

**CITY OF RIFLE, COLORADO
RESOLUTION NO. 7
SERIES OF 2014**

A RESOLUTION OF THE CITY OF RIFLE, COLORADO APPROVING THE
GRANT AGREEMENT BETWEEN THE CITY OF RIFLE AND THE
GARFIELD COUNTY FEDERAL MINERAL LEASE DISTRICT
REGARDING THE DIGITAL CONVERSION OF CHANNEL 10 EQUIPMENT

WHEREAS, the Garfield County Federal Mineral Lease District ("GCFMLD") is an independent public body politic and corporate formed pursuant to the Colorado Federal Mineral Lease District Act, C.R.S. §30-20-1301 *et seq.*, and receives federal mineral lease payments from the Colorado Department of Local Affairs annually for the purpose of disbursing and distributing those payments for specific statutory purposes; and

WHEREAS, the City has applied for and received a grant of \$25,000.00 from GCFMLD to convert Channel 10 equipment from analog to digital (the "Project"), subject to the execution of a grant agreement with GCFMLD detailing the terms and conditions of the grant, including, but not limited to, disbursement of funds for and management of the Project; and

WHEREAS, the Rifle City Council desires to authorize the City Manager to execute the grant agreement for the Project on behalf of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIFLE, COLORADO, THAT:

1. The City incorporates the foregoing recitals as findings by the City Council.
2. The Rifle City Council hereby authorizes Matt Sturgeon, Rifle City Manager, to sign the grant agreement for the Project with GCFMLD.
3. The City Council hereby authorizes the expenditure of funds in 2014 as necessary to meet the terms and obligations of the grant agreement and application. Nothing herein constitutes the approval of a multiple fiscal year obligation by the City.

THIS RESOLUTION was read, passed, and adopted by the Rifle City Council at a regular meeting held this 7th of May, 2014.

CITY OF RIFLE, COLORADO

By _____
Mayor

ATTEST:

City Clerk



Garfield County
Federal Mineral Lease District

— Established 2011 —

Friday, April 25, 2014

Ms. Kimberly Bullen
Government Affairs Coordinator
City of Rifle
202 Railroad Avenue
Rifle, CO 81650

Re: Spring 2014 Grant Cycle – Mini Grant Program – Contract No: 14-SM-12

Dear Ms. Bullen,

Enclosed please find one original of the Mini Grant Agreement (“Agreement”) pertaining to your grant award from the Garfield County Federal Mineral Lease District (“GCFMLD”) for the Spring 2014 Grant Cycle based on the Grant Application you submitted for the Mini Grant Program. Your award remains contingent on mutual execution of the Agreement.

Execution of the Agreement will require a separate resolution passed by your governing body indicating acceptance of the Agreement and its terms, and authority to sign the Agreement on behalf of the governing body.

Please make sure the fully executed Agreement is returned timely and with all necessary attachments to the District office no later than the close of business on May 30, 2014. Please direct any questions regarding the Agreement to info@garfieldfml.org.

Sincerely yours,

**GARFIELD COUNTY FEDERAL MINERAL LEASE DISTRICT
BOARD OF DIRECTORS**

enc: Mini Grant Agreement

cc: file

MINI GRANT AGREEMENT

ORIGINAL

CONTRACT NUMBER: 14-SM-12
PROJECT NAME: Rifle Community Television
GRANT: \$25,000.00
AWARD DATE: April 18, 2014
COMPLETION DATE: April 18, 2015
PARTIES TO AGREEMENT:

