested Butte Tourism Association its officers, employees or agents.

6. MEETING REQUIREMENTS AND PROJECT REPORTING

Gunnison/Crested Butte Tourism Association agrees to meet biannually with the Board of the Gunnison River Valley Local Marketing District to discuss progress with the implementation of a 2019 Work Plan and 2019 Budget, as outlined in Section 2B.

The Gunnison/Crested Butte Tourism Association agrees to submit a final project report in a form and format as prescribed by the Administrator of this Agreement on or before December 1, 2019.

7. 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 River Valley Local Marketing District
Attn: Gunnison County Manager
200 E. Virginia Avenue
Gunnison, Colorado 81230

Gunnison/Crested Butte Tourism Association
202 E. Georgia, Suite B
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.

8. TERMINATION.

This Agreement may be terminated for non-compliance with the terms and conditions of the Agreement or the inability of the Gunnison/Crested Butte Tourism Association to implement a 2019 Work Plan and the 2019 Budget.

9. IMMIGRATION COMPLIANCE CERTIFICATION.

A. By its signature on this Agreement, Gunnison/Crested Butte Tourism Association certifies that, as of the time of its signature, it does not knowingly employ or contract with an illegal alien and that, in order to confirm the employment eligibility of all employees who are newly hired for employment in the United States, the Gunnison/Crested Butte Tourism Association has participated or attempted to participate in the E-Verify program ("E-Verify Program") created in Public Law 208, 1 04th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the United States Department of Homeland Security, and the Social Security Administration or the Department Program (Department Program) established pursuant to §8-17.5- 102(5)(c), C.R.S.

B. Gunnison/Crested Butte Tourism Association agrees that it shall not knowingly employ or contract with an illegal alien to perform work under this Agreement; and that it shall not enter into a contract with a subcontractor that fails to certify to the Gunnison/Crested Butte Tourism Association that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

C. Gunnison/Crested Butte Tourism Association has confirmed or attempted to confirm through participation in the E-Verify or Department Program the employment eligibility of all employees who are newly hired for employment in the United States.

D. Gunnison/Crested Butte Tourism Association shall not use E-Verify or Department Program procedures to undertake pre-employment screening of job applicants while work under this Agreement is being performed.

E. If the Gunnison/Crested Butte Tourism Association obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Gunnison/Crested Butte Tourism Association Contractor shall:

1. Notify the subcontractor and the Board of the Gunnison River Valley Local Marketing District within three days that the Gunnison/Crested Butte Tourism Association 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 herein, the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor 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.

F. The Gunnison/Crested Butte Tourism Association shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. Section 8-17.5- 101 (5).

G. If the Gunnison/Crested Butte Tourism Association violates a provision of this Illegal Alien Addendum, the Board of the Gunnison River Valley Local Marketing District may terminate this Agreement for breach of contract. If the Agreement is so terminated, the Gunnison/Crested Butte Tourism Association shall be liable for actual and consequential damages to the Board of the Gunnison River Valley Local Marketing District. Gunnison/Crested Butte Tourism Association understands that, in the event of such a termination, the Board of the Gunnison River Valley Local Marketing District is required to notify the office of the Colorado Secretary of State.

10. SOLE SOURCE CONTRACT.

This Agreement is a sole source contract pursuant to Article XXVIII of the Colorado Constitution, and the following provisions are applicable to said Agreement.

A. Section 15 of Article XXVIII of the Colorado Constitution is hereby incorporated by reference into this Agreement.

B. The Gunnison/Crested Butte Tourism Association, on behalf of itself, any person who controls ten percent or more of the shares of or interest in the Gunnison/Crested Butte Tourism Association, and its officers, directors, and trustees (collectively, the "Contract Holder") agrees, for the duration of this Agreement and for two years thereafter, to cease making, causing to be made, or inducing by any means, a contribution, directly or indirectly, on behalf of the Contract Holder or on behalf of his or her immediate family members and for the benefit of any political party or for the benefit of any candidate for any elected officer of the state or any of its political subdivisions.

C. If a person responsible for the bookkeeping of the Gunnison/Crested Butte Tourism Association, or if a person acting on behalf of any party to this Agreement, obtains knowledge of a contribution made or accepted in violation of Section 15 of Article XXVIII of the Colorado Constitution, and that person intentionally fails to notify the Secretary of State or appropriate government officer about the violation in writing within ten business days of learning of such contribution, then that person may be contractually liable for restitution to the general treasury of the Board of the Gunnison River Valley Local Marketing District to compensate for all costs and expenses associated with the breach, including costs and losses involved in securing a new contract if that becomes necessary.

D. The parties hereto agree that if any party intentionally violates Section 15 of Article XXVIII of the Colorado Constitution, as contractual damages that party shall be ineligible to hold any sole source government contract or public employment within the State of Colorado or any of its political subdivisions, for three years.

E. The parties hereto agree that if any party intentionally violates Section 17(2) of Article XXVIII of the Colorado Constitution, as contractual damages that party shall be ineligible to hold any sole source government contract or public employment with the State of Colorado or any of its political subdivisions, for three years.

F. The Gunnison/Crested Butte Tourism Association agrees to comply with the summary and notice provisions of Section 16 of Article XXVIII of the Colorado Constitution.

G. The Gunnison/Crested Butte Tourism Association hereby certifies that it has not made or caused to be made any contribution intended to promote or influence the result of an election on a ballot issue relating to this Agreement on or after December 31, 2008.

H. All terms used in this Section and not otherwise defined in this Agreement shall have the same meanings as set forth in Article XXVIII of the Colorado Constitution.

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 the Board of the Gunnison River Valley Local Marketing District of Gunnison County, Colorado or Gunnison County of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

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. 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.

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.

GUNNISON RIVER VALLEY LOCAL MARKETING DISTRICT

By: _____
Phil Chamberland, Chairperson

By: _____
Jonathan Houck, Vice Chairperson

By: _____
John Messner, Commissioner

ATTEST:

_____
Deputy County Clerk

GUNNISON/CRESTED BUTTE TOURISM ASSOCIATION

By: _____
Chairperson