AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: DestiMetrics - Client Agreement 2016; Monthly Lodg

Action Requested: County Manager Signature

Parties to the Agreement: Local Marketing District (LMD) and DestiMetrics LLC

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

Summary:

Annual approval of Destimetric Contract for $11,550 by the LMD. This contract is for monthly reporting from lodges and includes a $5,950 credit from 2015 where we attempted to obtain daily data from lodging. Despite the best efforts of the TA and Destimetrics,, lodges did not consistently

Fiscal Impact: $11,550

Submitted by: Russell Forrest **Submitter's Email Address:** rforrest@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, amount covered in 2016 adopted budget

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 2/8/2016

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

Comments:
ok - gs

Reveiwed by: GUNCOUNTY1\gstuhr Discharge Date: 2/11/2016 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 2/11/2016

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: 5 minutes

Agenda Date: 2/16/2016

Revised April 2015

DestiMetrics – Client Agreement: 2016

This Agreement is between DestiMetrics, LLC (DMX) and Gunnison County (Client), regarding travel/tourism related research services (Services), subject to the terms and conditions described herein, and includes Client, participating properties (Client-Properties) and a designated number of full-time staff, who will be participants (collectively referred to as Subscribers). This Agreement is effective as of January 1, 2016, the start of Service, and provides for the following:

I. Services:

Services Provided: Include those services and related deliverables and work product (collectively, Services) which are provided in connection with this Agreement as further described in "Attachment A – Program Services and Deliverables" attached hereto and incorporated herein by reference.
Start Up: Includes DestiMetrics/Client initial organizational meeting, assistance with property recruitment and their sub-contract agreements, along with assistance with initial data load data validation and Client/Client Property support training and assistance as needed. Note, if a new destination, Startup and also includes any historical data aggregation precede start of monthly reporting cycle.
Term of Service: Services begin January 1, 2016 resulting in a related report by middle of the following month, and continuing for 12 monthly cycles. The final report is for data as of the end of December of 2016 and delivered in the month thereafter.
Participation: The number of data submitting Client-Properties provided for by this Agreement is up to 14. Total number of individual Subscriber licenses is based on: i) up to 3 Subscriptions for Clients/key stakeholders, ii) two for each Client-Property = 28, iii) the total of which is up to 31, and is subject to change by mutual agreement during the term of this Agreement.

II. Client Responsibilities: Client will:

1. Compensate DMX a total of 11,550/year for 1 year according to the following Schedule:

Invoice Date	Amt. Due:	Description
Upon Execution	$2,887.50	First of four quarterly payments
April 1, 2016	$2,887.50	Second of four quarterly payments
July 1, 2016	$2,887.50	Third of four quarterly payments
October 1, 2016	$2,887.50	Fourth of four quarterly payments

Note: Fees are based on the payment terms outlined above and may result in higher fees if modified.

2. Assign a Designated Representative in the person of John Norton (Client Representative) to serve as primary contact for contract administration and Client's performance of the responsibilities described herein.
3. Identify, recruit, and maintain responsibility for the administration and assignment of participating Property-Clients and Subscribers and assist in their training and startup, then oversee ongoing Client-Property data submission (in accordance with DMX procedures).
4. Generally recommend and endorse participation by other properties and comparative destinations, all mindful that DMX is a co-operative industry program, whose value increases with broader participation.
5. The Client-Properties/Subscribers shall be subject to, and bound by, such other necessary and reasonable terms and provisions as established and provided by DMX from time to time in furtherance of the terms and provisions of this Agreement.

6. Comply with the terms of Confidentiality and Non-Disclosure as further described below.

III. DMX Services and Responsibilities: DMX will:

1. Collect, examine, evaluate, aggregate and report the results of the Services and Deliverables as described in Attachment A, using proprietary systems and procedures and enabling technology * (created by DMX to be used in the collection, aggregation and subsequent reporting of the related Services), and make such results available to Clients and Client-Properties, as provided under the terms of this Agreement.
2. Assist Client in their recruitment, training, startup and ongoing support of participating Client-Properties and their designated Subscribers.
3. Distribute results to Clients, Client-Property representative subscribers (Subscribers) by way of a secure web portal to which Subscribers are provided access via individual subscriber logons.
4. Provide Client, Client-Properties and their Subscribers with access to additional DMX products and services on an a la carte basis, at best available rates, subject only to pre-existing commitments and in accordance with its standard Terms and Conditions.
5. Comply with the terms of Confidentiality and Non-Disclosure as further described below.

