AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: MOU; LMD & TAPP (TA); 2020 Funding

Action Requested: Other Convene as LMD & Motion

Parties to the Agreement:

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

Summary:

Memorandum of Understanding between the Local Marketing District and TAPP Re: 2020 Funding. The budget information will be added once received from J. Norton. Approved by County Manager for 12/17/19 Special Meeting agenda.

Fiscal Impact:

Submitted by: Liz Mense **Submitter's Email Address:** EMense@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, $2,160,000 is included for this contract in the 2020 adopted budget. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 12/13/2019

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

Comments:
ok db 12/12/19

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 12/12/2019 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\emense Discharge Date: 12/13/2019

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

Agenda Date: 12/17/2019

Revised April 2015

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("Agreement"), is made effective this 17th day of December, 2019, by and between the Board of the Gunnison River Valley Local Marketing District ("LMD") and the Tourism and Prosperity Partnership, known as the Gunnison-Crested Butte Tourism Association ("GUNNISON-CRESTED BUTTE TA"), a Colorado non-profit corporation, and provides that:

RECITALS

WHEREAS, the public purposes and powers of the LMD, declared pursuant to C.R.S. §29-25-102, 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.";

WHEREAS, pursuant to C.R.S. §29-25-111(e), the provision of services within the LMD, 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 LMD is responsible for the administration of funds collected from the LMD lodging tax and is supportive of the objectives of the GUNNISON-CRESTED BUTTE TA;

WHEREAS, the GUNNISON-CRESTED BUTTE TA has been working with the Crested Butte-Mt. Crested Butte Chamber of Commerce, Gunnison County Chamber of Commerce, local elected officials and the private sector to coordinate the marketing efforts of the Gunnison County community;

WHEREAS, in May 2019 the LMD and the GUNNISON-CRESTED BUTTE TA amended the

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then-existing Memorandum of Agreement to provide for the GUNNISON-CRESTED BUTTE TA to administer the ICELab located at Western Colorado University in Gunnison, Colorado;

WHEREAS, the LMD feels that it is in the public interest and meets the goals of the LMD to enter into this Agreement with the GUNNISON-CRESTED BUTTE TA to support the implementation of its 2020 Work Program.

AGREEMENT

NOW, THEREFORE, the LMD and the GUNNISON-CRESTED BUTTE TA, in consideration of the recitals above and the obligations and mutual covenants contained herein below, agree as follows:

1. TERM

This Agreement replaces in full all previous Memoranda of Agreement between the parties. The term of the Agreement shall begin on January 1, 2020 and end on December 31, 2020, unless sooner terminated or replaced as provided herein.

2. CONSIDERATION.

During the Term of this Agreement,

A. The LMD shall:

Provide support funds to the GUNNISON-CRESTED BUTTE TA, according to the 2020 Budget attached hereto and incorporated herein by reference as Appendix "A", in the amount of $2,160,000 (Two million, one hundred sixty thousand dollars).

It is expressly agreed that these funds must be used exclusively for costs identified in the 2020 Budget attached as Appendix "A". Adjustments among budget line items may be at the GUNNISON-CRESTED BUTTE TA'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 $ 180,000.00 (One hundred eighty thousand dollars). The approved 2020 Gunnison County budget identifies the support funds and expenditures.

B. The GUNNISON-CRESTED BUTTE TA shall:

1. Implement the 2020 Work Plan reflected by the budget in Appendix A.

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

a. Gunnison County Chamber of Commerce to provide funding for tourism services during the year 2020 in an amount no less than $25,000 (Twenty-five thousand dollars); and

b. Mt. Crested Butte/Crested Butte Chamber of Commerce to provide funding for tourism services during the year 2020 in an amount no less than $25,000 (Twenty-five thousand dollars).

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 TA'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.