GRANTOR: Garfield County Federal Mineral Lease District

GRANTEE: City of Rifle, Colorado

Recitals

- A. The Garfield County Federal Mineral Lease District (hereinafter "Grantor" or "GCFMLD") is an independent public body politic and corporate formed pursuant to the Colorado Federal Mineral Lease District Act, C.R.S., § 30-20-1301 *et seq* (2013) (hereinafter "the Act") and governed by a Board of Directors (hereinafter "Board").
- B. Grantee is a political subdivision of the State of Colorado, and is therefore eligible to receive grant funding from Grantor under the Act and 30 U.S.C. §191.
- C. Grantee submitted a grant application (hereinafter "Grant Application") in response to Grantor's **Spring 2014 Grant Cycle** and the Mini Grant Program.
- D. Grantor approved Grantee's Grant Application for a Mini Grant on **April 18, 2014**, conditioned on the execution of this Mini Grant Agreement (hereinafter "Agreement").
- E. The project (hereinafter "Project") is as described in the Grant Application and qualifies for GCFMLD funding as either (1) planning, (2) construction and maintenance of public facilities, or (3) provision of public services.

Agreement, Terms, and Conditions

NOW, THEREFORE, for and in consideration of the mutual promises or covenants exchanged herein and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

1. *Incorporation of Recitals.* The Recitals set forth above are hereby incorporated into the terms of this Agreement.

2. *Representations and Warranties of Grantee.*

- a. Grantee has full and lawful authority to enter into, and comply with the terms of, this Agreement.
- b. Grantee warrants that any and all statements and representations including all sources and uses of funds made in the Grant Application are true and correct, and that the Grant Application including all attachments and exhibits thereto is incorporated by this reference into this Agreement as if set forth in full and anew.
- c. Grantee's governing body has authorized entering into this Agreement as evidenced by the resolution attached hereto as **Exhibit A**.

3. *Representations and Warranties of Grantor.*

- a. Grantor has full and lawful authority to enter into, and comply with the terms of, this Agreement.
- b. Grantor represents and warrants that as of the date of execution of this Agreement it has available sufficient funds necessary to fully fund the amount of the Grant set forth herein.
- c. The Board has authorized its President to sign this Agreement.

4. *Grant and Project.* Subject to the terms and conditions set forth in this Agreement, the Board hereby awards to Grantee a sum not to exceed **twenty-five thousand dollars and no cents (\$25,000.00)** (the "Grant"). The Grant shall be used by Grantee solely to complete the Project, in substantial conformity with the final plans, specifications, designs and uses approved by Grantor and in conformity with the Grant Application.

5. *Project Scope.* Grantee shall not materially modify the Project or the Project budget (attached hereto as **Exhibit B**, the "Budget") without the prior written approval of the Grantor, or Grantor's designee, and such approval shall be in Grantor's sole discretion. Any material modification to the Project undertaken without Grantor's prior written consent may be deemed a breach of this Agreement by Grantor, entitling Grantor to all remedies available under this Agreement. If Grantee determines with reasonable probability that the Project will not or cannot be completed as reflected in the Grant Application, Grantee will promptly so advise the Board, and cooperate in good faith to seek a resolution before any further funds are advanced.

6. *Grantee Efforts.* Grantee shall complete the Project in a timely fashion, in a good and workmanlike manner, and consistent with this Agreement and Grantor's approvals related to the Project.