Confidentiality and Distribution:

1. All data provided by Client-Properties will be treated as Confidential Information, not to be published or distributed unless/until aggregated with other similar data and undistinguishable as a result, where upon DMX may use/distribute the resulting data as it chooses and at its sole discretion, including, without limitation, multi-property competitive views, destination comparative reports, and any other custom segment reports, provided only that resulting data is limited to DMX Subscribers and not otherwise made public.
2. All DMX Subscribers acknowledge and agree that all information, reports and related data posted within the DMX web portal and/or otherwise provided by DMX is CONFIDENTIAL INFORMATION, to which access is restricted to Subscribers in good standing by way of confidential and proprietary log in and who covenant and agree that reproduction, distribution or sharing of this CONFIDENTIAL INFORMATION is STRICTLY PROHIBITED and enforceable by law excepting only when specific written agreement provides otherwise.
3. For purposes of clarification, participating stakeholders may, at their discretion, publicly show/display referenced reports and/or make public reference to information contained therein, but may not physically reproduce or distribute these referenced reports, excepting among/between other stakeholders and or their full time staff.

IV. Terms and Conditions:

1. Billing Procedures:
   a) Fees related to this Agreement are due and payable as described in the Client Responsibilities section of this Agreement and become Delinquent if not received within 30 days of invoice date. Delinquent payments are subject to interest charges at 1.5% per month until received and, if not cured within 30 days of notice, are grounds for default under this Agreement and the right to pursue related remedies exists.
   b) Expenses will be those reasonable out-of-pocket costs incurred by DMX and/or its agents, during the performance of this Agreement and are billed monthly as incurred. i) Travel costs include meal reimbursement, lodging, air, rental car, and personal car use from DMX's corporate offices or that of the designated contractor. ii) Other office costs, including phone, air freight, and Internet and/or web conference fees are treated as part of DMX's standard costs of business and will not be treated as reimbursable expenses, excepting by prior written agreement. iii) Travel Time will be charged at DMX's standard rates and treated as travel related expenses, unless otherwise agreed upon.
   c) Any/all additional work requested by Client and not already included in this Agreement, will be performed, subject to pre-existing commitments, and at DMX standard rates, terms and conditions.

2. Client-Property Participation: In the performance of their obligations under this Agreement, both DMX and Client rely on data provided by participating Client-Properties which must achieve participation thresholds that are set by DMX, depending on report type, participating property inventory configuration and overall destination census.
   a) Client-Properties are recruited by Client with assistance from DMX, and made party to this Agreement by way of a separate-but-related Property Participation Profile, to be completed by an authorized representative of the Client Property, whereby the Client-Property becomes a participant in good standing, and two of its designated representatives become authorized Subscribers and will be granted login access to the DMX web portal and all Services provided as part of this Agreement.

3. Cancellation: This Agreement shall terminate upon completion of all services provided for herein, or as mutually agreed by the Parties, whereupon, this Agreement shall be wound down and, at a minimum, Client will reimburse DMX for any/all work performed to date, including any/all unpaid startup fees.

4. Independent Contractor: DMX and the Client shall be considered independent contractors. Neither DMX nor the Client is an employee, agent, joint venturer or partner of the other entity. Nothing shall be interpreted as creating an employment relationship between or among DMX and the Client. DMX shall have control of the manner and means by which its services are provided to the Client subject to the terms and provisions of this Agreement.

5. Controlling Law: This Agreement shall be construed in accordance with, and governed by, the laws of the State of Colorado.

6. Venue: DMX and the Client hereby agree and consent that any action, suit or proceeding arising out of this Agreement shall be brought in the District Court for the City and County of Denver, State of

678 S Franklin P. 303.722.7346 info@DestiMetrics.com
Denver, CO 80209 F. 303.745.7380 www.DestiMetrics.com

Colorado, and by execution of this Agreement both parties hereto irrevocably consent and agree to the jurisdiction of such court.

7. Dispute Resolution: Any disputes arising out of this Agreement shall be subject to arbitration. As a pre-condition to the filing of any such arbitration, all claims, disputes, and other matters in question between the parties to this Agreement arising out of or relating to this Agreement concerning a breach thereof, shall first be submitted to non-binding mediation prior to initiation of any arbitration unless the parties mutually agree otherwise. The cost of said mediation shall be split equally between the parties. This Agreement to mediate shall be specifically enforceable under the prevailing laws of the State of Colorado.