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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 LMD 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 TA's adopted strategic business plan for 2020, 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 TA bylaws, no later than October 1, submit a tentatively adopted strategic business plan and accompanying budget for the 2020 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 TA;

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 TA; and

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

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6. Permit auditing by the LMD of all the GUNNISON-CRESTED BUTTE TA's books, accounts, and financial transactions.

7. Administer the ICELab

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 2020, the financial obligation will be reduced accordingly.

3. DESIGNATION OF COUNTY MANAGER

The parties hereto designate 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

The GUNNISON-CRESTED BUTTE TA agrees to indemnify, defend and hold harmless the LMD 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 the GUNNISON-CRESTED BUTTE TA 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 TA to the Board of the LMD is that of an independent contractor, performing marketing functions pursuant to this Agreement. The GUNNISON-CRESTED BUTTE TA is not an agent of the LMD, and the LMD is not responsible for the acts or omissions of the GUNNISON-CRESTED BUTTE TA, its officers, employees or agents.

6. MEETING REQUIREMENTS AND PROJECT REPORTING

The GUNNISON-CRESTED BUTTE TA agrees to meet biannually with the LMD to discuss progress with the implementation of a 2020 Work Plan and 2020 Budget, as outlined in Section 2B.

The GUNNISON-CRESTED BUTTE TA 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,

2020.

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 TA to implement a 2020 Work Plan and the 2020 Budget.

9. IMMIGRATION COMPLIANCE CERTIFICATION.

A. By its signature on this Agreement, THE GUNNISON-CRESTED BUTTE TA 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 TA has participated or attempted to participate in the E-Verify program ("E-Verify Program") created in Public Law 208, 104th 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. THE GUNNISON-CRESTED BUTTE TA 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 TA that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

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C. THE GUNNISON-CRESTED BUTTE TA 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. THE GUNNISON-CRESTED BUTTE TA 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 TA obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, THE GUNNISON-CRESTED BUTTE TA Contractor shall:

1. Notify the subcontractor and the LMD within three days that THE GUNNISON-CRESTED BUTTE TA 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 TA 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. §8-17.5-101(5).

G. If the GUNNISON-CRESTED BUTTE TA violates a provision of this Illegal Alien Addendum, the LMD may terminate this Agreement for breach of contract. If the Agreement is so terminated, THE GUNNISON-CRESTED BUTTE TA shall be liable for actual and consequential damages to the LMD. THE GUNNISON-CRESTED BUTTE TA understands that, in the event of such a termination, the LMD 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

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reference into this Agreement.

B. The GUNNISON-CRESTED BUTTE TA, on behalf of itself, any person who controls ten percent or more of the shares of or interest in the GUNNISON-CRESTED BUTTE TA, 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 TA, 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 LMD 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 TA agrees to comply with the summary and notice provisions of Section 16 of Article XXVIII of the Colorado Constitution.

G. The GUNNISON-CRESTED BUTTE TA 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.

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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 LMD 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 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.

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: _____
Jonathan Houck, Chairperson

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By: _____
John Messner, Commissioner

By: _____
Roland Mason, Commissioner

ATTEST:

_____
Deputy County Clerk

GUNNISON-CRESTED BUTTE TOURISM ASSOCIATION

By: _____
Kurt Giesselman, President

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By: _____

John Messner, Commissioner

By: _____

Roland Mason, Commissioner

ATTEST:

_____

Deputy County Clerk

GUNNISON-CRESTED BUTTE TOURISM ASSOCIATION

By: _____

Kurt Giesselman, President

for Kurt Giesselman

John Norton

executive director

12/13/19

In order to manage cash flow in 2020 the Tourism and Prosperity Partnership requests the following payment schedule from the Local Marketing District pending approval of our 2020 Budget:

January	$199,108.33
February	$199,108.33
March	$199,108.33
April	$199,108.33
May	$199,108.33
June	$181,108.33
July	$181,108.33
August	$181,108.33
September	$181,108.33
October	$181,108.33
November	$136,108.33
December	$122,808.37
Total	$2,160,000.00