



Memorandum

To: City Council
From: Ben Cowan
Date: 1/20/2016
Re: 2016 Continuing Challenge Grants

Attached are the recommended agreements 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.

I have included your requested modifications to the agreement which include the reporting requirement within 45 days of the end of the event as well as a copy of the literature that demonstrates the receipt of City funds.

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>
TOTAL	\$13,250

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 GUNNISON CHAMBER OF COMMERCE, a non-profit corporation of the State of Colorado, hereinafter called "CHAMBER".

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, CHAMBER 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 CHAMBER in the amount of Two Thousand Dollars and No Cents (\$2,000.00), 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 CHAMBER 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) CHAMBER 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.”** Copies of such advertising and literature must be provided to the Community Development Department of the CITY pursuant to paragraph 9 of this Agreement and may be submitted in an electronic format. Photos will be accepted as satisfaction of this requirement.
- (b) CHAMBER agrees to provide CITY with a detailed synopsis of the event together with an accounting as to the revenues and expenditures no later than forty-five (45) days following the conclusion of the event. Such written synopsis must be provided to the Community Development Department of the CITY pursuant to paragraph 9 of this Agreement and may be submitted in an electronic format.
- (c) CHAMBER agrees that the sum provided by the CITY shall be expended in accordance with its continuing category challenge grant request.
- (d) CHAMBER agrees to not utilize City funds as a pass through to other City funded programs.

4. INDEMNIFICATION.

- (a) CHAMBER 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 CHAMBER 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.

CHAMBER agrees that at all times during the Term of this Agreement that CHAMBER 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, CHAMBER 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 CHAMBER 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, CHAMBER is acting as an independent contractor and not as an agent, partner, joint venture or employee of CITY. CHAMBER does not have any authority to bind CITY in any manner whatsoever.
- (b) CHAMBER acknowledges and agrees that CHAMBER is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from CITY. Further, CHAMBER 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 CHAMBER and, therefore, CHAMBER 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 CHAMBER pursuant to C.R.S. 8-17.5-101, et seq.:

- (a) CHAMBER 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 CHAMBER that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Contract;
- (b) CHAMBER 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) CHAMBER 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 CHAMBER obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, CHAMBER shall be required to: (1) notify the subcontractor and the CITY within three days that CHAMBER 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 CHAMBER 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) CHAMBER 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 CHAMBER 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, CHAMBER 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

CHAMBER: GUNNISON CHAMBER OF COMMERCE
500 E. Tomichi Ave.
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.

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

GUNNISON CHAMBER OF COMMERCE

By: _____

CONTINUING CHALLENGE GRANT AGREEMENT

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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, CATTLEMEN'S 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.

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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 CATTLEMEN'S in the amount of Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00), 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 CATTLEMEN'S 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) CATTLEMEN'S 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."** Copies of such advertising and literature must be provided to the Community Development Department of the CITY pursuant to paragraph 9 of this Agreement and may be submitted in an electronic format. Photos will be accepted as satisfaction of this requirement.
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- (c) CATTLEMEN'S agrees that the sum provided by the CITY shall be expended in accordance with its continuing category challenge grant request.
- (d) CATTLEMEN'S agrees to not utilize City funds as a pass through to other City funded programs.

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- (a) CATTLEMEN'S 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 CATTLEMEN'S 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.

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- (a) Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by CATTLEMEN'S 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).

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- (b) CATTLEMEN'S 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;
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- (d) If CATTLEMEN'S obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, CATTLEMEN'S shall be required to: (1) notify the subcontractor and the CITY within three days that CATTLEMEN'S 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 CATTLEMEN'S 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;

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9. NOTICES.

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Community Development Department
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Gunnison, Colorado 81230
Phone: 970-641-8090

CATTLEMEN'S: CATTLEMEN'S DAYS, INC.
Margo Patton Blair
PO Box 1203
Gunnison, CO 81230

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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

CATTLEMEN'S DAYS, INC.

By: _____

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subsection (1), the subcontractor does not stop employing or contracting with the illegal alien; except that CAR CLUB 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;

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Phone: 970-641-8090

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Mike Callihan
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- (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

GUNNISON CAR CLUB

By: _____

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 ROTARY CLUB OF GUNNISON, a non-profit corporation of the State of Colorado, hereinafter called "ROTARY".