   The parties agree that any disputes concerning the terms and conditions of this Agreement that cannot be resolved after consultation and discussion between the parties or by mediation shall be submitted to binding arbitration through either the American Arbitration Association or the Judicial Arbiter Group in accordance with commercial arbitration rules and the Colorado Arbitration Act, with the tribunal being selected by the party filing the demand for Arbitration. Any such arbitration shall be conducted at Denver, Colorado. The parties shall select one mutually agreeable arbitrator from the candidates available through the arbitration tribunal. The arbitrator shall have the power to grant interim and injunctive relief, provided that any party may apply to any court of competent jurisdiction to enjoin a breach of confidential information obligation(s). Judgment upon the award rendered by the arbitrator may be entered into any court having jurisdiction. In connection with any dispute, the prevailing party shall be awarded and shall recover from the other non-prevailing party all costs and expenses, including reasonable attorney's fees, as may be incurred.

8. Additional Provisions (If Any):

9. General Provisions: This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, successors and assigns. This Agreement, and Attachments hereto, embodies the entire understanding and agreement between the parties concerning the subject matter hereof and supersedes any and all prior negotiations, understandings or agreements concerning the subject matter hereof. This Agreement shall be deemed for all purposes to have been prepared through the joint efforts of the parties hereto and shall not be construed for or against one party or any other party as a result of the preparation, submittal, drafting, execution or other event of negotiation hereof. This Agreement may be executed in counterparts, but such counterparts shall constitute one and the same instrument. This Agreement may be executed by telefax signature which shall be binding as original signatures for all purposes (evidentiary otherwise).

EXECUTED as of the _____ day of January, 2016

CLIENT:	**DMX:**
Gunnison County	**DestiMetrics, LLC,**
By: _____	By: _____
Name: _____	Name: Ralf Garrison
Title: _____	Title: Director

Attachment: Billing Information
Attachment A: Products and Services

ATTACHMENT: BILLING INFORMATION

Send Invoice by: _____ Email/PDF _____ Postal Mail

Client Company Name: _____

Authorized Representative Name: _____

Phone: _____ Email Address: _____

Mailing Address: _____
(PO Box or Street Address)

City: _____ State/Province: _____

Country: _____

Zip/Postal Code: _____

Invoices are to be sent to the attention of: _____

Accounting Contact Email Address: _____Phone_____

ATTACHMENT A - DMX PRODUCTS AND SERVICES

This Attachment A is an integral part of Client Agreement dated January 1, 2016 by and between DestiMetrics, LLC (DMX) and Gunnison County (Client) and further describes products and services that are being provided pursuant to the Client Agreement. The prices, terms and conditions described below are based on the total number of Subscribers (including Client/Client-Property Subscribers) and data submitting Client-Properties listed below. Client-Properties may be provided additional logins for their authorized data submitters by separate agreement. Included in this agreements is use of DMX proprietary systems, procedures, metrics and key performance indicators along with use of the DMX 2.0 technology platform, which also include

- Reservation Activity Outlook (RAO) recipients are provided with additional "Industy-wide" reports on a monthly basis in standard format.
- RAO Client-Properties will have optional access to their own individual custom Property vs. Destination Reports on a monthly basis in standard RAO format, based on terms and conditions to be agreed upon between Destination and Client, but at no additional cost to Client.

1. MARKET TRAVEL INTELLIGENCE PACK: Designed to provide a broad, contextual overview of the destination leisure travel ecosystem, and mountain travel marketplace, The "Intel-Pak" includes a family of information related services, bundled into a comprehensive package that provides "what you ought to know…" to do business better. All Intel-Pak products are available through the DestiMetrics Secure Web Portal, and the Mountain Travel News and Monthly Briefing are delivered by email for added convenience. Quarterly webinars and the annual ASSEMBLY complete the elements of the Intel Pak.

