

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("MOA") made effective this 12th day of January, 2016, is by and between the by and between the CITY OF GUNNISON, a Colorado home-rule municipality, existing under the laws of the State of Colorado, hereinafter called "CITY", and GUNNISON COUNTRY CHAMBER OF COMMERCE, a non-profit corporation of the State of Colorado, hereinafter called "CHAMBER".

### RECITALS

WHEREAS, CHAMBER believes it to be in the interest of the citizens of the City of Gunnison for CITY to contract with CHAMBER to perform certain services to the community; and

WHEREAS, GUNNISON has budgeted certain funds for said services to be provided in the agreed time period; and

WHEREAS, CITY conducted a survey of sales tax licensees with a majority of respondents indicating they support the use of a vendor fee reduction to be used to fund the CHAMBER in its operation of the Gunnison Country Visitor Center; and

WHEREAS, pursuant to Ordinance No. 21, Series 2015, enacted by the City Council of the City of Gunnison on December 8, 2015, the Allowable Service Fee was reduced from 5% to 4% effective January 1, 2016 to better fund the operation of the Gunnison Country Visitor Center.

### 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 agrees to provide funds equivalent to twenty-five percent (25%) of the Allowable Service Fee on a monthly basis, commonly referred to as vendor fees. CHAMBER acknowledges that this amount is dependent upon the total taxable sales and the amount of sales tax returns that are filed by the deadline. Monthly payments shall be made during CITY'S first check cycle in the third month following the associated filing period (i.e. a payment will be made in the first check cycle in April for taxes collected by vendors in January).
- (b) CHAMBER agrees to provide a full accounting of specifically how dollars were spent in operating the Gunnison Country Visitor Center. Such report must be clearly defined as separate from the revenues and expenditures of the rest of the Gunnison Country Chamber of Commerce operations. CHAMBER will either

provide this report in writing, in person or both by the discretion of the City Council of Gunnison semiannually by August 31, 2016 and March 31, 2017.

- (c) 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 11 of this Agreement.
- (d) 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 to provide a third party impact analysis that demonstrates why visitor centers are a critical part of a healthy local economy by December 31, 2016.
- (b) CHAMBER agrees to provide a business plan for the Visitor Center by April 1, 2016.
- (c) CHAMBER agrees to update the website to include separation of the Gunnison Country Chamber of Commerce and visitor center content by June 1, 2016.
- (d) CHAMBER agrees to establish a three-person Gunnison Country Visitor Center sub-committee by March 31, 2016, with one of the three members to be appointed by CITY. CITY acknowledges it does not have decision making authority for Gunnison Country Chamber of Commerce business that is unrelated to the Gunnison Country Visitor Center.
- (e) CHAMBER agrees to develop an affordable fee structure for service organizations so they can buy into visitor center services even though they don't collect sales tax by October 31, 2016.
- (f) CHAMBER agrees to represent all businesses that have a recognizable presence within the City of Gunnison as determined by the Gunnison Country Visitor Center sub-committee with regard to visitor center services by October 31, 2016.

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 \$150,000 for any injury to one person in any single occurrence and in an amount no less than \$600,000 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 not 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: Finance Director  
City of Gunnison  
201 W. Virginia Ave.  
Gunnison, Colorado 81230  
Phone: 970-641-8162

CHAMBER: Gunnison Country 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 COUNTRY CHAMBER OF  
COMMERCE

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