# AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

**Agenda Item:** Road Maintenance and Cost Agreement; Crested Butte

**Action Requested:** Discussion

**Parties to the Agreement:** Gunnison County and CB South Metro District

**Term Begins:** **Term Ends:** **Grant Contract #:**

**Summary:**

An agreement has been prepared by the County Attorney's office for maintenance and plowing of some roads in CB South

**Fiscal Impact:** None directly to County

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

**Finance Review:** (●) Required ( ) Not Required

Comments:
I have no concerns as long as HUTF passthrough is determined to be appropriate in this case. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 9/7/2016

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

Comments:
ok - gs

Reveiwed by: GUNCOUNTY1\gstuhr Discharge Date: 9/13/2016 Certificate of Insurance Required Yes (●) No ( )

**County Manager Review:**

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 9/14/2016

( ) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 20 minutes

Agenda Date: 9/27/2016

*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"), and Crested Butte South Metropolitan District, a Colorado special district, whose address is 280 Cement Creek Road, Crested Butte, Colorado 81224 ("CB South Metro").

## A. RECITALS

WHEREAS, CB South Metro has several miles of roads to maintain within its service district; and

WHEREAS, Gunnison County has access to Highway User Tax Funds (HUTF); and

WHEREAS, Gunnison County and CB South Metro wish to contract for the addition of the remaining roads to the County's HUTF inventory and for the maintenance of the roads within CB South Metro's service district.

## 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. Gunnison County agrees to include specific roads within CB South Metro's service area on its HUTF inventory for Tier 3 monies. The roads to be included on the HUTF inventory are listed in Exhibit A, which by this reference is hereby incorporated and made a part of this agreement. Gunnison County submits the HUTF inventory in January of each year and these roads would not be added until January of 2017.

B. The roads within CB South Metro's service area will need to be measured and the condition rated per HUTF standards which the County will do prior to placing the road on the HUTF inventory.

C. All road regulatory and warning signs shall conform to the requirements of the Manual on Uniform Traffic Control Devices (MUTCD) prior to Gunnison County adding the road to its HUTF inventory.

D. Gunnison County will continue to plow the roads which are currently plowed by Gunnison County as they will not be included on the reimbursement list.

E. Any Tier 3 monies received by Gunnison County for the maintenance of the included roads in CB South Metro's service area will be passed through to CB South Metro. However, the exact amount each year is variable and will be determined on a year to year basis. Moreover, Gunnison County cannot and will not guarantee a specific amount of money per year or that any money will be received in any given year for maintenance of the CB South Metro's roads. CB South will not receive any monies provided under Tier 1 or Tier 2 as the roads do not qualify under those tiers.

F. CB South agrees to provide all maintenance and snow plowing for the roads within its service district regardless of the amount of money received from Gunnison County. Failure of CB South to continue the maintenance and snow plowing on the roads covered by this agreement will result in the County immediately removing the roads from the HUTF inventory.

G. CB South will maintain a maintenance log that includes the dates and hours worked, or similar information which shows the work actually performed, which will be available for inspection by Gunnison County during normal business hours.

H. Gunnison County will not provide maintenance or snow plow removal to the roads added under this agreement. Should CB South fail to provide for the maintenance and snow removal of these roads, Gunnison County will not be responsible for maintenance or snow plowing or the costs of maintenance or snow plowing, of said roads.

## 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. Should CB South terminate this contract after the County has turned over the HUTF funds for CB South roads, CB South shall refund all unspent monies back to the County and provide accounting for all monies spent on the roads for that year.

## 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

| | |
|---|---|
| CB South Metropolitan District | President<br>Board of Directors |

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, CB South Metro is 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.

CB South Metro acknowledges and agrees that CB South Metro and its agents and employees are not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County. Further, CB South Metro is 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 CB South Metro that may maintain and plow the roads within CB South Metro's service area 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

CB South Metropolitan District,
a Colorado Special District

By: _____

ATTEST:

_____
Secretary