




Fiscal Impact Form

Department: Road and Bridge	Date: September 13, 2016	
Document Title (i.e. Resolution, Agreement, etc.): Winter Maintenance Agreement – Eldred Ranch and Ouray County	Year of commencement: 2016-2017 Winter Season	
Source of Funding:		
 General Fund <input type="checkbox"/>	R & B Fund <input type="checkbox"/>	EMS Fund <input type="checkbox"/>
Social Services Fund <input type="checkbox"/>	Other <input type="checkbox"/>	
If other, please indicate: N/A		
Reporting Requirements (if any): \$1,000 Bond and Certificate of Insurance for Liability		
Description/Purpose: For the purpose of winter snow removal on affected portions of Dave Wood Road (.8 miles) during the 2016-2017 Winter Season (through June 30, 2017).		

Submission/Review/Approval or Denial:

Department Head / Elected Official: _____	Date: _____
County Administrator: <u><i>C. Hunt</i></u>	Date: <u>9/7/2016</u>
Comments: _____	
Board of County Commissioners, Chair: _____	
Approve <input type="checkbox"/>	Deny <input type="checkbox"/>

WINTER MAINTENANCE AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____ 2016, by and between the Board of County Commissioners of Ouray County, Colorado, (hereinafter referred to as "County") and Eldred Colorado Family Limited Partnership (hereinafter referred to as "The Ranch") located on Horsefly Mesa in Montrose County, Colorado.

MATERIAL to their agreement, County and The Ranch make the following recitals:

A. The County is responsible for the use and maintenance of that part of Dave Wood Road which is located in Ouray County, Colorado, but does not include the pertinent section of Dave Wood Road on its winter maintenance schedule.

B. The Ranch intends to use Dave Wood Road for access to its property during the winter months and anticipates the need to plow snow on a portion of Dave Wood Road from the entrance to Elk Mountain Resort to the Montrose – Ouray County line, approximately .8 miles of which is in Ouray County ("Ouray County Portion").

C. The Ranch would like permission from the County to plow snow on the Ouray County Portion of Dave Wood Road to keep it open and useable during winter season of 2016-2017;

D. The Ranch and County recognize and agree that The Ranch's use and snow plowing activities may result in damage to Dave Wood Road and The Ranch shall be responsible for repair of any such damage.

E. The County is willing to provide permission for The Ranch to provide winter maintenance under the terms and conditions herein.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the sufficiency of which are hereby acknowledged, The Ranch and County agree as follows:

1. TERM AND CONDITIONS. Beginning on the date of this Agreement, and continuing through June 30, 2017, The Ranch shall have the authority, but not an obligation, to plow snow on the Ouray County Portion of Dave Wood Road during the winter season of 2016-2017, and for such additional winters as the parties may agree to extend this Agreement as follows:
 - a. The Ranch may plow and remove snow on Dave Wood Road from the entrance to Elk Mountain Resort to the Ouray and Montrose County Line on Dave Wood Road, approximately .8 miles.
 - b. The Ranch shall not plow any snow from the roadway that has not accumulated to a depth of at least four inches (4") prior to plowing. One to two inches of snow cover shall be left on the road to protect the aggregate surface and to keep the road frozen.
 - c. The Ranch shall plow and remove snow from the full width of the road surface, to the extent practical to permit simultaneous vehicle travel in both directions, for the Ouray County Portion of Dave Wood Road.
 - d. The road shall be signed to warn of private maintenance and no guarantee of public access.
 - e. A standard motor grader, snow cat, or self-propelled snow blower is required to perform snow plowing. No truck-mounted plows will be acceptable.

- f. Prior to The Ranch commencing winter road maintenance on the Ouray County Portion of Dave Wood Road, the Ouray County Road and Bridge Superintendent shall perform an evaluation of the Road with a representative from The Ranch in order to determine the Road's condition just prior to commencement of this Agreement. Thereafter, The Ranch shall repair any damage to the road that results from its plowing of the Ouray County Portion of Dave Wood Road; such repair to be made to the satisfaction of County. The Ranch shall act affirmatively to repair any such damage it finds to have occurred and shall further repair any such damage identified by County to restore the road to the condition it was in just prior to execution of this Agreement; such reasonable repairs to be commenced within seven days of receipt of written notice of such damage by County to The Ranch.
2. **BOND**. The Ranch shall deposit with County a good and sufficient security, in a form acceptable to the County, in the amount of \$1,000.00, in order to secure The Ranch's obligation to repair damage to the Ouray County Portion of Dave Wood Road. The security may be in the form of a performance bond, a Certificate of Deposit or an irrevocable letter of credit. Such security shall be forfeited in its entirety upon a finding by County, after notice to The Ranch of the perceived default by The Ranch, that damage has resulted from the Ranch's use of the road and that such damage has not been repaired to County's satisfaction in a timely manner. If forfeited, The Ranch must replace the Performance Bond prior to further plowing by The Ranch.
3. **TERMINATION**. County may terminate this agreement upon written notice to The Ranch providing The Ranch a reasonable opportunity to be heard and to cure any alleged default or breach of this agreement. Unless terminated as provided herein due to default or breach, this Agreement shall be automatically renewed for additional one-year terms through the winter of 2019-20. Either party may cancel this Agreement at the end of any winter season with thirty (30) days notice, given not later than May 31 of each year.
4. **ENTIRE AGREEMENT**. This instrument contains the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding. This contract may not be enlarged, modified, or altered except in writing signed by the parties and endorsed on this agreement. This agreement does not deal with or affect the County "Road Impact Fee" structure or any agreement made in lieu of full payment of such fees.
5. **BINDING EFFECT**. This agreement shall inure to the benefit of and be binding on the parties, their heirs, executors, administrators, assignees, and successors, however, The Ranch shall not assign this agreement without the written permission of County, which permission shall not be unreasonable withheld, but will require confirmation that the assignee is capable of meeting the performance standards hereunder.
6. **SEVERABILITY**. If any part, term, or provision of this contract is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term or provision held to be invalid.
7. **GOVERNING LAW**. This agreement shall be governed by the laws of the State of Colorado, both as to interpretation and performance.