7. *Completion Date.* Grantee shall complete the Project and submit its Final Report no later than **April 18, 2015** (the "Completion Date"), one calendar year after the Board's approval of the Project. Requests for extension of the Completion Date are discouraged but should be directed in writing to the Board.
8. *Disbursement of Funds.* The Grant is subject to the following requirements and conditions:
 - a. The Grant shall be used only for (1) planning, (2) construction and maintenance of public facilities, or (3) provision of public services and consistent with Grantee's representations in the Grant Agreement. Determinations on eligible and ineligible costs are in Grantor's sole discretion.
 - b. Disbursement of Grant funds shall be made on the basis of costs actually incurred by Grantee and supported by written documentation (receipts, bills, etc.). Grantor may, in its discretion, depending on the nature of the Project, require documentation of mechanics lien waivers or waivers of claims to public project performance bonds as a precondition to any disbursement under this Agreement.
 - c. Except as otherwise agreed to in advance by Grantor in accordance with the terms of this Agreement, no material modifications may be made to the Project. Material modifications to the Project to which Grantor has not agreed may result in a reduction in the Grant. "Material modifications" may include, but are not necessarily limited to, a reduction in the total cost of the Project or any other variance from the Project as presented in the Grant Application. It is the sole responsibility of Grantee to inform Grantor of any such modifications to the Project. Grantor strongly encourages Grantee to contact Grantor in writing when it becomes aware of or wishes to make any such modifications, however seemingly minor, to the Project.
9. *Sufficiency of Grant Funds.* Grantor warrants that Grantor has available sufficient funds to fund the Grant.
10. *Project Operation and Maintenance.*
 - a. As applicable to the construction and maintenance of public facilities, Grantee shall operate, manage, and maintain the Project in a reasonable state of repair for the purposes specified in the Grant Application for a period of 25 years from the date of completion of the Project or the useful life of the Project, whichever is less, in accordance with product warranties and/or generally accepted standards applicable to the Project, and provide and maintain access to the Project and to the Property, regardless of the Property's ownership.
 - b. Failure to comply with the provisions of Paragraph 10.a. may be deemed a breach by Grantee under Paragraph 18, below.

- c. Grantor shall not be liable for any cost of maintenance, management or operation of the Project.
 - d. Within 60 days of a reasonable request by Grantor, Grantee will provide Grantor with adequate records reflecting the operating and maintenance costs of the Project and provide the Board with such other information concerning the use of the Project by the public and the impact of the Project.
11. *Public Access.* As applicable to the construction and maintenance of public facilities, Grantee agrees, for itself and its successors in interest, to allow reasonable public access to the Project given the nature and use of the public facilities, for the term specified in Paragraph 10. Grantee may temporarily close such public access for construction, maintenance, emergency situations, or other reasonable purposes.
12. *Compliance with Regulatory Requirements and Federal and State Mandates.* Grantee hereby assumes responsibility for compliance with all regulatory requirements in all applicable areas, including but not limited to nondiscrimination, worker safety, local labor preferences, preferred vendor programs, equal employment opportunity, use of competitive bidding, permits, approvals, and other similar requirements.
13. *Nondiscrimination.* During the performance of this Agreement, Grantee and its contractors, subcontractors and agents shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex, or any other basis prohibited by local, state or federal law. Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Further, during the performance of this Agreement, Grantee and anyone acting on behalf of Grantee shall not engage in any unlawful discrimination in permitting access and use of the Project.
14. *Publicity and Project Information.* Grantee agrees to acknowledge the assistance of the Garfield County Federal Mineral Lease District in a manner appropriate to the Project.

Grantee agrees to erect and maintain a sign(s) at a prominent location(s) on the Project site during construction, and Grantor will provide such signs at no cost to Grantee. Alternatively, Grantor will provide reproducible samples of its logo to Grantee for custom signs. Grantor may withhold Final Payment pending evidence of placement of signage.

Grantee shall prominently display an indoor plaque or other suitable marker acknowledging the assistance of the Garfield County Federal Mineral Lease District. Grantor will provide such plaque or marker at no cost to Grantee. The plaque or marker shall be displayed in Grantee's principal place of business or other logical location as determined by Grantor.

Grantee shall inform the GCFMLD of the need for a replacement sign or plaque due to damage, destruction, or disrepair. Grantor's failure to provide a replacement sign or plaque shall relieve Grantee of the obligations of this paragraph.

Additional terms:

- a. Grantee shall acknowledge GCFMLD funding in all publicity issued by it concerning the Project.
- b. Grantee shall cooperate with the GCFMLD or its designee in advance in preparing public information pieces related to the Project.
- c. Grantee shall give the GCFMLD the right and opportunity to use information gained from the Project.
- d. Grantee shall give the GCFMLD a minimum 30 days' notice of any Project grand openings, dedications, or other events.
- e. Grantee shall give timely notice of the Project, its inauguration, significance, and completion to the local members of the Colorado General Assembly, members of the board of county commissioners of the county or counties in which the Project is located, as well as to other appropriate public officials, upon request of Grantor.
- f. Grantee shall provide quality digital photographs (or printed photographs, if unable to provide digital photographs) of the completed Project with the Final Report, upon request of Grantor.
- g. At no time shall Grantee represent in any manner to the public or to any party that it is affiliated with the GCFMLD or acting on behalf of the GCFMLD.

