# AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

**Agenda Item:** MOA; RTA & Gunnison County

**Action Requested:** Board of County Commissioners' Signature

**Parties to the Agreement:**

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

**Summary:**

Memorandum of Agreement between Gunnison Valley RTA and Gunnison County.

**Fiscal Impact:**

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

**Finance Review:** (●) Required ( ) Not Required

Comments:

No concerns, will be included in sources/uses computations for Airport Terminal project in applicable years. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 2/28/2020

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

Comments:

Reveiwed by: GUNCOUNTY1\mhoyt Discharge Date: 2/28/2020 Certificate of Insurance Required

Yes ( ) No (●)

**County Manager Review:**

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 2/28/2020

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: CM Report

Agenda Date: 3/3/2020

*Revised April 2015*

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**THE GUNNISON VALLEY TRANSPORTATION AUTHORITY**

**AND**

**THE BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, COLORADO**

## RECITALS

WHEREAS, the mission of the Gunnison Valley Transportation Authority ("RTA") is to provide and improve air transportation to and from the Gunnison-Crested Butte Regional Airport ("Airport") on a year-round basis, to provide long term and energy efficient public transit system between the north and south ends of the Highway 135 corridor, and to provide senior and human services transportation in Gunnison County; and

WHEREAS, the Board of the RTA and the Gunnison County Board of Commissioners ("County") acknowledge that the Airport accounted for $121,880,000 in direct economic benefit to the County as of 2019 (per the 2020 Economic Benefit Report); and

WHEREAS, the customer enplanements were 37,274/year in 2018 and the expectation is that this number will continue to increase; and

WHEREAS, the RTA commits funding to airline guarantees to maintain airline services; and

WHEREAS, the Terminal at the Airport requires a major renovation to improve passenger experience in order to maintain and grow a passenger customer base which will help in airline service retention; and

WHEREAS, without a current RTA commitment of long-term funding, the Gunnison Crested Butte Regional Airport Terminal renovation project which was presented to the RTA Board of Directors at their regular meeting January 10, 2020 may be phased or delayed over several years, thereby increasing impact to travelers over time and extending the time by which renovation will be complete which will meaningfully improve customer service.

WHEREAS, the Gunnison Valley's economy significantly relies on air travelers – including visitors, students, local residents and second homeowners – who rely upon year-round air travel opportunities. Easily half of the jobs in the Valley depend on tourism. Increased visitors to the Valley through the Gunnison Airport benefit the entire Valley – we are one economy; and

WHEREAS, Valley-wide leadership from CBMR, the RTA, Gunnison Airport, WCU, and the Tourism Association has united in common purpose to create a synergistic Public Private Partnership focused on excellence and reliability in air service for the Valley. This collaborative Partnership will pool resources and speak with one voice to strengthen air service to the Valley.

## AGREEMENT

NOW, THEREFORE, in consideration of the Recitals above and the mutual covenants and obligations set forth below, the parties agree as follows:

1. TERM.

The term of this MOA shall commence on the 1st day of March, 2020 and shall not terminate until February 28, 2041 or until all of the funding obligations identified herein have been performed whichever is the later.

2. RTA FUNDING OBLIGATION TO PAY.

The RTA shall pay to Gunnison County, in each calendar year beginning in 2022 during the term of this MOA, the sum of two hundred and fifty thousand dollars and zero cents ($250,000.00).

3. GUNNISON COUNTY OBLIGATION FOR USE OF FUNDS.

Gunnison County shall use the RTA funds exclusively for payment of the Terminal Project to include the capital expenses of restoration of the Terminal and maintenance of the Terminal and such renovation, including without limit, debt service, in the sole discretion of Gunnison County.

4. PRIORITY OF RTA PAYMENT.

RTA's obligation to provide annual funding shall be a primary fiscal obligation of RTA each year.

EXCEPT THAT this MOA is subject to RTA making an annual budget appropriation in an amount sufficient to fund this MOA. Non-appropriation in any year does not terminate, waive or eliminate the RTA obligation in subsequent years.

5. INDEMNIFICATION.

(a) Gunnison County agrees to indemnify, defend and hold harmless RTA, its board members, 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 County or its employees, sub-contractors or agents in connection with this MOA.

(b) This provision shall survive any termination or expiration of this MOA with respect to any liability, injury or damage occurring prior to such termination.

