




Fiscal Impact Form

Department: Road and Bridge	Date: October 25, 2016
Document Title (i.e. Resolution, Agreement, etc.): Winter Maintenance Agreement for CR 5 and CR 5A between Ouray County and Craig Morrison	Year of commencement: 2016 – 2017 Winter Season
Source of Funding (if applicable):	
 General Fund <input type="checkbox"/>	R & B Fund <input type="checkbox"/>
Social Services Fund <input type="checkbox"/>	Other <input type="checkbox"/>
EMS Fund <input type="checkbox"/>	
If other, please indicate: <u>N/A</u>	
Requirements (if any): A \$500 performance bond, Certificate of Deposit, or irrevocable letter of credit and appropriate insurance coverage are required and are pending receipt to the County.	
Description/Purpose: For the purpose of winter snow removal on affected portions the county road during the 2016 – 2017 winter season; as specified.	

Submission/Review/Approval or Denial:

Department Head / Elected Official: <u>Steven Calkins, Interim Road Superintendent</u>	Date: <u>October 19, 2016</u>
County Administrator: <u>Courne J. Hunt</u>	Date: <u>10-19-16</u>
Comments: _____	
Board of County Commissioners, Chair: _____ Date: _____	
Approve <input type="checkbox"/>	Deny <input type="checkbox"/>

WINTER ROAD MAINTENANCE AGREEMENT

THIS AGREEMENT made and entered into effective _____, 2016, by and between the Board of County Commissioners of Ouray County, Colorado, (hereinafter referred to as "County") and Radio Dog Ranch LLC (hereinafter referred to as "Rancher") located on County Road 5, Ouray County, Colorado.

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

WHEREAS, County is responsible for the use and maintenance of that part of County Road 5 located in Ouray County, Colorado; and

WHEREAS, Rancher intends to use County Road 5 for access to his and other properties and may need to plow snow on a .9 mile portion of County Road 5 from the intersection of County Road 5 and 5-A to the area of Hidden Meadows Lane ("Portion of CR 5") in order to keep it open and accessible during the winter season of 2016-17; and

WHEREAS, Rancher and County recognize and agree that the optimal conditions for sharing this section of County Road 5 between Vehicles, Snowmobiles and Skiers is to create a separate single track for skiers on the County R.O.W. as resources permit; and

WHEREAS, Rancher and County recognize and agree that if Rancher's winter use of the road and snow plowing activities results in damage to County Road 5, then Rancher shall be responsible for repair of any such damage; and

WHEREAS, Rancher and County have reached an agreement regarding Rancher's removal of snow of the Portion of County Road 5 and, by this instrument, reduce such agreement to writing.

[WHEREAS, renewal of this agreement is contemplated by Resolution 2016-019;](#)

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

1. TERM AND CONDITIONS. Beginning on the date of this Agreement, and continuing until such time as this Agreement may be terminated as provided herein, Rancher shall have the authority, but not an obligation, to plow snow on the .9 mile Portion of CR 5 during the winter season of 2016-2017, pursuant to the following terms and conditions:
 - a. Rancher may plow and remove snow on County Road 5 from the intersection of County Road 5 and 5-A to Hidden Meadows Lane, approximately .9 mile, but shall provide notice to the County Road and Bridge Supervisor prior to removing snow, so that the County can verify that the snow removal is conducted according to the terms and conditions of this Agreement.
 - b. Rancher shall not plow any snow from the roadway that has not accumulated to a depth of at least eight inches (8") prior to plowing. At least four inches of snow cover shall be left on the road.
 - c. In order to minimize impact on skiers, Rancher will plow one lane as close to the downhill edge of the road as is practicable and safe to use for vehicular access. The parties recognize that one segment of the road may pose special problems with plowing on the downhill side of the road, and Rancher shall be entitled to maintain a safe distance from the edge of the road for vehicular safety purposes.