15. **Liability.** The Grantor and Grantee acknowledge that each is subject to the constitutional prohibitions against indemnification pursuant to Colorado Constitution article XI, § 1 and that as governmental entities, neither party can agree to indemnify the other. Nothing herein shall be deemed a waiver of the Colorado Governmental Immunity Act for or by either party. C.R.S. § 24-10-101 *et seq.* (1963) as amended.

16. **Audits and Accounting.** Grantee shall maintain standard financial accounts, documents, and records relating to the use, management, and operation of the Project. The accounts, documents, and records related to the Project shall be retained by Grantee for not less than five (5) years following the date of disbursement of funds under this Agreement. Grantor, or its designated agent, shall have the right, upon reasonable notice to Grantee, to audit the books and records of Grantee, which pertain to the Project and to the use and disposition of the Grant. While Grantee is not required to use GAAP (Generally Accepted Accounting Principles), Grantee shall use reasonable and appropriate accounting systems in maintaining the required records hereunder.

17. *Inspection.* Throughout the term of this Agreement, Grantor shall have the right to inspect the Project to ascertain compliance with this Agreement.

18. *Breach; Withdrawal of Board Funding; Termination of Agreement.* Anything else in this Agreement or otherwise to the contrary notwithstanding, Grantor may withdraw, in whole or in part, the Grant and/or terminate this Agreement, if the Board determines in its discretion that:

- a. facts have arisen or situations have occurred that fundamentally alter the expectations of the parties or make the purposes for the Grant as contemplated infeasible or impractical;
- b. any material modifications in the scope or nature of the Project have occurred from that which was presented in the Grant Application and such material modifications have not received the prior written approval of Grantor;
- c. any statement or representation made by Grantee in the Grant Application, this Agreement, the Advance Payment documentation, the Progress Report, the Final Report, or otherwise is untrue, inaccurate or incomplete in any material respect;
- d. the results of Grantor's review of the Advance Payment documentation, the Progress Report, or the Final Report are not acceptable to Grantor with respect to material representations therein;
- e. the Project will not or cannot be completed by the Completion Date or any extensions granted thereto or delays in the implementation of the Project have occurred which, in Grantor's sole judgment, make the Project impracticable;
- f. the Project will not or cannot be completed within the Budget or any approved modifications, or the total Project cost and/or Grantee's matching funding are reduced;
- g. title to or encumbrances against the Property are or become such that Grantee is unable to complete the Project, or the Project and/or the Property are or become unavailable for public use;

19. *Remedies.*

- a. In the event that Grantee breaches any of the terms, covenants, representations, or conditions of this Agreement, Grantor may elect to enforce any and all remedies available at law or in equity, including without limitation, any of the following:
 - i. Prior to payment of Grant:
 - A. Withdraw the Grant and terminate this Agreement; and,

