AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: MOA; BOCC & West Region Wildfire Council

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: BOCC and West Region Wildfire Council

Term Begins: 09/04/18 **Term Ends:** **Grant Contract #:**

Summary:

Attached please find the MOA with West Region Wildfire Council for disbursement of Title III Awards for fire mitigation activities.

Fiscal Impact:

Submitted by: Office of the County Attorney **Submitter's Email Address:** rmagruder@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ◉ Required ○ Not Required

Comments:
ok db 9/14/18

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 9/14/2018 Certificate of Insurance Required Yes ○ No ◉

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\emense Discharge Date: 9/14/2018

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

Agenda Date: 9/18/2018

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 ASSOCIATED WITH WILDFIRE MITIGATION ACTIVITIES IN GUNNISON COUNTY, COLORADO

THIS MEMORANDUM OF AGREEMENT ("Agreement") is entered into on the ____ day of September, 2018, 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 535 S. Nevada Avenue, Montrose, Colorado 81401.

A. 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. ("Title III Funds").

Gunnison County wishes to transfer those Title III Funds currently held by Gunnison County 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.

B. 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:

1. Transfer those Title III Funds identified above currently held by Gunnison County to the San Juan Mountains Association, fiscal agent for West Region Wildfire Council as identified in the *Fiscal Sponsor Memorandum of Understanding*, dated August 2, 2010 and Amendment thereto dated December 20, 2011, attached hereto and incorporated herein by reference as Appendix "A".

2. 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:

1. 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.

2. Comply with the terms and conditions set forth in the *Fiscal Sponsor Memorandum of Understanding* and amendment thereto by and between West Region Wildfire Council and San Juan Mountains Association attached hereto as Appendix "A".

3. 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.

4. 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. 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.

6. 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.

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 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:	Lilia Falk Executive Director West Region Wildfire Council 535 S. Nevada Avenue 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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: _____
Phil Chamberland, Chairperson

By: _____
Jonathan Houck, Vice-Chairperson

By: _____
John Messner, Commissioner

ATTEST:

_____
Deputy County Clerk

WEST REGION WILDFIRE COUNCIL,
a Colorado non-profit corporation

By: _____
Lilia Falk, Executive Director

SAN JUAN MOUNTAINS ASSOCIATION

FISCAL SPONSOR MEMORANDUM OF UNDERSTANDING

On 8/2/10, the San Juan Mountains Association (aka: SJMA) (Grantor) decided that financial support of the ongoing efforts to promote fire prevention, education and mitigation efforts will further Grantor's tax-exempt purposes. Therefore, SJMA has created a separate restricted fund designated for such project/program, and has decided to grant all amounts that it may deposit to that fund, less any administrative charge as set forth below, to the West Regional Wildfire Council (aka: WRWC) (Grantee), and subject to the following terms and conditions.

1. WRWC shall provide SJMA with its governing documents or other documentation satisfactory to Grantor, showing Grantee's separate existence as an organization. This might simply be a letter explaining the grassroots nature of the organization and the participating parties.
2. WRWC shall use the grant solely for the advancement of its efforts in fire education, mitigation and prevention. Any changes in the purposes for which funds are spent must be approved in writing by SJMA before implementation. SJMA retains the right, if WRWC breaches this MOU, or if WRWC's conduct of the project jeopardizes SJMA's legal or tax status, to withhold, withdraw, or demand immediate return of grant funds, and to spend such funds so as to accomplish the purposes of the project as nearly as possible within SJMA's sole judgment. Any tangible or intangible property, including copyrights, obtained or created by Grantee as part of this project shall remain the property of Grantee.
3. WRWC may solicit gifts, contributions, and grants to SJMA, earmarked for Grantor's fund for this project. Grantee's choice of funding sources to be approached, and the text of Grantee's choice of funding sources to be approached, and the text of Grantee's fund-raising materials, are subject to Grantor's prior written or verbal approval. In instances where Southwest Firewise Council is applying for competing funding it is agreed that they will have first priority in advancing their request; however, in all cases, every effort will be made to work collaboratively and jointly when appropriate and feasible. All grant agreements, pledges, or other commitments with funding sources to support this project via Grantor's fund shall be executed by Grantor. The cost of any reports or other compliance measures required by such funding sources shall be borne by WRWC.
4. An administrative charge of 4 % on each incoming gift shall be deducted by SJMA to defray SJMA's costs of administering the fund and this grant. The percentage will be reviewed annually on the anniversary date of this MOU and is subject to renegotiation depending upon the amount of work required of SJMA.
5. Nothing in this MOU shall constitute the naming of WRWC as an agent or legal representative of SJMA for any purpose whatsoever except as specifically and to the extent set forth herein. This MOU shall not be deemed to create any relationship of agency, partnership, or joint venture between the parties hereto, and WRWC shall make no such representation to anyone unless it is stipulated and agreed upon by both parties.
6. WRWC shall submit a full and complete narrative report to SJMA as of the end of WRWC's annual reporting period within which any portion of this funding is received or spent. The initial report shall be submitted by WRWC no later than October 31st of each calendar year and subsequent reports, if any shall be due on the anniversary date of the initial report. The report shall describe the programs conducted by WRWC with the aid of this pass through funding. SJMA will provide a detailed accounting of all activity in the account on a quarterly basis. Should certain grants administered by SJMA require more regular reports, it will be the

APPENDIX A

responsibility of WRWC to make sure that they meet the grant reporting deadline submissions as outlined by SJMA on an individual basis.