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, ROTARY 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 ROTARY in the amount of Seven Hundred Fifty Dollars and No Cents (\$750.00), 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 ROTARY 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) ROTARY 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.”** Copies of such advertising and literature must be provided to the Community Development Department of the CITY pursuant to paragraph 9 of this Agreement and may be submitted in an electronic format. Photos will be accepted as satisfaction of this requirement.
- (b) ROTARY agrees to provide CITY with a detailed synopsis of the event together with an accounting as to the revenues and expenditures no later than forty-five (45) days following the conclusion of the event. Such written synopsis must be provided to the Community Development Department of the CITY pursuant to paragraph 9 of this Agreement and may be submitted in an electronic format.
- (c) ROTARY agrees that the sum provided by the CITY shall be expended in accordance with its continuing category challenge grant request.
- (d) ROTARY agrees to not utilize City funds as a pass through to other City funded programs.

4. INDEMNIFICATION.

- (a) ROTARY 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 ROTARY 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.

ROTARY agrees that at all times during the Term of this Agreement that ROTARY 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, ROTARY 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 ROTARY 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, ROTARY is acting as an independent contractor and not as an agent, partner, joint venture or employee of CITY. ROTARY does not have any authority to bind CITY in any manner whatsoever.
- (b) ROTARY acknowledges and agrees that ROTARY is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from CITY. Further, ROTARY 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 ROTARY and, therefore, ROTARY 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 ROTARY pursuant to C.R.S. 8-17.5-101, et seq.:

- (a) ROTARY 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 ROTARY that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Contract;
- (b) ROTARY 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) ROTARY 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 ROTARY obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, ROTARY shall be required to: (1) notify the subcontractor and the CITY within three days that ROTARY 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 ROTARY 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) ROTARY 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 ROTARY 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, ROTARY 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

ROTARY: ROTARY CLUB OF GUNNISON
Lauren Holbrook
PO Box 1274
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.

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

ROTARY CLUB OF GUNNISON

By: _____

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 GUNNISON RIVER FESTIVAL, a non-profit corporation of the State of Colorado, hereinafter called "RIVER FESTIVAL".

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, RIVER FESTIVAL 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 RIVER FESTIVAL in the amount of Two Thousand Dollars and No Cents (\$2,000.00), 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 RIVER FESTIVAL 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) RIVER FESTIVAL 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.”** Copies of such advertising and literature must be provided to the Community Development Department of the CITY pursuant to paragraph 9 of this Agreement and may be submitted in an electronic format. Photos will be accepted as satisfaction of this requirement.

- (b) RIVER FESTIVAL agrees to provide CITY with a detailed synopsis of the event together with an accounting as to the revenues and expenditures no later than forty-five (45) days following the conclusion of the event. Such written synopsis must be provided to the Community Development Department of the CITY pursuant to paragraph 9 of this Agreement and may be submitted in an electronic format.
- (c) RIVER FESTIVAL agrees that the sum provided by the CITY shall be expended in accordance with its continuing category challenge grant request.
- (d) RIVER FESTIVAL agrees to not utilize City funds as a pass through to other City funded programs.

4. INDEMNIFICATION.

- (a) RIVER FESTIVAL 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 RIVER FESTIVAL 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.

RIVER FESTIVAL agrees that at all times during the Term of this Agreement that RIVER FESTIVAL 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, RIVER FESTIVAL 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 RIVER FESTIVAL 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, RIVER FESTIVAL is acting as an independent contractor and not as an agent, partner, joint venture or employee of CITY. RIVER FESTIVAL does not have any authority to bind CITY in any manner whatsoever.
- (b) RIVER FESTIVAL acknowledges and agrees that RIVER FESTIVAL is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from CITY. Further, RIVER FESTIVAL 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 RIVER FESTIVAL and, therefore, RIVER FESTIVAL 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 RIVER FESTIVAL pursuant to C.R.S. 8-17.5-101, et seq.:

- (a) RIVER FESTIVAL 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 RIVER FESTIVAL that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Contract;
- (b) RIVER FESTIVAL 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) RIVER FESTIVAL 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 RIVER FESTIVAL obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, RIVER FESTIVAL shall be required to: (1) notify the subcontractor and the CITY within three days that RIVER FESTIVAL 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 RIVER FESTIVAL 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) RIVER FESTIVAL 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 RIVER FESTIVAL 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, RIVER FESTIVAL 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

RIVER FESTIVAL: GUNNISON RIVER FESTIVAL
John Messner
210 Spencer Ave
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.

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.

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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

GUNNISON RIVER FESTIVAL

By: _____