AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: MOA Title III Transfer to WRWC

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

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

Summary:

Memorandum of Agreement West Region Wildfire Council re USDA Secure Rural Schools and Community Title III Awards re Wildfire Mitigation Activities in Gunnison, CO

Fiscal Impact:

Submitted by: Lauren Hibbard **Submitter's Email Address:** lhibbard@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ○ Required ◉ Not Required

Comments:

Reveiwed by: Discharge Date: Certificate of Insurance Required Yes ○ No ○

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 9/10/2020

◉ Consent Agenda ○ Regular Agenda ○ Worksession Time Allotted: 0

Agenda Date: 9/15/2020

Revised April 2015

MEMORANDUM OF AGREEMENT
BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO AND THE WEST REGION WILDFIRE COUNCIL REGARDING U.S.D.A. SECURE RURAL SCHOOLS AND COMMUNITY SELF-DETERMINATION ACT, TITLE III AWARDS FOR 2013-2020 ASSOCIATED WITH WILDFIRE MITIGATION ACTIVITIES IN GUNNISON COUNTY, COLORADO

THIS MEMORANDUM OF AGREEMENT ("Agreement") is entered into on the ____ day of _____, 2020, between the Board of County Commissioners of the County of Gunnison, Colorado, whose address is 200 E. Virginia, Gunnison, Colorado 81230 ("Gunnison County") and West Region Wildfire Council, a Colorado non-profit corporation, whose address is 510 South Cascade Avenue, Montrose, Colorado 81401.

I. RECITALS.

Pursuant to Title III of the United States Department of Agriculture Secure Rural Schools and Community Self-Determination Act of 2000, as amended through P.L. 115-141, participating counties may receive and utilize funds for certain fire mitigation activities.

In 2015 Gunnison County was authorized to receive Title III funds in the amount of $78,145.70 and in 2016 received those funds. In 2016 Gunnison County was authorized to receive Title III funds in the amount of $71,836.33 and received those funds in 2017. In 2017 Gunnison County was authorized to receive Title III funds in the amount of $61,184.54 and received those funds in 2018. In 2018 Gunnison County was authorized to receive Title III funds in the amount of $60,578.71 and received those funds in 2019. In 2019 Gunnison County was authorized to receive Title III funds in the amount of $55,634.95 and received those funds in 2020.

Gunnison County wishes to transfer those Title III Funds currently held by Gunnison County, in the amount of $55,634.95 to West Region Wildfire Council for use by West Region Wildfire Council for fire mitigation activities within Gunnison County, Colorado pursuant to Title III of the Secure Rural Schools and Community Self-Determination Act of 2000, as amended through P.L. 115-141, according to the terms and conditions of this Agreement.

II. AGREEMENT

NOW THEREFORE, in consideration of the Recitals above, the parties herein agree to the following terms and conditions:

1. TERM.

This Agreement shall will become effective upon the date entered into as set forth above and shall remain in force until all Title III Funds received and designated by Gunnison County have been disbursed by Gunnison County to West Region Wildfire Council and

all associated reports and documentation have been completed and accepted by the United States Department of Agriculture unless sooner terminated, amended or replaced as provided herein.

2. CONSIDERATION.

a. In consideration and exchange for West Region Wildfire Council's fire mitigation activities, Gunnison County agrees to and shall:

i. Transfer those Title III Funds identified above currently held by Gunnison County to West Region Wildfire Council.

ii. Publish the proposal for use of the Title III Funds pursuant to Section 302(b) of the United States Department of Agriculture Secure Rural Schools and Community Self-Determination Act of 2000, as amended through P.L. 115-141.

b. In consideration and exchange for Gunnison County's transfer of Title III Funds, West Region Wildfire Council agrees to and shall:

i. Utilize the Title III Funds for fire mitigation activities within Gunnison County, Colorado pursuant to the United States Department of Agriculture Secure Rural Schools and Community Self-Determination Act of 2000, as amended through P.L. 115-141, ONLY for the following:

A. Carry out activities under the Firewise Communities program to provide to homeowners in fire-sensitive ecosystems education on, and assistance with implementing, techniques in home siting, home construction, and home landscaping that can increase the protection of people and property from wildfires;

B. Develop and carry out community wildfire protection plans in coordination with the appropriate Secretary concerned.

ii. Maintain all necessary and appropriate records regarding receipt and expenditures of the Title III Funds and provide all records requested by Gunnison County and/or the United States Department of Agriculture to satisfy its obligations under this Agreement and in accordance with the Secure Rural Schools and Community Self-Determination Act of 2000, as amended through P.L. 115-141.

iii. Prior to the expiration of this Agreement, warrant and certify in writing to Gunnison County that they have complied with the requirements of the Secure Rural Schools and Community Self-Determination Act of 2000, as

amended by P.L. 115-141, for uses associated with Title III County Funds as set forth by the United States Department of Agriculture and all other provisions of applicable law and regulation

3. INDEPENDENT CONTRACTOR.

a. In carrying out its obligations and activities under this Agreement, West Region Wildfire Council is acting as an independent contractor and not as an agent, partner, joint venture or employee of Gunnison County. West Region Wildfire Council does not have any authority to bind Gunnison County in any manner whatsoever.

b. West Region Wildfire Council acknowledges and agrees that West Region Wildfire Council is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County.

4. INDEMNIFICATION.

West Region Wildfire Council shall indemnify, defend and hold harmless Gunnison County, its commissioners, officers, employees and agents, 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 West Region Wildfire Council or its employees, sub-contractors 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. INSURANCE.

West Region Wildfire Council agrees that at all times during the Term of this Agreement that West Region Wildfire Council 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, West Region Wildfire Council will provide insurance certificates to Gunnison County. 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 West Region Wildfire Council during the term of this Agreement.

b. Comprehensive General Liability Insurance or the equivalent.

c. Comprehensive automobile liability insurance on all vehicles used by West Region Wildfire Council in the performance of this Agreement, or in addition or in the alternative non-owned vehicle insurance to the extent applicable.

6. DELEGATION AND ASSIGNMENT.

West Region Wildfire Council shall not delegate or assign its duties under this Agreement 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 Agreement shall be binding on the successors and assigns of either party.

7. IMMIGRATION COMPLIANCE CERTIFICATION.

West Region Wildfire Council certifies that West Region Wildfire Council does not and will not knowingly contract with or employ illegal aliens to work under this Agreement.

West Region Wildfire Council certifies that West Region Wildfire Council has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work under this Agreement.

West Region Wildfire Council 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.

West Region Wildfire Council 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.

West Region Wildfire Council agrees to comply with the provisions of C.R.S. 8-17.5-101 et seq.

8. 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: Scott Morrill
Emergency Manager
Gunnison County
510 W. Bidwell Avenue

Gunnison, CO 81230

With a Copy to: Matthew Birnie, County Manager
Gunnison County
200 E. Virginia
Gunnison, Colorado 81230

West Region Wildfire Council: Jamie Gomez
Executive Director
West Region Wildfire Council
510 S. Cascade Ave.
Montrose, Colorado 81401.

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.

9. 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.

10. 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 Gunnison County of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

11. 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 of Colorado District Court, Gunnison County, Colorado.

12. COUNTERPARTS: ELECTRONIC TRANSMISSION.

This Agreement may be executed and submitted via electronically 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 electronic counterparts shall be promptly followed with delivery of original executed counterparts.

13. 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

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the date set forth above.

BOARD OF COUNTY COMMISSIONERS OF
THE COUNTY OF GUNNISON, COLORADO

By: _____
Jonathon Houck, Chairperson

By: _____
Roland Mason, Vice-Chairperson

By: _____
Elizabeth Smith, Commissioner

ATTEST:

_____
Deputy County Clerk

WEST REGION WILDFIRE COUNCIL,
(a Colorado non-profit corporation)

By: _____
Jamie Gomez, Executive Director

ATTEST:

_____
Secretary