AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Request for Agreement Amendment

Action Requested: Motion

Parties to the Agreement: CB South Metro District

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

Summary:

A portion of roads in CB South were added to our HUTF with the agreement that all maintenance and plowing would be done by the Metro and we would reimburse them from HUTF

Fiscal Impact: $1,508.00 - $22,447.92

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

Finance Review: (●) Required ( ) Not Required

Comments:

No concerns with paying based on total collections rather than just Title III portion. The redistribution at that level will not adversly affect the projections for 2019 in the 2020 adopted budget, as the revenue was projected at less than final ending total even with this payment to CB South Metro District. I support this request to ament the agreement. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 1/15/2020

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

Comments:

No document provided. db 1/16/20

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 1/16/2020 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 1/16/2020

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

Agenda Date: 1/21/2020

Revised April 2015

CRESTED BUTTE SOUTH PUBLIC ROAD MAINTENANCE AGREEMENT

THIS CRESTED BUTTE SOUTH PUBLIC ROAD MAINTENANCE AGREEMENT ("Agreement") is made and entered into this 7th day of March, 2017 by and between the Board of County Commissioners of the County of Gunnison, Colorado whose address is 200 E. Virginia, Gunnison, Colorado 81230 ("Gunnison County") and the Crested Butte South Metropolitan District, a Colorado Special District, whose address is 280 Cement Creek Road, Crested Butte, Colorado 81224 ("Metro District").

RECITALS.

WHEREAS, the Metro District is a quasi-municipal corporation organized and existing under the statutes of the State of Colorado, pursuant to C.R.S. §32-1-101, *et seq.*; and

WHEREAS, one of the purposes for which the Metro District was formed was to provide street improvement services with the ability to construct and maintain streets and highways within the confines of the Metro District; and

WHEREAS, the Metro District and Gunnison County are political subdivisions, as defined under the Intergovernmental Relationships Act, C.R.S. §29-1-201, *et seq.*, which Act permits, authorizes and encourages political subdivision of the State of Colorado to cooperate and contract with one another to provide any functions, services of facilities lawfully authorized to the cooperating or contracting political subdivision; and

WHEREAS, certain roads within the Metro District, as identified in Appendix "A" attached hereto and incorporated herein by reference ("CB South Roads Added to HUTF Inventory"), were dedicated to the use of the public; the public dedication was accepted by Gunnison County and such roads are public roads as required by C.R.S. § 43-4-207; and

WHEREAS, the locations of the CB South Roads are identified on the following plats titled:

1. *Crested Butte South – First Filing* recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on August 26, 1970, bearing Reception No: 280978; and
2. *Crested Butte South – Second Filing* recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on September 24, 1970, bearing Reception No: 281588; and
3. *Crested Butte South – Third Filing* recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on January 8, 1971, bearing Reception No: 282791; and

4. *Crested Butte South – Fourth Filing* recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on November 9, 1972, bearing Reception No: 291415; and

WHEREAS, Gunnison County may secure for the Metro District, Highway User Tax Funds ("HUTF") pursuant to C.R.S. §43-4-201, *et seq.*, to assist with maintenance of the CB South Roads; and

WHEREAS, Gunnison County and the Metro District have considered and determined that it is in the best interest of the residents and citizens of Gunnison County, Colorado and the residents and citizens of the Metro District to provide for the maintenance of the CB South Roads Added to HUTF Inventory according to the terms of this Agreement; and

WHEREAS, Gunnison County and the Metro District hereby find and determine that this Agreement and the provisions herein will make the most efficient and effective use of their powers and responsibilities.

AGREEMENT.

NOW THEREFORE, in consideration of the foregoing and the mutual promises, covenants, agreements and obligations herein contained, the parties understand and agree to the following:

1. TERM.

The term of the Agreement shall begin January 1, 2017 and shall continue for a period of five (5) years expiring on December 31, 2021 ("Term"), unless sooner terminated, amended or replaced as provided herein. Upon mutual written agreement of the parties hereto, the Agreement may be renewed and extended for an additional period of time.

2. OBLIGATIONS OF THE METRO DISTRICT.

A. It is understood that all CB South Roads Added to HUTF Inventory shall be legally open to the public, used and maintained by the Metro District on a continual basis.