8. NOTICES. Each notice, demand, request, or other communication required to be given or served by either party to this agreement on the other, or which either party desires to give or serve on the other, shall be in writing and any statute, ordinance, or regulation to the contrary notwithstanding, shall not be effective for any purpose whatsoever unless given or served as provided by this agreement.

If given by County, notice shall be mailed, postage prepaid, by first class mail addressed to Eldred Colorado Ranch, c/o Mark Rumbaugh, Manager, 236 S. 3rd Street, #330, Montrose, CO 81401 or at such other address as The Ranch may designate by notice given to County in the manner provided by this agreement. If given by The Ranch, notice shall be mailed, postage prepaid, by first class mail addressed to Board of County Commissioners, Bin C, Ouray, Colorado 81427, or at such other address as County may designate by notice given to The Ranch in the manner provided by this agreement.

9. WAIVER. No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or bylaw.
10. COUNTERPARTS. This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
11. FACSIMILE SIGNATURES. For the convenience of the parties, signatures to this agreement may be provided through facsimile transmission. The signature of a party to this agreement supplied by facsimile transmission shall be as binding as an original.
12. AUTHORITY. By their signatures below, the parties acknowledge that they have the necessary authority and approvals to execute this Agreement and bind the respective entities.
13. INDEMNITY AND ASSUMPTION OF RISK. The Ranch shall save, hold harmless, defend and indemnify the County, its public officials, employees, agents, representatives, and contractors for losses, damages or judgments and expenses, including attorneys fees and costs, on account of fire or other peril, bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, arising, in whole or in part, out of the activities of The Ranch, its employees, subcontractors or agents and Ranch's guests and invitees, under the terms of this Agreement.

Nothing stated herein is intended to nor shall it be interpreted as diminishing or otherwise affecting any statutory or common law protection or immunity that Ouray County may otherwise enjoy, including, but not limited to, the governmental immunities, limitations and protections provided by C.R.S. Section 24-10-101 et seq.

14. INSURANCE. The Ranch shall purchase, at a minimum, the types and amounts of insurance coverage as stated herein and agrees to comply with any revised insurance limits the County may reasonably require during the term of this Agreement. A company authorized to do business in Colorado shall underwrite any policy of insurance required hereunder. Any such policy shall include Ouray County as an additional insured and such policy shall contain a provision that coverage shall not be canceled or altered until at least thirty (30) days' prior written notice has been given to Ouray County. If the insurance policy lapses or becomes void for any reason whatsoever, The Ranch's rights under this Agreement shall be suspended until a new insurance certificate is provided to the County. At the inception of this Agreement, The Ranch shall provide the County with a properly authorized and executed current Certificate of Insurance reflecting insurance

coverage that complies with the terms of this Agreement. The Ranch shall not operate under the terms of this Agreement until all appropriate insurance is acquired and notice of the same has been supplied to the County.

- (a) Public Liability. The Ranch shall provide comprehensive general liability insurance against claims occasioned by actions or omissions of The Ranch in carrying out the activities and operations authorized hereunder. Such insurance shall not be less than five hundred thousand (\$500,000.00) dollars per occurrence and one million (\$1,000,000.00) in the aggregate covering both bodily injury and property damage. If claims reduce available insurance below the required per occurrence limits, The Ranch shall obtain additional insurance to restore the required limits. An umbrella or excess liability policy, in addition to a comprehensive general liability policy, may be used to achieve the required limits.
 - (b) No Subrogation Against County. All liability policies shall specify that the insurance company shall have no right of subrogation against the County and the insurance company shall have no recourse against the County for payment of any premium or assessment.
15. NOTIFICATION TO COUNTY. The Ranch shall immediately notify the County of all accidents that occur as a result of the activities contemplated under this Agreement, and in no event later than twenty-four hours following any such accident.
16. ATTORNEY'S FEES. In the event that either party to this agreement brings an action to interpret the terms of the agreement or to enforce its terms, the prevailing party in any such action shall be awarded its reasonable costs and attorney fees incurred in such action.

IN WITNESS HEREOF, the parties have signed this agreement the day and year first written above.

**BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO**

**ELDRED COLORADO FAMILY
LIMITED PARTNERSHIP**

Lynn M. Padgett, Chair

By Mark Rumbaugh, Authorized Agent

ATTEST:

Michelle Nauer, Clerk and Recorder
By Hannah Hollenbeck, Deputy Clerk of the Board

