

**AGREEMENT FOR MONTROSE TOURISM / PROMOTIONAL PROGRAM
AND RETAIL SALES ENHANCEMENT PROGRAM SERVICES
WITH THE MONTROSE ASSOCIATION OF COMMERCE AND TOURISM
2010**

THIS SERVICES AGREEMENT, dated the ____ day of February 2010, is entered into between the City of Montrose, a Colorado home rule municipal corporation, whose address is 433 South First Street, P.O. Box 790, Montrose, Colorado 81402, (hereinafter referred to as the “City”), and the Montrose Association of Commerce and Tourism, a Colorado non-profit corporation, whose address is 1519 East Main Street, Montrose, Colorado 81401 (hereinafter referred to as the “MACT”).

RECITALS

WHEREAS, the City has, pursuant to Ordinance 1192, as codified in Chapter 5-2 of the Official Municipal Code, implemented a tax for the Tourism/Promotional Fund (“T/P Fund”), the proceeds of which are used for the purpose of promoting tourism, advertising the community, attracting conferences, conventions and meetings, or for other purposes related to attracting tourists, visitors and businesses to the City; and

WHEREAS, the City has, as codified in Section 5-15-33 of the Official Municipal Code, implemented a Retail Sales Enhancement Fund (“RSE Fund”) funded by a portion of the vendor’s fee, the proceeds of which are used for purposes reasonably related to the enhancement of retail sales within the City; and

WHEREAS, the City of Montrose, Montrose Area Merchants Association, Inc., Montrose Chamber of Commerce Inc., Montrose Economic Development Corporation Inc. and Montrose Visitors and Convention Bureau have participated in a restructuring process and mutually agree with the recommendation from the National Community Development Services, Inc. that the funding of the Montrose Area Merchants Association, Inc. and Montrose Visitors and Convention Bureau should be discontinued in their current form, and that a restructured Chamber of Commerce should be created to properly incorporate and oversee the T/P Fund and the RSE Fund.

NOW, THEREFORE, it is agreed by the City and the MACT, for and in consideration of the mutual covenants contained herein, as follows:

FUNDING

1. The City shall continue to collect the taxes that comprise the T/P Fund and the vendor's fees that comprise the RSE Fund, and submit said funds to the MACT, which will be collected and held in separate revenue and expenditure accounts for tourism/promotional and retail enhancement expenses. The transfer of the monies in each fund shall occur on a monthly basis, and the City shall retain therefrom a three percent (3%) administrative fee per fund.
2. The MACT hereby agrees to administer the funds, and conduct activities in accordance therewith, providing location and support staff for the same.
3. It is anticipated that the monthly payment of the funds to the MACT will occur between the fifteenth (15th) day of the month and the last day of each month for those taxes and fees collected during the preceding month, although the City will attempt to remit such payments as soon as is practicable.

ADMINISTRATIVE COSTS

4. Of the monies to be transferred to the MACT on a monthly basis, each of the T/P Fund and the RSE Fund may be utilized by the MACT to defray up to one-third (1/3) of the administration costs of the programs. The parties understand that once MACT has an approved budget, this paragraph may need to be amended.

PROGRAM BUDGETS

5. MACT agrees to consider an appropriate level of funding for the “Telluride/Montrose Regional Summer Air Services Program” in its annual budget from each of the T/P Fund and the RSE Fund.
6. MACT agrees to consider an appropriate level of funding for the Montrose Downtown Development Authority in its annual budget from each of the T/P Fund and the RSE Fund upon the successful passage of the question in the Montrose general election 2010.
7. Any additional appropriation of the Fund balances in addition to the approved budget shall require the approval of the City Council. It is the intention of the City and the MACT that the Fund balances will be spent rather than accumulated into large Fund balances. Notwithstanding this intent, the MACT will have the ability to fund multi-year commitments and will not be expected to spend revenues that were not projected. Provisions may be made to allow for cash flow considerations.

