AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Road Maintenance Agreement; Colorado Stone Quarrie

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: BOCC and Colorado Stone Quarries

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

Summary:

Attached please find the Road Maintenance Agreement for Marble Quarry Road from the Town of Marble bridge up to Colorado Stone Quarries.

Fiscal Impact:

Submitted by: Office of the County Attorney **Submitter's Email Address:** rmagruder@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 4/13/2017

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

Comments:
ok - gs

Reveiwed by: Discharge Date: 4/13/2017 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 4/13/2017

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 4/18/2017

Revised April 2015

ROAD MAINTENANCE AGREEMENT

THIS ROAD MAINTENANCE AGREEMENT ("Agreement") is entered into this 13th day of April, 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 Colorado Stone Quarries, Inc., a Delaware corporation, whose principal office address is 1 Marble Road, Marble, Colorado 81623 ("Colorado Stone Quarries").

A. RECITALS

WHEREAS, Gunnison County, by virtue of Colorado law, has authority and is the owner of certain roads lying within the County of Gunnison; and

WHEREAS, one of those certain roads is a portion of a 30-foot-wide right of way known as the Marble Quarry Road, also known as the Marble Road, Yule Creek Access Road and Yule Creek Road, as identified in Appendix "A" attached hereto and incorporated herein by reference ("Marble Quarry Road"); and

WHEREAS, Colorado Stone Quarries significantly utilizes the Marble Quarry Road for its commercial marble quarry operations; and

WHEREAS, acknowledging the impact of the commercial marble quarry operations has on the Marble Quarry Road, Colorado Stone Quarries would like to provide for the maintenance of the Marble Quarry Road under the direction of Gunnison County.

B. AGREEMENT

NOW, THEREFORE, in consideration of the recitals above and the mutual covenants and obligations contained herein below, which are valuable and sufficient, the parties understand and agree to the following:

1. TERM

The term of the Agreement shall be for a period of five (5) years to begin on January 1, 2017 and terminate on December 31, 2021, unless sooner terminated or replaced as provided herein ("Term").

2. MAINTENANCE SERVICES.

A. In consideration and in exchange for Colorado Stone Quarries' significant commercial use of the Marble Quarry Road, Colorado Stone Quarries shall provide for the following either directly or through a third party approved by Gunnison County in accordance with clause E below, and all to the schedule and specifications identified by Gunnison County:

1. Seasonal blading, shaping and maintenance of the road surface; and

2. Application of water or dust suppressant, if needed; and

3. Installation of crushed roadbase where necessary; and

4. Maintenance of all drainage structures to assure they are functional and able to carry water in the ditches after a heavy rain or spring snow melt; and

5. Installation of new drainage structures, as necessary; and

6. Scaling of cut slopes to mitigate rock falls; and

7. Installation of rock bolts or other support to mitigate geotechnical issues; and

8. Cutting of slopes to mitigate geotechnical issues within 30 foot right of way; and

9. Installation of turnouts and parking bays to improve safety within 30 foot right of way; and

10. Filling of areas to maintain road surface within 30 foot right of way; and

11. Maintenance of pull-outs to allow vehicles to pass; and

12. Winter maintenance to include plowing and snowplowing, as needed for safe passage (all to be known as "Road Maintenance").

B. Colorado Stone Quarries shall have the authority to temporarily close the road as needed for avalanche mitigation, road repairs, or safety issues. Colorado Stone Quarries shall provide adequate signage to warn non-quarry related traffic of said road closures and any and all hazards, to include avalanches, road repair and safety issues, to include large vehicles on the road.

Colorado Stone Quarries shall immediately notify Gunnison County <u>and</u> Gunnison County Dispatch at 970-641-7607 of each closure. Any closure exceeding a 48 hour period of time for avalanche mitigation or exceeding a 24 hour period of time for road repairs or within 24 hours of a previous closure, shall require prior approval by Gunnison County.

C. Colorado Stone Quarries shall fund and perform the above Road Maintenance to the reasonable satisfaction of Gunnison County to maintain safe access to and use of the Marble Quarry Road. Such road maintenance shall be at the sole cost of Colorado Stone Quarries and shall not create any fiscal obligation for Gunnison County.

D. Representatives of Gunnison County shall meet with representatives of Colorado Stone Quarries bi-annually to inspect the Marble Quarry Road. The first meeting shall occur in June before summer visitors begin arriving, and the second meeting shall occur mid-October to look at any potential winter concerns.

E. Gunnison County shall review and respond to requests by Colorado Stone Quarries for use of third party service providers within thirty (30) days of receipt of such requests.

