AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Memorandum of Agreement between the Board of Count

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

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

Summary:

Please see the attached agreement regarding senior transportation.

Fiscal Impact: $52,000 (paid by the RTA)

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

Finance Review: (●) Required ( ) Not Required

Comments:

Reviewed by: GUNCOUNTY1\kweak Discharge Date: 12/4/2020

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

Comments:
ok db 12/3/20

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 12/3/2020 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 12/4/2020

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

Agenda Date: 12/8/2020

Revised April 2015

MEMORANDUM OF AGREEMENT BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO, MOUNTAIN EXPRESS, AND THE REGIONAL TRANSPORTATION AUTHORITY REGARDING SENIOR TRANSPORTATION

This Memorandum of Agreement ("Agreement") made effective this ___ day of _____, 2020, is by and among the Board of County Commissioners of Gunnison County, Colorado, 200 East Virginia, Gunnison, CO 81230 ("Gunnison County"), the Mountain Express, and the Gunnison Valley Regional Transportation Authority ("RTA").

RECITALS

Mountain Express provides professional services regarding transportation of seniors ("Services").

RTA desires to engage the Services provided by Mountain Express.

Gunnison County provides fiscal agent services for the RTA.

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 Agreement shall commence on January 1, 2021 and shall terminate on December 31, 2021 unless sooner terminated or replaced as provided herein.

2. SCOPE OF SERVICES.

Mountain Express shall furnish all materials, labor, supervision, supplies and equipment to commence, diligently pursue, and complete the services as more specifically set forth in Exhibit A, attached hereto and incorporated herein by this reference. All Services shall be performed in a timely manner and in accordance with generally accepted standards for Mountain Express's profession and all applicable federal, state and local laws and regulations affecting the Services or the subject matter thereof. Mountain Express acknowledges that this is a non-exclusive Agreement, and the RTA may contract with additional or other providers able to furnish the same or similar services as it deems appropriate to do so.

3. COMPENSATION AND EXPENSES.

(a) In exchange for the Mountain Express's performance of the Services during the Term, the RTA, through its fiscal agent Gunnison County, shall pay the Mountain Express the full and complete amount not to exceed Fifty-Two Thousand Dollars and No/100 ($52,000.00). Any expenditures in excess of this amount must be pre-approved by RTA Executive Director Scott Truex.

(b) The Compensation shall compensate Mountain Express for all charges, expenses, overhead, payroll costs, employee benefits, and insurance subsistence.

(c) This Agreement is subject to RTA making an annual budget appropriation in an amount sufficient to fund this Agreement. If the RTA fails or refuses to make such an appropriation, RTA reserves the right to terminate this Agreement without penalty to the Mountain Express pursuant to paragraph 6 of this Agreement.

4. INDEMNIFICATION.

(a) Mountain Express agrees to indemnify, defend and hold harmless Gunnison County and RTA, their 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 Mountain Express or its employees, sub-contractors or agents in connection with this Agreement.

(b) 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.

Mountain Express agrees that at all times during the Term of this Agreement, Mountain Express 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, Mountain Express will provide insurance certificates to Gunnison County, listing Gunnison County and RTA as additional insured, for the coverage required herein. Should any of the described policies be materially changed or cancelled prior to the expiration date, the insurance carrier will endeavor to mail written notice within thirty (30) days to Gunnison County and RTA, but failure to do so shall impose no obligation or liability of any kind upon the insurance carrier, its agents or representatives.

(a) Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by the Mountain Express during the term of this Agreement.

(b) Comprehensive General Liability Insurance or the equivalent for any injury to one person in any single occurrence, Three Hundred Eighty-Seven Thousand and No/100 U.S. Dollars ($387,000.00); and for an injury to two or more persons in any single occurrence, the sum of One Million Ninety-Three Thousand and No/100 U.S. Dollars ($1,093,000.00).

(c) Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than Three Hundred Eighty-Seven Thousand and No/100 U.S. Dollars ($387,000.00) for any injury to one person in any single occurrence and in an amount no less than One Million Ninety-Three Thousand and No/100 U.S. Dollars ($1,093,000.00) for any injury to two or more persons in any single occurrence.

6. TERMINATION.

Any 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. Upon termination, the Mountain Express shall be entitled to compensation for Services performed prior to the date of termination, per the compensation terms outlined in paragraph 3 of this agreement.

7. DELEGATION AND ASSIGNMENT.

This is a service contract with the Mountain Express and, therefore, Mountain Express shall not delegate or assign its duties under this Agreement without the prior written consent of Gunnison County and RTA which consent Gunnison County and RTA 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.

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:	Matthew Birnie, County Manager 200 E. Virginia Gunnison, Colorado 81230 Phone: 970-641-0248
With a copy to:	Board of County Commissioners 200 E. Virginia Gunnison, Colorado 81230
RTA:	Scott Truex, Executive Director PO Box 39 Crested Butte, CO 81224
If to Mountain Express:	Jeremy Hertzog, Managing Director PO Box 3482 Crested Butte, CO 81224

Any 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. INDEPENDENT CONTRACTOR.

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

(b) Mountain Express acknowledges and agrees that Mountain Express is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County or RTA.

10. 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.

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

(d) IMMIGRATION COMPLIANCE CERTIFICATION. Mountain Express certifies that it does not and will not knowingly contract with or employ illegal aliens to work under this contract. Mountain Express further certifies that it has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work under this contract. Finally, Mountain Express certifies that it has attempted to verify the eligibility of its employees and subcontractors to work through the Basic Pilot Employment Verification Program (operated by the Department of Homeland Security).

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 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 Agreement as of the date set forth below to be effective as of the date first above written.

Board of County Commissioners of the County
of Gunnison, Colorado

_____
Matthew Birnie, County Manager

Attest:

_____
Deputy Clerk

Gunnison Valley Rural Transportation Authority

Janet R. Farmer
_____
Janet Farmer, Board Chairperson

Mountain Express

_____
Roman Kolodziej, Chairman

EXHIBIT A

SCOPE OF SERVICES

Mountain Express shall perform and provide the following services:

- Provide transportation services to Seniors of Gunnison County, who reside in Mt. Crested Butte, Crested Butte and surrounding north valley communities, on a regularly scheduled basis as currently being provided.
- Work with necessary RTA and County staff to ensure all required compliance related to transportation program is met, including:
    - Provide required compliance for driving personnel (background checks, annual evaluations, etc.).
    - Maintain required transportation logs.

Regional Transportation Authority shall perform and provide the following services:

- Funding to the Mountain Express in the amount not to exceed $35,000 for transportation services to Seniors of Gunnison County, within the identified service area.

Gunnison County shall perform and provide the following services:

- Provide fiscal agent service to the RTA for this contract, including the payment of vouchers for services to the Mountain Express.