MARKETING PLAN AND BUDGET REPORTING

8. The MACT shall prepare and present to the City a fiscal year Program Budget, as well as annual evaluations of work progress. Additionally, the MACT Director shall prepare and present semi-annual reports of activities, financial statements, and budget reports, to the City Council six (6) months after execution of this Agreement by the City and the MACT.
9. In accordance with the City’s Records Retention Program, the MACT shall record all formal meetings of the MACT Board. All records, including recorded minutes of meetings, regardless of physical form, and the accounting practices and

procedures of the MACT relevant to this Agreement are subject to examination by the City or the City's designee. The MACT shall retain all such records for at least three (3) years following the year of their creation. In the City's sole discretion, it may request an audit be performed using generally accepted accounting practices of the MACT's financial transactions of any nature whatsoever. The City shall have the option to perform such an audit, and withhold the costs thereof from any amounts payable.

SERVICES

10. The following services shall be performed by the MACT under this Agreement:
 - a. MACT agrees to develop the organizational structure of the MACT to include proper utilization of the RSE Fund and the T/P Fund; and
 - b. MACT agrees to develop a four-year strategic plan with defined performance objectives along with program cost estimates to be incorporated into the 2011 MACT agreement with the City; and
 - c. MACT agrees to evaluate the 2009 uses of the Retail Enhancement Funds and the Promotion/Tourism Program Funds and determine those uses to be continued in 2010 and those to be incorporated in the 2011 MACT agreement with the City; and
 - d. MACT agrees to provide proper management of the mobile stages that will be leased by the City to the MACT; and
 - e. The MACT agrees to continue its participation in the community economic development assessment process.

- f. MACT agrees that one voting MACT board seat will be assigned to be filled by appointment by the Montrose City Council.

TERM OF AGREEMENT

11. This Agreement is effective as of the date first written above, and shall expire on December 31, 2010. This Agreement may be subject to subsequent and consecutive renewal periods, upon the written consent of the City and the MACT. The City and the MACT shall evaluate the success of the programs and the terms and conditions of this Agreement prior to the commencement of any renewal of this Agreement.
12. Either the City or the MACT may terminate this Agreement for their convenience by giving written notice of not less than forty-five (45) days to the other. In the event of such termination, the MACT shall immediately repay to the City any uncommitted funds remaining in the RSE Fund and the T/P Fund not expended which it has received from the City and shall conduct no further activities pursuant to this Agreement. This provision shall survive the termination or expiration of this Agreement.

MISCELLANEOUS

13. This Agreement may not be assigned by either the MACT or the City, and may be amended only by written agreement between the City and the MACT. It represents the entire agreement between the City and the MACT.
14. The MACT is an independent contractor for purposes of this Agreement. The Parties agree that the City's payment of any monies under this Agreement is subject to annual budget appropriations as required by provisions of the Taxpayers' Bill of Rights ("TABOR") contained in Article X, Section 20 of the Colorado Constitution, as amended. The Parties further agree that any failure to

fund the obligations set forth herein as a result of TABOR-related monetary constraints shall not give rise to any legal or equitable cause of action whatsoever.

15. All notices or other communications required under this Agreement shall be given by regular mail and are complete on the date mailed when addressed to the parties at the addresses set forth above.
16. This Agreement is governed by and construed in accordance with the laws of the State of Colorado.
17. MACT shall defend, indemnify, and hold harmless the City, its agencies, officers, and employees, from any and all claims of any nature, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this Contract, except for claims resulting from or arising out of the City's sole negligence. The legal defense provided by MACT to the City under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the City is necessary. MACT shall also defend, indemnify, and hold the City harmless for all costs, expenses, and attorneys' fees incurred in establishing and litigating the indemnification coverage provided in this section. The obligation in this section shall continue after termination of this Agreement, or any extensions or renewals of it.
18. MACT agrees to comply with all applicable federal, state and local laws, rules, regulations and policies, including but not limited to those relating to nondiscrimination, accessibility and civil rights. MACT agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including but not limited to sales and use taxes and unemployment compensation and workers' compensation premiums. MACT shall have and keep current at all times during the term of this Contract all licenses and permits required by law.

