AGREEMENT FOR PUBLIC HIGHWAY MAINTENANCE

THIS AGREEMENT made and entered into this 16th day of September, 2013 by and between COLORADO'S TIMBER RIDGE METROPOLITAN DISTRICT, Archuleta County, Colorado, hereinafter referred to as the "District" and the BOARD OF COUNTY COMMISSIONERS OF ARCHULETA COUNTY, COLORADO, hereinafter referred to as the "County".

WITNESSETH:

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

WHEREAS, one of the purposes for which the District was formed was to provide street improvement services with the authority to maintain streets and highways within the District and to engage in road maintenance and improvements on a continual basis; and

WHEREAS, the District and 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 or facilities lawfully authorized to the cooperating or contracting political subdivisions; and

WHEREAS, the roads within the District shown on the plats of Colorado's Timber Ridge, Phases 1-4 recorded under Reception Numbers 99008647, 20011528, 20110833 and 20212641 in the office of the Clerk and Recorder of Archuleta County, Colorado were dedicated to the use of the public, the public dedication was accepted by the County and such roads are "open, used and maintained public highways" as required by C.R.S. §43-4-207(2)(b); and

WHEREAS, the District has the financial resources necessary to maintain the roads within the District; and

WHEREAS, the County may receive, highway user tax funds pursuant to C.R.S. §43-4-201 *et seq.*, to assist in maintenance of the roads within Archuleta County including but not limited to roads within the District; and

WHEREAS, currently the County receives highway users tax fund in three tiers. The first tier is money based on the same allocation the County received for the fiscal year 1987 as identified at C.R.S. §43-4-207(2)(a)(I) (hereinafter "Tier 1 Payments") The second tier as identified at C.R.S. §43-4-207(2)(a)(II) (hereinafter "Tier 2 Payments") are paid to certain counties which does not include Archuleta County. The third tier is money allocated based on the manner set forth at C.R.S. §43-4-207(2)(b) (hereinafter "Tier 3 Payments") and includes four different components including rural motor vehicle registration, countywide motor vehicle registration, adjusted lane miles and square footage of bridge decks;

WHEREAS, the County currently has agreements with four other metropolitan districts to pay a portion of highway user tax funds to assist the Districts with road maintenance and has historically passed through highway user tax funds only based on the adjusted lane miles such that, for instance, some Districts may have received the square footage of bridge decks component even if they didn't have any bridges within their district; and

WHEREAS, the parties to this Agreement have considered and determined that it is in the best interest of the residents and citizens of the County of Archuleta, Colorado and the residents and citizens of Colorado's Timber Ridge Metropolitan District, County of Archuleta, Colorado to provide for the maintenance, repair and reconstruction of the dedicated roads within the District according to the terms of this Agreement; and

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

NOW, THEREFORE, it is agreed in consideration of the foregoing and the mutual promises, covenants, agreements and obligations herein contained that:

Section 1. District agrees to provide all maintenance for the dedicated and constructed public roads located within the District, whether described as streets, roads, avenues, drives, or otherwise, it being the intent of this Agreement that the District maintain all those roads shown on the official plats of Colorado's Timber Ridge Subdivision, which are currently constructed. It is understood and agreed that District shall not be obligated to construct any additional roads.

Section 2. All public roads presently constructed within the District shall be legally open, used and maintained by the District on a continual basis.

Section 3.

A. Tier 1 monies received by the County will be paid to the District in an amount equal to 100% of the Tier 1 monies received by Archuleta County and attributable to the District based on the calculation of:

   District adjusted lane miles / County adjusted lane miles

B. Tier 2 monies are not received and therefore not distributed by this Agreement.

C. Tier 3 monies received by the County will be paid to the District for 2014 in an amount equal to 100% of the Tier 3 monies received by Archuleta County and attributable to the District based on the calculation of:

   District adjusted lane miles / County adjusted lane miles

   In each year after 2014 that portion of the Tier 3 monies passed through to the District (estimated as 10% of the Tier 3 monies received by County) will be reduced and or increased by the square footage of the bridge decks component such that if a District does not have a bridge it will not receive this component of Tier 3 funds and if it does have a bridge it will receive a proportionate share of the monies received by the County for this component based on the calculation of:

   District square footage of bridge decks / County square footage of bridge decks

D. Notwithstanding anything to the contrary herein, all funds paid to the District pursuant to this Agreement shall be reduced by an amount equal to five percent (5%) of the amount due to the District to compensate County for its costs in administering this Agreement.

