



## Memorandum

**To:** City Council  
**From:** Ben Cowan  
**Date:** 1/8/2016  
**Re:** 2016 Continuing Challenge Grants

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Attached is a template agreement for the 2016 Continuing Challenge Grants.

Please note the agreements are the same for each organization in the Continuing Challenge Grant category. Therefore, a blank agreement is attached for your review.

Representatives of those organizations have been notified of the Council meeting, but made aware their attendance is not necessary unless they have concerns regarding the agreement.

**2016 Continuing Challenge Grants**

Gunnison Country Chamber of Commerce (Chamber Holidays)	2,000
Cattlemen's Days, Inc.	7,500
Gunnison Car Club	1,000
Rotary Club of Gunnison Fishing Tournament	750
Gunnison River Festival	<u>2,000</u>
<b>TOTAL</b>	<b>\$13,250</b>

**Requested Action:** A motion to authorize the Mayor's signature on the Continuing Challenge Grants for the above organizations; and to authorize the release of the budgeted 2016 funds for these programs.

## CONTINUING CHALLENGE GRANT AGREEMENT

This Agreement made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2016, is by and between CITY OF GUNNISON, a Colorado home-rule municipality, existing under the laws of the State of Colorado, hereinafter called "CITY", and «FullNameCAPS», a non-profit corporation of the State of Colorado, hereinafter called "«ShortName»".

### RECITALS

WHEREAS, the CITY has instituted a Challenge Grant program for which all public entities or private non-profit entities are eligible for challenge grants from the CITY, the purpose of which is to increase tourism and the attendant sales tax revenue to the CITY; and

WHEREAS, the CITY has issued written criteria by which Challenge Grants will be granted; and

WHEREAS, the CITY has budgeted certain funds for the award of challenge grants; and

WHEREAS, «ShortName» has submitted an application for such challenge grant, and after due consideration thereof by the City Council of Gunnison, in public meeting, the CITY has awarded a Continuing Challenge Grant as hereinafter set forth.

### 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, 2016 and shall terminate on December 31, 2016, unless sooner terminated or replaced as provided herein.

2. COMPENSATION, BONUS AND EXPENSES.

- (a) CITY hereby agrees to provide the funds previously appropriated and budgeted to «ShortName» in the amount of «Words» («Amount»), within thirty (30) days of execution of this agreement.
- (b) This Agreement is subject to CITY making an annual budget appropriation in an amount sufficient to fund this Agreement. If CITY fails or refuses to make such an appropriation, CITY reserves the right to terminate this Agreement without penalty to «ShortName» pursuant to paragraph 10 of this Agreement.
- (c) CITY reserves the right to amend this agreement to reduce the contribution stated herein if the 2015 CITY audit should result in a significantly lower fund balance than projected.

3. CONSIDERATION.

- (a) «ShortName» agrees acknowledge the financial support of the CITY in advertising and promotional literature. All promotional material shall contain the following statement: **“This event is made possible, in part, with the assistance of the Challenge Grant Program of the City of Gunnison.”**
- (b) «ShortName» agrees to provide CITY with a detailed synopsis of the event together with an accounting as to the revenues and expenditures no later than December 31, 2016. Such written synopsis must be provided to the Finance Director of the CITY pursuant to paragraph 9 of this Agreement and may be submitted in an electronic format.
- (c) «ShortName» agrees that the sum provided by the CITY shall be expended in accordance with its continuing category challenge grant request.
- (d) «ShortName» agrees to not utilize City funds as a pass through to other City funded programs.

#### 4. INDEMNIFICATION.

- (a) «ShortName» agrees to indemnify, defend and hold harmless CITY, its Council, 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 «ShortName» 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.

«ShortName» agrees that at all times during the Term of this Agreement that «ShortName» 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, «ShortName» will provide insurance certificates to CITY, listing CITY 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 CITY.

- (a) Worker’s Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by «ShortName» 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 Fifty Thousand and No/100 U.S. Dollars (\$350,000.00); and For an injury to two or more persons in any single occurrence, the sum of Nine Hundred Ninety Thousand and No/100 U.S. Dollars (\$990,000.00).