19. This Agreement is a contract for services and the funds provided to MACT are to be used for those services delineated herein. While MACT is not funded under this Agreement to promote any particular legislative cause or political agenda, or to function as a political action committee, trade union, or lobbying group, MACT may use its other funds for such activities. MACT hereby agrees not to use the funding under this Agreement while engaged in lobbying, petitioning, protesting, agitating, or other activities having a similar nature relating to political activism at the federal, state or local level. Any breach of this Section shall constitute grounds for termination. Should any issue involving the City arise, MACT shall immediately inform the City in order that the issue can be addressed in the proper manner.

20. In consideration of its receipt of public monies under this Agreement, the MACT shall discharge its responsibilities in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner reasonably believed to be in the best interests of the MACT and the City. The MACT shall avoid conflicts of interest: a conflict of interest occurs when there is a transaction or agreement with the MACT in which a director, officer, agent or employee of the MACT has a direct or indirect interest.
 - a. A conflict of interest transaction is not voidable by the MACT solely because of the director's, officer's, agent's or employee's interest in the transaction if all of the following are true: (1) the material facts of the transaction and the director's, officer's, agent's or employee's interest were disclosed or known to the MACT Board of Directors, and they approved or ratified it; and (2) the material facts of the transaction and the director's, officer's, agent's or employee's interest were disclosed or known to the City, and the City approved or ratified it; and (3) the transaction was fair to the City and to the MACT.
 - b. No director, officer, agent or employee of the MACT shall use their position to profit or realize an advantage at the expense of the MACT; nor shall they

contract with the MACT to provide services to the MACT during their term of office, engagement, or employment, unless it is agreed that there is no viable alternative.

- c. The MACT shall be subject to the Colorado Code of Ethics, codified in C.R.S. § 24-18-101 *et seq.*

21. THE FOLLOWING PROVISIONS ARE REQUIRED BY HB 06-1343, AS AMENDED BY HB 07-1073 AND SB 08-139

- a. MACT shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- b. MACT shall not enter into a contract with a subcontractor that fails to certify to the MACT that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. MACT shall, within twenty (20) days of hiring a new employee during the term of this Agreement, cause a written, notarized copy of its affirmation of said employee's status to be sent to the City.
- c. MACT hereby affirms that it has confirmed or attempted to confirm the employment eligibility of all employees who are newly hired for employment in the United States through participation in the e-verify program, ("e-verify program" means the employment verification program authorized in 8 U.S.C. §1324a, as amended, that is administered by the United States Department of Homeland Security, or the "department program"). If MACT is not accepted into the e-verify program, prior to entering into this Agreement, the MACT shall apply to participate in the e-verify program every three (3) months until the MACT is accepted or this Agreement has been completed, whichever is earlier. MACT is prohibited from using the e-verify program procedures to undertake preemployment screening of job applicants while this Agreement is being performed. This subparagraph "c" shall not be effective if the e-verify program is discontinued.

- d. If the MACT obtains actual knowledge that a Subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the MACT shall be required to: (a) notify the subcontractor and the City within three (3) days that the MACT has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (b) terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to section (a) of this subparagraph, if the subcontractor does not stop employing or contracting with the illegal alien; except that the MACT shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- e. MACT shall comply with any reasonable request by the applicable State agency or department made in the course of an investigation that said agency or department is undertaking pursuant to its lawful authority. If MACT violates a provision of this Section 21, the City may terminate this Agreement for material breach. If this Agreement is so terminated, MACT shall be liable for actual and consequential damages of the City. The City is required by State law to notify the Office of the Secretary of State if MACT violates a provision of this Section 21, and the City terminates this Agreement for that reason.

CITY OF MONTROSE

MONTROSE ASSOCIATION OF COMMERCE AND TOURISM

 José Abeyta, Mayor

 _____, President

ATTEST:

ATTEST:

 Teri Colvin, City Clerk

 _____, its _____