Section 4. In December of each year, County shall provide District an inventory of all roads, including adjusted lane miles, identifying whether the road is paved or unpaved and such other information, as may be reasonably necessary for District to insure HUTF funds are being maximized. District shall review and correct such inventory and return it to County within two (2) weeks of its receipt of the inventory. County agrees to make all appropriate and necessary changes to the inventory before submitting for the next cycle of HUTF funding.

On the first Monday of each February, County Staff shall host a meeting of County and representatives from all districts to discuss how this agreement is being implemented, the upcoming HUTF submission and such other discussion items as County or District requests be discussed and which relate to this Agreement.

District agrees to use all funds received from the County under this Agreement only on maintenance of and for the benefit of approved roads within the District and for no other purpose. The term maintenance includes construction, engineering, reconstruction, maintenance, repair, equipment purchase and administration expenses incurred in connection with said roads. It is mutually acknowledged and agreed that the funds paid by the County to the District hereunder may not be adequate for all maintenance required and District agrees to expend additional funds from such other sources and in such other amounts as it sees fit for maintenance of the roads.

Section 5. Notwithstanding the foregoing, this agreement shall in no way limit the right or ability of the County or District or impose any additional obligations upon the County or District to raise revenue or use such additional revenues as may be necessary or proper for the maintenance of roads within the District.

Section 6. This Agreement shall expire June 30, 2018. Provided, however, it may be terminated by either the County or the District upon giving written notice of termination to the other party at least ninety days prior to the first day of January of each succeeding year. Such termination shall be effective on July 1st of the following year.

Section 7. Each party shall be solely responsible for the performance of its obligations hereunder. District further specifically agrees to indemnify County against any loss which may occur in the event funds received by the County and paid to the District under this agreement are later required to be returned to the State of Colorado.

Section 8. This Agreement shall not operate as, or be construed to operate as, acceptance by County of any maintenance responsibility for any roads located within the District.

Section 9. Should a dispute arise regarding this Agreement or performance of the obligations herein, the Parties agree to make all reasonable efforts to reach an amicable resolution of such dispute. 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 Archuleta County, Colorado. Should litigation be necessary to enforce any term or provision of this Agreement, the prevailing party shall be entitled to recover from the losing party all reasonable litigation expenses, witness fees, court costs and attorney's fees.

Section 10. Any notices required or desired hereunder shall be in writing and delivered or sent postage prepaid by certified mail, return receipt requested, to the President of the District or the Chairperson of the Board of County Commissioners 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.

Colorado's Timber Ridge Metropolitan District
P.O. Box 5601
Pagosa Springs, CO 81147

Board of County Commissioners
Archuleta County
P.O. Box 1507
Pagosa Springs, CO 81147

Section 11. 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 to fully perform their obligations hereunder and carry out the intent of this Agreement.

Section 12. This Agreement shall be subject to and conditioned upon appropriation of funds by the Archuleta Board of County Commissioners. Any financial obligations of the County payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted or otherwise made available.

Section 13. This Agreement shall be effective on the day and year first above written.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers the day and year first above written.

COLORADO'S TIMBER RIDGE METROPOLITAN DISTRICT

BY: _____
Title: PRESIDENT
IDA ARIEVEN

ATTEST:

BY: _____
Title: Treasurer

BOARD OF COUNTY COMMISSIONERS OF ARCHULETA COUNTY, COLORADO

BY: _____
Chair

ATTEST:

BY: June Madrid by Teresa Nederom Deputy
Clerk to the Board County Clerk + Recorder