Formatted: Font:

Formatted: Font: (Default) Arial, 11 pt

- d. In order to avoid [two2](#) vehicles meeting from opposite directions, the road way will be plowed for a vehicle to pass at the elbow turn, and all authorized vehicle owners will communicate times when they will be using the road.
 - e. The County agrees to install a gate to limit vehicles accessing the road, to the extent that access to the road may be lawfully denied. Property owners beyond the gate will be provided a key upon payment of a fee of \$50.00. County will also post a sign near the gate to advise those parking in the parking lot "Do NOT Block Gate".
 - f. A snowcat, or self-propelled snow blower is required to perform snow plowing. No truck-mounted plows will be acceptable.
 - g. Both parties agree and understand that extreme weather conditions or snow accumulations or other emergencies (including but not limited to fire, avalanche rescue, and other emergencies which may require access by emergency vehicles) may require temporary alterations to the plowing and snow removal as outlined above.
 - h. The parties may review this agreement from time to time during the winter of 2016-17 and may make reasonable modifications of this Agreement as may be necessary.
 - i. Both parties agree and understand that nothing in this agreement shall preclude the parties from amending any of the terms and conditions of this Agreement to accommodate changes which change the need for such terms and conditions (such as, but not limited to, changes caused by widening of the road, construction of a separate trail for skiers, or other changes which may make some of the terms and conditions of this Agreement unreasonable or necessary).
 - j. Prior to Rancher commencing winter road maintenance on the Portion of CR 5, the Ouray County Road and Bridge Supervisor shall perform an evaluation of the Road with Rancher in order to determine the Road's condition just prior to commencement of this Agreement. Thereafter, Rancher shall repair any damage to the road that results from its plowing of the .9 mile Portion of CR 5; such repair to be made to the satisfaction of County. Rancher 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 Rancher.
 - k. County will forward any comments or complaints received from members of the public regarding plowing or conditions on the subject road segment to Rancher on a timely basis.
2. **BOND.** Rancher shall deposit with County a good and sufficient security, in a form acceptable to the County, in the amount of \$500.00, in order to secure Rancher's obligation to repair damage to the .9 mile Portion of CR 5. 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 Rancher of a perceived default of this Agreement, that damage has resulted and that such damage has not been repaired to County's satisfaction in a timely manner. If forfeited, Rancher must replace the Performance Bond prior to further plowing.
3. **TERMINATION.** County may terminate this agreement upon written notice to Rancher providing an 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 automatically terminate on June 30, 2017.

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.
5. BINDING EFFECT. This agreement shall inure to the benefit of and be binding on the parties, their heirs, executors, administrators, assignees, and successors.
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 may be emailed with delivery or read receipt requested, or mailed, postage prepaid, by first class mail addressed to:

Radio Dog Ranch LLC, Attn: Craig Morrison, 9708 County Road 5, Ridgway, Colorado 81432 or at such other address as Craig Morrison may designate by notice given to County in the manner provided by this agreement. Email address: craigsmor@gmail.com, with copies to rjtlaw@montrose.net

If given by Rancher, 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 Rancher in the manner provided by this agreement. Email address: chunt@ouraycountyco.gov, with copies to scal-kins@ouraycountyco.gov and mwhitmore@ouraycountyco.gov.
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. Rancher 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 Rancher, agents, 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. Rancher 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 (30) days' prior written notice has been given to Ouray County. If the insurance policy lapses or becomes void for any reason whatsoever, Rancher's rights under this Agreement shall be suspended until a new insurance certificate is provided to the County. At the inception of this Agreement, Rancher 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. Rancher 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. Craig Morrison shall provide comprehensive general liability insurance against claims occasioned by actions or omissions of Craig Morrison 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, Craig Morrison 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. Rancher 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 WHEREOF, the parties have signed this agreement the day and year first written above.

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

Lynn M. Padgett, Chair

Radio Dog Ranch LLC

ATTEST:

By Craig Morrison, Manager

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