B. The regulatory and warning signs on all CB South Roads Added to HUTF Inventory must fully conform to the requirements of the current *Manual on Uniform Traffic Control Devices* as a prerequisite to Gunnison County including CB South Roads Added to HUTF Inventory to its HUTF inventory report.

C. The Metro District agrees to utilize all HUTF funds, received from Gunnison County pursuant to this Agreement, only for maintenance and for the benefit of CB South Roads Added to HUTF Inventory and for no other purpose whatsoever. The term maintenance herein includes construction, engineering, reconstruction, maintenance, repair, snowplowing and equipment purchase incurred in connection with CB South Roads Added to HUTF Inventory. It is mutually acknowledged and agreed that the HUTF funds allocated to Gunnison County and disbursed to the Metro District may not be adequate for all the maintenance required for CB South Roads Added to HUTF Inventory

and the Metro District agrees that it affirmatively shall expend such additional funds from other sources and in other amounts as are necessary for maintenance of CB South Roads Added to HUTF Inventory. Failure of the Metro District to ensure continuous and adequate maintenance of CB South Roads Added to HUTF Inventory, in the reasonable discretion of Gunnison County, will result in Gunnison County immediately removing CB South Roads Added to HUTF Inventory from the HUTF inventory.

D. The Metro District shall keep a maintenance log that includes the dates and hours worked, and relevant maintenance information documenting maintenance work actually performed on CB South Roads Added to HUTF Inventory which log shall be available for inspection by Gunnison County during normal business hours.

E. The Metro District agrees to provide maintenance for ALL roads within its service district, currently constructed regardless of the amount of money received from the County, whether described as streets, roads, avenues, drives, or otherwise. It is understood and agreed that the Metro District shall not be obligated to construct any additional roads.

3. OBLIGATIONS OF GUNNISON COUNTY.

A. Gunnison County shall include CB South Roads Added to HUTF Inventory in its annual January 2017 HUTF inventory report to the Colorado Department of Transportation for Tier 3 funds.

B. Subject to annual appropriation by the general assembly and as allocated and expended pursuant to C.R.S. §43-4-207, Gunnison County shall, in consideration of Metro District's agreement to maintain CB South Roads Added to HUTF Inventory, pay to the Metro District a pro rata share of funds received by Gunnison County from HUTF to the extent such funds are derived from the adjusted lane mileage of those open, used and maintained CB South Roads Added to HUTF Inventory. The percentage of HUTF funds to be paid to the Metro District shall be calculated as follows:

Metro District adjusted lane miles for CB South Roads Added to HUTF Inventory /Gunnison County adjusted lane miles.

The first allocation of HUTF funds to be received by Gunnison County and disbursed semi-annually to the Metro District for the maintenance of CB South Roads Added to HUTF Inventory shall begin upon receipt of verification by Colorado Department of Transportation that the CB South Roads have been added to Gunnison County's inventory and the second disbursement to the Metro District shall be in December 2017. Thereafter, the semi-annual disbursements shall be made in June and December during the Term of this Agreement.

The exact amount of HUTF Tier 3 funds each year is variable and cannot be determined on a year to year basis. Gunnison County cannot, does not and shall not guarantee a specific amount of HUTF Tier 3 funds that will be allocated for maintenance of CB South Roads Added to HUTF Inventory. The Metro District shall not receive any

monies provided under Tier 1 or Tier 2 as CB South Roads Added to HUTF Inventory do not qualify under those tiers.

C. This Agreement shall not operate, or be construed to operate as, acceptance by Gunnison County of maintenance responsibility for the CB South Roads Added to HUTF Inventory. Gunnison County may, but shall not be obligated to provide maintenance for CB South Roads Added to HUTF Inventory identified pursuant to this Agreement. Should the Metro District fail to provide for the maintenance of CB South Roads Added to HUTF Inventory, Gunnison County shall not be responsible for said maintenance of CB South Roads Added to HUTF Inventory.