6. INSURANCE.

Gunnison County agrees that at all times during the Term of this MOA that Gunnison County 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 MOA, Gunnison County will provide insurance certificates to RTA, listing RTA as an additional insured, for the coverage's required herein which shall state that such policies shall not be materially changed or cancelled without thirty (30) days' prior notice to RTA:

Comprehensive liability insurance, in an amount no less than $387,000.00 for any injury to one person in any single occurrence and in an amount no less than $1,093,000.00 for any injury to two or more persons in any single occurrence, as those amounts may be amended from time to time by the Colorado Governmental Immunity Act.

7. INDEPENDENT CONTRACTOR.

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

8. AUTHORITY TO AUDIT RECORDS.

RTA has the authority to audit Gunnison County's financial records, only regarding funds provided by RTA pursuant to the MOA, said audit is to be performed by an employee, agent or designee of RTA and at the expense of Gunnison County, upon thirty days' notice to Gunnison County.

9. DELEGATION AND ASSIGNMENT.

Gunnison County shall not delegate or assign its rights under this MOA without prior written consent of RTA which consent RTA may withhold in its discretion. Subject to the foregoing, the terms, covenants and conditions of this MOA shall be binding on the successors and assigns of either party.

10. IMMIGRATION COMPLIANCE CERTIFICATION.

(a) Gunnison County certifies that it does not and will not knowingly contract with or employ illegal aliens to work under this MOA.

(b) Gunnison County certifies that it has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work under this MOA.

(c) Gunnison County will participate in either (i) the "E-Verify Program", jointly administered by the United States Department of Homeland Security and the Social Security Administration, or (ii) the "Department Program" administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all Gunnison County's employees who are hired to perform work under this Agreement.

(d) Gunnison County 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.

(e) Gunnison County agrees to comply with the provisions of C.R.S. § 8-17.5-101 et seq.

11. DISCRIMINATION.

Gunnison County agrees not to discriminate against any person or class of persons by reason of age, race, color, sex, creed, religion, disability, national origin, sexual orientation or political affiliation in providing any services or in the use of any facilities provided for the public in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. Gunnison County shall further comply with the letter and spirit of the Colorado Anti-Discrimination Act of 1957, as amended, and any other laws and regulations respecting

discrimination in unfair employment practices. Additionally, Gunnison County shall comply with enforcement procedures as any governmental authority might demand that RTA take for the purpose of complying with any such laws and regulations.

12. 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: County Manager, Matthew Birnie
Gunnison County
200 East Virginia Ave.
Gunnison, CO 81230
970.641.0248

With a copy to: Board of County Commissioners
Of the County of Gunnison, Colorado
200 East Virginia Ave.
Gunnison, CO 81230
970.641.0248

RTA: Gunnison Valley Rural Transportation Authority
P.O. Box 39
Crested Butte, CO 81224
970.641.5074

Either party has a right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

13. TERMINATION.

Either party shall have the right to terminate this MOA at any time, with or without cause, upon thirty (30) days prior written notice to the other.

14. MISCELLANEOUS.

(a) SEVERABILITY. If any clause or provision of this MOA 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 MOA 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 MOA 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.

15. ATTORNEYS FEES.

If any party hereto shall bring any suit or action against another for relief, declaratory or otherwise, arising out of this MOA, the prevailing party shall have and recover against the other party, in addition to all court costs and disbursements, such sum as the court may adjudge to be reasonable attorney's fees and expert witness fees.

16. GOVERNING LAW.

This MOA 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 MOA shall be in the state District Court governing Gunnison, Colorado.

17. ENTIRE AGREEMENT.

This MOA 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.

18. COUNTERPARTS: FACSIMILE TRANSMISSION.

This MOA 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 originally executed counterparts.

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

BOARD OF COUNTY COMMISSIONERS

OF THE COUNTY OF GUNNISON, COLORADO

By: _____

Jonathan Houck, Chairperson

ATTEST: _____

Deputy Clerk

GUNNISON VALLEY TRANSPORTATION AUTHORITY

By: Janet R. Farmer

Janet Farmer, Board Chair

ATTEST: _____

Roland Mason, Secretary

GUNNISON VALLEY TRANSPORTATION AUTHORITY, COLORADO
SEAL