- (c) Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than Three Hundred Fifty Thousand and No/100 U.S. Dollars (\$350,000.00) for any injury to one person in any single occurrence and in an amount no less than Nine Hundred Ninety Thousand and No/100 U.S. Dollars (\$990,000.00) for any injury to two or more persons in any single occurrence.

6. INDEPENDENT CONTRACTOR.

- (a) In carrying out its obligations and activities under this Agreement, «ShortName» is acting as an independent contractor and not as an agent, partner, joint venture or employee of CITY. «ShortName» does not have any authority to bind CITY in any manner whatsoever.
- (b) «ShortName» acknowledges and agrees that «ShortName» is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from CITY. Further, «ShortName» is obligated to pay federal and state income tax on any moneys paid it related to the services.

7. DELEGATION AND ASSIGNMENT.

This is a personal services contract with «ShortName» and, therefore, «ShortName» shall not delegate or assign its duties under this Agreement without the prior written consent of CITY which consent CITY 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. ILLEGAL ALIEN CERTIFICATION.

The Following Certifications are made by «ShortName» pursuant to C.R.S. 8-17.5-101, et seq.:

- (a) «ShortName» shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to «ShortName» that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Contract;
- (b) «ShortName» has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in either the e-verify program or the department program;
- (c) «ShortName» certifies that it will use either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Contract is being performed;
- (d) If «ShortName» obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, «ShortName» shall be required to: (1) notify the subcontractor and the CITY within three days that «ShortName» 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 pursuant to subsection (1), the subcontractor does not stop employing or contracting with the illegal alien; except that «ShortName» 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;

- (e) «ShortName» shall comply with any reasonable request by the department made in the course of an investigation that the department is undertaking pursuant to the authority established in Section 8-17.5-102(5).
- (f) If «ShortName» violates a provision of this Contract regarding requirements under Section 8-17.5-102(2), C.R.S., the CITY may terminate this Contract for a breach of the Contract. If the Contract is so terminated, «ShortName» shall be liable for actual and consequential damages to the CITY. In the event of termination under this provision, the CITY is required to notify the Secretary of State.

#### 9. 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:

CITY: City of Gunnison  
Community Development Department  
201 W. Virginia Ave.  
Gunnison, Colorado 81230  
Phone: 970-641-8090

«ShortName»: «FullNameCAPS»  
«Attn»  
«Address»  
«CityStateZip»

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.

#### 10. 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.

#### 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 CITY of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

12. ATTORNEYS FEES.

If any party hereto shall bring any suit or action against another for relief, declaratory or otherwise, arising out of this Agreement, 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 attorneys fees and expert witness fees.

13. 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.

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.

15. 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 above.

CITY OF GUNNISON, a Colorado  
home-rule municipality

ATTEST:

By: \_\_\_\_\_  
Richard Hagan  
Mayor

\_\_\_\_\_  
Gail A. Davidson  
City Clerk

«FullNameCAPS»

By: \_\_\_\_\_

FullNameCAPS	ShortName	Attn:	Address	City,State,Zip	Words	Amount
ROTARY CLUB OF GUNNISON	ROTARY	Lauren Holbrook	PO Box 1274	Gunnison, CO 81230	Seven Hundred Fifty Dollars and No Cents	\$ 750.00
GUNNISON CHAMBER OF COMMERCE	CHAMBER		500 E. Tomichi Ave.	Gunnison, CO 81230	Two Thousand Dollars and No Cents	\$ 2,000.00
CATTLEMEN'S DAYS, INC.	CATTLEMEN'S	Margo Patton Blair	PO Box 1203	Gunnison, CO 81230	Seven Thousand Five Hundred Dollars and No Cents	\$ 7,500.00
GUNNISON CAR CLUB	CAR CLUB	Mike Callihan	PO Box 7102	Gunnison, CO 81230	One Thousand Dollars and No Cents	\$ 1,000.00
GUNNISON RIVER FESTIVAL	RIVER FESTIVAL	John Messner	210 Spencer Ave	Gunnison, CO 81230	Two Thousand Dollars and No Cents	\$ 2,000.00