7. This funding is not earmarked to be used in any attempt to influence legislation within the meaning of Internal Revenue Code (IRC) Section 501 (c) (3). No agreement, oral or written, to that effect has been made between SJMA and WRWC. This funding is not earmarked to be used in any attempt to influence legislation within the meaning of IRC Section 501 (c) (3), except for expenditures described in IRC Section 4911 as follows: If applicable, up to $0.00 for grassroots lobbying, and up to $0.00 for all lobbying.
8. WRWC shall not use any portion of the funds granted herein to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, to induce or encourage violations of law or public policy, to cause any private inurement or improper private benefit to occur, not to take any other action inconsistent with IRC Section 501 (c) (3).
9. WRWC shall notify SJMA immediately of any change in (a) Grantee's legal or tax status, or (b) Grantee's executive staff or key staff responsible for achieving the funding purposed.
10. WRWC hereby irrevocably and unconditionally agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless SJMA, its officers, directors, trustees, employees and agents, from and against any and all claims, liabilities, losses and expenses (including reasonable attorney's fees) directly, indirectly, wholly or partially arising from or in connection with any act or omission of WRWC, its employees or agents, in applying for or accepting the grant in expending or applying the funds furnished pursuant to the grant or in carrying out the program or project to be funded or financed by the grant, except to the extent that such claims, liabilities, losses or expenses arise from or in connection with any act or omission of SJMA, its officers, directors, trustees, employees or agents.
11. If a dispute arises relating to this MOU, and is not resolved, the parties involved in such dispute (Disputants) shall first proceed in good faith to submit the matter to mediation. The Disputants will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. In the event the entire dispute is not resolved within thirty (30) calendar days from the date written notice requesting mediation is sent by one Disputant to the other(s), the mediation, unless otherwise agreed, shall terminate.
12. This MOU shall be governed by and construes in accordance with the laws of the State of Colorado applicable to agreements made and to be performed entirely within such State.
13. This MOU shall supersede any prior oral or written understandings or communications between the parties and constitutes the entire agreement of the parties with respect to the subject matter hereof. This MOU may not be amended or modified, except in writing signed by both parties hereto.

IN WITNESS WHEREOF, the parties have executed this Grant agreement effective on the 18 day of Aug., 2010

San Juan Mountains Association, (Grantor)

Executive Director _____ Dated: 8/18/10

Western Regional Wildfire Council (Grantee)

Stakeholder _____ Title Jennifer Dinsmore Emergency Mgmt Coord. San Miguel County

Dated: 8.13.10

AMENDMENT TO FISCAL SPONSORSHIP MOU AGREEMENT
BETWEEN
SAN JUAN MOUNTAINS ASSOCIATION AND
WEST REGIONAL WILDFIRE COUNCIL
DATED AUGUST 2, 2010

On December 20th, the San Juan Mountains Association (SJMA), as Grantor and the West Regional Wildfire Council (WRWC), as Grantee, mutually agree to amend the MOU Agreement dated August 2, 2010. Both parties agree to add the following stipulations:

1. SJMA and WRWC representatives agree to meet annually on or near the anniversary date of this MOU. The purpose of this annual meeting is to discuss the status of the work in progress and review the fiscal sponsorship relationship and the merits of continuing the mutually beneficial affiliation.

2. This MOU Agreement will terminate if any of the following events occur:
   a. Grantor requests the Grantee cease activities which it deems might jeopardize its tax-exempt status and the Project fails to comply within a period of ten (10) days;
   b. The Grantee fails to perform or observe any other covenant of this MOU Agreement, which failure remains unremedied after fifteen (15) days of notice in writing;
   c. Upon expiration of thirty (30) days after either the Grantee or the Grantor has given written notice of its intent to terminate this MOU Agreement.

3. In the event this MOU Agreement is terminated, funds remaining in the Project Fund shall not be transferred to any person or entity without written consent from Grantee and shall be restricted to transfer to a 501 (c) 3 organization, and be consistent with any agreement Grantee may have entered into for the Project.

IN WITNESS WHEREOF, the parties have executed this MOU Agreement effective on the 20th day of December, 2011,

San Juan Mountains Association, (GRANTOR)

Executive Director [signature] Dated: 12/23/11

West Regional Wildfire Council (GRANTEE)

Stakeholder [signature] Dated: 12/20/2011