- B. Deny Grantee eligibility for participation in future GCFMLD grants, loans or projects.
 - ii. After payment (partial or full) of Grant:
 - A. Deny Grantee eligibility for participation in future GCFMLD grants, loans or projects;
 - B. Seek specific performance of Grantee's obligations under this Agreement;
 - C. Seek reimbursement in full of disbursement made under the Grant.
 - b. The foregoing remedies are cumulative and may be exercised independently or in combination and are not exclusive to one another or to any other remedies available at law or in equity.
20. *Good Faith.* There is an obligation of good faith on the part of both parties, including the obligation to make timely communication of information which may reasonably be believed to be material to the other party.
21. *Assignment.* Grantee may not assign its rights under this Agreement without the prior written consent of Grantor, which consent shall be in the discretion of Grantor. Any assignment shall require that, at a minimum, the assignee is eligible to receive grants from Grantor and assumes all of Grantee's ongoing obligations under this Agreement.
22. *Applicable Law.* This Agreement shall be governed by the laws of the State of Colorado and the United States of America, and venue for any dispute hereunder shall lie exclusively in the 9th Judicial District Court, State of Colorado, in Glenwood Springs, CO.
23. *No Joint Venture.* Nothing in this Agreement shall be construed to create a joint venture, partnership, employer/employee or other relationship between the parties hereto other than independent contracting parties. Except as permitted under the remedies provisions hereunder, neither party shall have the express or implied right to act for, on behalf of, or in the name of the other party.
24. *Severability.* If any provision of this Agreement, or the application thereof, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision, other than those as to which it is found to be invalid, shall remain in full force and effect.
25. *Time is of the Essence.* Time is of the essence in this Agreement.
26. *Survival.* The terms and provisions of this Agreement and the parties' covenants hereunder shall survive the funding of the Grant and the completion of the Project.

27. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one Agreement. In addition, the parties agree to recognize signatures of this Agreement transmitted by telecopy or e-mail as if they were original signatures.
28. *Third Party Beneficiary.* Grantor and Grantee hereby acknowledge and agree that this Agreement is intended only to cover the relative rights and obligations between Grantor and Grantee, and that no third party beneficiaries are intended.
29. *Construction.* Each party hereto has reviewed this Agreement, and therefore, any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement.
30. *Waiver.* The failure of either party to enforce a term hereof shall not be deemed a waiver of such term or right of enforcement as to that breach or any subsequent breach of the same, similar or different nature. No waiver shall be enforceable hereunder unless signed by the party against whom the waiver is sought to be enforced.
31. *TABOR.* No provision of this Agreement shall be construed or interpreted: i) to directly or indirectly obligate either party to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or iii) as a donation or grant to or in aid of any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.
32. *Entire Agreement.* Except as expressly provided herein or below, this Agreement constitutes the entire agreement of the parties. No oral understanding or agreement not incorporated in this Agreement shall be binding upon the parties. No changes to this Agreement shall be valid unless made as an amendment to this contract, approved by the Board, and signed by the parties.

Exhibit A – Resolution Approved by Grantee’s Governing Body Authorizing Execution of this Agreement

Exhibit B – Project Budget

33. *No Later Than Start Date.* Part of the GCFMLD’s mission is the expeditious distribution of funding, which means the projects it funds are started and completed in a timely manner. A “no later than start date” is Grantee’s good faith estimate of the date by which the Project will commence. This date varies depending on the type of project, and is used by the Board for informational and tracking purposes only. Indicate this date below, and briefly describe the action(s) Grantee considers “starting” the Project. Examples: bid award date, groundbreaking, execution of construction contract, date of first program, etc. This date does not alter the Completion Date in paragraph 7 above.

No Later Than Start Date: _____ (mm/dd/yyyy).

Description: _____

34. *Execution.* To be eligible for the Grant, Grantee shall fully execute the original Agreement including all Exhibits listed in paragraph 32 above and deliver the same to Grantor no later close of business on **May 30, 2014**. Thereafter, Grantor will execute the Agreement and retain the original in the GCFMLD offices, returning a photocopy to Grantee.

IN WITNESS WHEREOF, the parties by signature below of their authorized representatives execute this Agreement effective as of the ____ day of May, 2014.

GRANTOR:
GARFIELD COUNTY
FEDERAL MINERAL LEASE DISTRICT

GRANTEE:
CITY OF RIFLE, COLORADO

By: _____
Gregg Rippy
President, GCFMLD Board

By: _____
Matt Sturgeon
City Manager, City of Rifle

ORIGINAL

ATTACH EXHIBIT A

ATTACH EXHIBIT B