4. ROAD STANDARDS.

It is acknowledged by both Gunnison County and the Metro District that the CB South Roads Added to HUTF Inventory may not be presently constructed to meet the current *Gunnison County Standards and Specifications for Road and Bridge Construction*. This Agreement does not alter or amend the *Gunnison County Standards and Specifications for Road and Bridge Construction* nor require the Metro District to reconstruct or improve the existing CB South Roads to meet the current *Gunnison County Standards and Specifications for Road and Bridge Construction.*

5. FURTHER FUNDING ABILITY.

Notwithstanding the foregoing, this Agreement shall in no way limit the right or ability of Gunnison County or the Metro District or impose any additional obligations upon Gunnison County or the Metro District to raise revenue or use such additional revenues as may be necessary or proper for the maintenance of CB South Roads Added to HUTF Inventory.

6. NOTICES.

Any notices required or desired hereunder shall be in writing and delivered or sent postage prepaid by certified or registered mail, return receipt requested, to the Metro District or Gunnison County at the addresses set forth below, or such other addresses as the parties may otherwise designate in writing. The date of delivery or mailing shall be deemed to constitute the date of any such notice.

Gunnison County:	Marlene Crosby, Director Gunnison County Public Works Department 195 Basin Park Drive Gunnison, CO 812130
Metro District:	Crested Butte South Metropolitan District 280 Cement Creek Road Crested Butte, CO 81224 Attn: District Manager

7. TERMINATION.

Either party shall have the right to terminate this Agreement at any time, with or without cause, upon ninety (90) days prior written notice to the other.

8. INDEMNIFICATION.

Each party shall be solely responsible for the performance of its obligations hereunder. The Metro District further specifically agrees to indemnify Gunnison County against any loss which may occur in the event funds received by Gunnison County and paid to the Metro District under this Agreement are later required to be returned to the State of Colorado, up to the amount required to be returned to the State of Colorado.

9. 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 or Metro District of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

10. IMMIGRATION COMPLIANCE CERTIFICATION.

The Metro District certifies and agrees that it:

A. Does not and will not knowingly contract with or employ illegal aliens to work under this Agreement.

B. Has required its contractors to certify that they do not knowingly contract with or employ illegal aliens to work under this Agreement.

C. Has attempted to verify the eligibility of its contractors to work through the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security.

D. To comply with all reasonable requests made in the course of an investigation under C.R.S. 8-17.5-102 by the Colorado Department of Labor and Employment and with the provisions of C.R.S. 8-17.5-101 et seq.

11. APPROVAL AND COMPLIANCE WITH AUTHORITY.

This Agreement has been approved by the appropriate governing authorities of each of the parties in compliance with all statutes and governing documents concerning open

meetings and manner of acting. The parties will execute such further documents and assurances necessary to fully perform their obligations hereunder and carry out the intent of this Agreement.

12. GOVERNING LAW.

Should a dispute arise regarding this Agreement or performance of the obligations herein, Gunnison County and the Metro District agree to make all reasonable efforts to reach an amicable resolution of such dispute. In an effort to resolve any conflicts that arise under this Agreement, the parties agree that all disputes between them arising out of or relating to this Agreement shall be first submitted to non-binding mediation, the costs of which will be shared equally by the parties unless the parties herein mutually agree otherwise. Should no amicable resolution of a dispute be reached, the parties hereto agree that jurisdiction and venue for any litigation shall be in the District Court of Gunnison County, Colorado.

13. 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.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Phil Chamberland, Chairperson

ATTEST:

_____
Deputy County Clerk

GUNNISON COUNTY SEAL COLORADO

CRESTED BUTTE SOUTH METROPOLITAN DISTRICT,
a Colorado Special District

By: _____
Tom Dill, President

ATTEST:

_____
Tom Hein, Secretary

APPENDIX "A"

CB SOUTH ROADS ADDED TO HUTF INVENTORY

Profit Place	.06 miles
Neville Way	.41 miles
Barbra Place	.16 miles
Anderson Drive	.52 miles
Gloria Place	.23 miles
Cisneros Lane	.47 miles
Zeligman Street	.95 miles
Janet Place	.09 miles
Bryant Avenue	.91 miles
Fox Place	.05 miles
Huckaby Way	.24 miles
Cascadilla Street	.41 miles
Ruland Place	.04 miles
Waters Court	.09 miles
Stephenson Place	.06 miles
Kubler Street	.13 miles