AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Road Maintenance and Cost Agreement; SG Interests

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: SG Interestl, Ltd/Gunnison Energy and Gunnison County

Term Begins: 5/01/2016 **Term Ends:** 12/31/2021 **Grant Contract #:**

Summary:

SG Interests and Gunnison Energy pay annually for the magnesium chloride sprayed on CR #265. This agreement helps to minimize the impact of their traffic on the road both for dust and road damage.

Fiscal Impact: Generates between $15,000 and $20,000 per year

Submitted by: Marlene D. Crosby **Submitter's Email Address:** mcrosby@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 3/10/2016

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok - gs

Reveiwed by: GUNCOUNTY1\gstuhr Discharge Date: 3/10/2016 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 3/11/2016

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted:

Agenda Date: 3/15/2016

Revised April 2015

ROAD MAINTENANCE AND COST AGREEMENT

THIS ROAD MAINTENANCE AND COST AGREEMENT ("Agreement") is entered into this ____ day of _____, 2016 among the Board of County Commissioners of the County of Gunnison, Colorado whose address is 200 E. Virginia, Gunnison, Colorado 81230 ("Gunnison County"), SG Interests I, Ltd, a Texas limited partnership, whose address is 100 Waugh Drive, Suite 400, Houston, Texas 77007 ("SG Interests") and Gunnison Energy Corporation, a Delaware corporation, whose address is 1801 Broadway, Suite 1200, Denver, Colorado 80202 ("Gunnison Energy").

A. RECITALS

WHEREAS, both SG Interests and Gunnison Energy utilize County Road 265 for their commercial oil and gas operations; and

WHEREAS, as part of necessary maintenance of County Road 265, Gunnison County applies magnesium chloride to County Road 265; and

WHEREAS, SG Interests and Gunnison Energy intend to make a financial contribution to the cost incurred by Gunnison County for the application of magnesium chloride on County Road 265.

B. AGREEMENT

NOW, THEREFORE, in consideration of the recitals above and the mutual covenants and obligations contained herein below, the parties understand and agree to the following:

1. TERM

The term of the agreement shall begin on May 1, 2016 and terminate on December 31, 2021.

2. SERVICES AND COMPENSATION.

A. In consideration and exchange for SG Interests' and Gunnison Energy's financial contribution towards the application of magnesium chloride on County Road 265, the Gunnison County, through the Gunnison County Public Works Department, shall:

1. Grade County Road 265 each year in preparation for the application of magnesium chloride.

2. Apply the magnesium chloride as needed which need is to be determined at the sole discretion of the Gunnison County Public Works Department. This application shall be limited to two (2) separate full strength applications of magnesium chloride to the entire length of County Road 265 per calendar year and one (1) additional application of full strength magnesium chloride, as necessary, for adequate dust suppression of the road at residential driveway entrances adjacent to County Road 265

B. In consideration and exchange for Gunnison County's application of magnesium chloride on County Road 265, SG Interests and Gunnison Energy shall:

1. Pay for the actual product cost of the magnesium chloride.

2. Provide the water necessary for the application of the magnesium chloride.

Gunnison County will invoice SG Interests for the cost of the magnesium chloride. SG Interests will in turn invoice Gunnison Energy for one-half (1/2) the total cost. This will allow Gunnison County to send one invoice and receive payment in full each year without the need to allocate costs between the two companies.

SG Interests shall send full payment to Gunnison County within sixty (60) days from the date of the invoice.

3. 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.

4. 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:

Gunnison County: Matthew Birnie
Gunnison County Manager
200 E. Virginia Avenue
Gunnison, Colorado 81230

SG Interests:	SG Interests I, Ltd 100 Waugh Drive, Suite 400 Houston, Texas 77007
Gunnison Energy:	Gunnison Energy Corporation 1801 Broadway, Suite 1200, Denver, Colorado 80202

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.

5. 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 Gunnison County of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

6. INDEPENDENT CONTRACTOR.

In carrying out its obligations and activities under this Agreement, SG Interests and Gunnison Energy are acting as independent contractors and not as an agent, partner, joint venture or employee of Gunnison County. Contractor does not have any authority to bind Gunnison County in any manner whatsoever.

SG Interests and Gunnison Energy acknowledge and agree that they are not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County. Further, SG Interests and Gunnison Energy are obligated to pay federal and state income tax on any moneys paid it related to the services.

7. BINDING AGREEMENT FOR SUCCESSORS AND ASSIGNS.

This Agreement shall bind any successor or assign in interest to the operations of SG Interests and/or Gunnison Energy that may use Gunnison County Road 265 for the same or similar purposes.

8. 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 attorney's fees and expert witness fees.

9. 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 County, Colorado.

10. COUNTERPARTS: FACSIMILE TRANSMISSION.

This Agreement may be executed by facsimile and/or in any number of counterparts, any or all of which my 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.

11. 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Paula Swenson, Chairperson

ATTEST:

_____
Deputy County Clerk

SG INTERESTS I, LTD.,
a Texas Limited Partnership

By: _____
Robbie Guinn, Jr., Vice President – Land

ATTEST:

_____
Secretary

GUNNISON ENERGY CORPORATION,
a Delaware corporation

By: _____
Brad Robinson, President

ATTEST:

_____
Secretary