- **1.1 Econometrics**: A collection of national and local economic and travel indicators as well as comparative sales/lodging tax and airport enplanement data, collected and updated monthly from publicly available sources and presented from DMX's secure web portal.
- **1.2 Mountain Travel Briefing:** A monthly narrative summary of DMX Travel News Talker, Econometrics and DMX "industry-wide" econometric data, with expert interpretation and supporting economic indicator dashboard graphics.
- **1.3 Travel News Talker:** A synopsis of current economic and mountain travel news, aggregated from various 3rd party sources and selected for the destination travel industry marketing and management professionals, and updated regularly and posted on DMX's secure web portal.
- **1.4 Mountain Travel News**: A monthly newsletter, featuring the top stories from the daily News Talker, and distributed monthly by email.
- **1.5 Quarterly Market Update Webinars**: A 60 minute web/phone based presentation by DestiMetrics analysts, provided several times per year, and including strategic assessment and interpretation of market conditions and trends as well as industry lodging metrics for the past season and upcoming season. Webinars are exclusively for Subscribers only.
- **1.6 The ASSEMBLY:** A one day annual confab, held mid-winter and as a precursor to the next year's planning cycle, The ASSEMBLY is a collaboration of 40 mountain travel businesses with common interests in a shared fact base and broader year-round economic foundation. DMX subscribers are provided with significant courtesy discount off standard rates, when pre-registered for this end-of-January event held in conjunction with the SIA Snow Show in Denver.
- **1.7 Library**: A collection of articles, reports and other market intelligence along with copies of various DMX presentations are found in the DMX Subscriber Library.

  Annual Price: <u>$2,500</u>

  Distribution Rights: The Mountain Market Intelligence Pak is only available to individual Subscribers up to the number of subscribers listed in the Agreement.

Publication: Theses reports/products will be posted on DestiMetrics web portal and will be accessible by all Subscribers.

2. RESERVATION ACTIVITY OUTLOOK REPORT SET: Client-Property data is collected at a monthly level of granularity and aggregated to create a destination-wide monthly report set of paid lodging reservation activity and related revenue,

2.1 Reservation Activity Outlook (RAO) Report. The number of available units, room nights and related revenue are collected, from which Occupancy average daily rate (ADR), and revenue per available room night (RevPAR) are calculated. Results are then aggregated in a report format that provides graphic summaries, charts and supporting tables of business on the books for the forward looking 6 months and total business for the trailing 6 months. Current year data is overlaid against previous year-to-date and previous seasons-end data, when sufficient data exists. Three views of the resulting data are provided in chart form with supporting tables, including 6 month forward-looking view, fixed winter view (Nov. – Apr.), and fixed summer view (May – Oct.). Additionally, pacing of current year vs. previous year reservation activity is provided in chart and detailed table view. From this information, destinations can track their performance against their previous history and properties can see how the aggregate of others properties in their destination are performing. Distribution rights include all Subscribers. **Annual Price: $10,250** per year**.**
Note: Additional Client-Property data submission licensing is available in increments for an additional fee.
Publication: This report will be posted on DestiMetrics web portal and will be accessible by all Subscribers.

2.2 RAO Segment Reports: When sufficient participation is obtained, Client may purchase reports that compare a portion of their participating properties (example: properties within a specific geographical location or unit type) against their own year over year performance or to another segment of participating properties. These reports will provide the same metrics as the RAO (2.1) and will be in the same format as the described above. Distribution rights include all Subscribers. **Annual Price: $2,000** per year for 2 Segment Reports subject to participation in the RAO (2.1) above, and under the same terms and conditions.

2.3 Multi-Destination Comparative Report (MDC): A destination-wide view of paid occupancies is created from data provided as part of the RAO (2.1) report, the result of which is displayed against all other individual participating DMX destinations (which are kept anonymous) in bar chart format, in both current year occupancy and year-over-year comparative change. A third report shows Average Daily Rate in similar format and also includes the trailing months and forward –looking 6 months. Distribution rights include all Subscribers. This report will be posted on DestiMetrics web portal and will be accessible by all Subscribers.
Annual Price: $2,750 subject to participation in the RAO (2.1) above, and under the same terms and conditions.

- **3.2 Report for Retailers (45 day short-view) Distribution:** This report depicts occupancy for the forward looking 45 days in bar chart format and displays occupancy for the current year and the previous year. While access to this report is included in the DOR (page 5) this option allows for further distribution than the DOR allows. The Report for Retailers will be provided in a separate PDF and allows for unlimited distribution to retail community and/or Client constituents. **Annual Price**: included.
  Publication: This report will emailed each month to the designated Client(s) listed here:
  _____

678 S Franklin P. 303.722.7346 info@DestiMetrics.com
Denver, CO 80209 F. 303.745.7380 www.DestiMetrics.com

TOTAL PACKAGE PRICE: 1 Year Agreement

Ongoing Annual Fees:	**17,500**
Refund from 2015 Agreement	-$5,950
Total - Ongoing Annual Fees:	**$11,550**

678 S Franklin
Denver, CO 80209
P. 303.722.7346
F. 303.745.7380
info@DestiMetrics.com
www.DestiMetrics.com