3. INSURANCE.

Colorado Stone Quarries agrees that at all times during the Term of this Agreement that Colorado Stone Quarries shall carry and maintain, in full force and effect and at its sole cost and expense, the following insurance policies. Within thirty (30) days of the execution of this Agreement, Colorado Stone Quarries shall provide insurance certificates to Gunnison County, listing Gunnison County as an additional insured, for the coverages required herein which shall state that such policies shall not be materially changed or cancelled without thirty (30) days prior notice to Gunnison County.

a. Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Contractor during the term of this Agreement.

b. Comprehensive General Liability Insurance or the equivalent for any injury to one person in any single occurrence, Three Hundred Fifty Thousand and No/100 U.S. Dollars ($350,000.00); and for an injury to two or more persons in any single occurrence, the sum of Nine Hundred Ninety Thousand and No/100 U.S. Dollars ($990,000.00).

c. Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than $350,000 for any injury to one person in any single occurrence and in an amount no less than $990,000 for any injury to two or more persons in any single occurrence.

4. INDEPENDENT CONTRACTOR.

In carrying out its obligations and activities under this Agreement, Colorado Stone Quarries is acting as independent contractor and not as an agent, partner, joint venture

or employee of Gunnison County. Colorado Stone Quarries does not have any authority to bind Gunnison County in any manner whatsoever.

Colorado Stone Quarries acknowledges and agrees that it is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County. Further, Colorado Stone Quarries are obligated to pay federal and state income tax on any moneys paid related to the services to the extent required by applicable law.

5. INDEMNIFICATION.

Colorado Stone Quarries agrees to indemnify, defend and hold harmless Gunnison County, its Commissioners, agents and employees ("Indemnified Persons") of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) ("Liabilities") arising out of or related to any loss, cost, damage or injury, including death, of any person or damage to property of any kind caused by the misconduct or negligent acts, errors or omissions of Colorado Stone Quarries or its employees, subcontractors or agents in connection with this Agreement, except to the extent such Liabilities have been caused by the gross negligence or willful misconduct of any of the Indemnified Persons.

This provision shall survive any termination or expiration of this Agreement with respect to any liability, injury or damage occurring prior to such termination.

6. DISCRIMINATION.

Colorado Stone Quarries agrees not to discriminate against any person or class of persons by reason of age, race, color, sex, creed, religion, disability, national origin, sexual orientation or political affiliation in providing any services or in the use of any facilities provided for the public in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. Colorado Stone Quarries shall further comply with the letter and spirit of the Colorado Anti-Discrimination Act of 1957, as amended, and any other laws and regulations respecting discrimination in unfair employment practices. Additionally, Colorado Stone Quarries shall comply with such enforcement procedures as any governmental authority might demand that Gunnison County take for the purpose of complying with any such laws and regulations.

7. IMMIGRATION COMPLIANCE CERTIFICATION.

A. Colorado Stone Quarries certifies that Colorado Stone Quarries does not and will not knowingly contract with or employ illegal aliens to work pursuant to this Agreement.

B. Colorado Stone Quarries certifies that Colorado Stone Quarries has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work pursuant to this Agreement.

C. Colorado Stone Quarries certifies that it has attempted to verify the eligibility of its employees and subcontractors to work through the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security.

D. Colorado Stone Quarries agrees 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.

E. Colorado Stone Quarries agrees to comply with the provisions of C.R.S. 8-17.5-101 et seq.

8. 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:	Marlene Crosby, Director Gunnison County Public Works Department 195 Basin Park Drive Gunnison, Colorado 81230 Telephone No: 970-641-0044
Colorado Stone Quarries:	Daniele Treves 1 Marble Quarry Road Marble, CO 81623 Telephone No: 540-661-2623

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.

9. DEFAULT.

In the event of any default hereunder by a party hereto, the non-defaulting party shall give notice to the defaulting party specifying the nature of such default. In the event the defaulting party does not remedy such default to the reasonable satisfaction of non-defaulting party within thirty (30) days following such notice, the parties will first subject the dispute to mediation by a mediator selected by the parties, which mediation the parties agree to pursue in good faith for a period of sixty (60) days, to be extended by mutual agreements of the parties. Any disputes which have not been resolved to the satisfaction of the parties by the end of such period entitles the non-defaulting party to elect, in its discretion, all remedies available to it, including but not limited to:

A. To specifically enforce the terms and conditions of this Agreement; or

B. To exercise any other rights and obtain any other remedies provided by law.

10. TERMINATION.

Either party shall have the right to terminate this Agreement at any time, with or without cause, upon fifteen (15) days prior written notice to the other.

11. 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.

12. BINDING AGREEMENT FOR SUCCESSORS AND ASSIGNS.

This Agreement shall bind any successor or assign in interest to the operations of Colorado Stone Quarries that may use the Marble Quarry Road for the same or similar purposes.

13. 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.

14. 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 Colorado State District Court governing Gunnison County, Colorado.

15. COUNTERPARTS: FACSIMILE TRANSMISSION.

This Agreement may be executed by facsimile and/or in any number of counterparts, any or all of which may 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.

16. 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: _____
Phil Chamberland, Chairperson

ATTEST:

_____
Deputy County Clerk

COLORADO STONE QUARRIES,
a Delaware corporation

By: _____
Daniele Treves

ATTEST:

_____
Secretary

THIS MAP WAS PREPARED BY GUNNISON COUNTY AND REPRESENTS GENERALIZED GEOGRAPHIC DATA FOR GENERAL ASSESSMENT AND PLANNING PURPOSES ONLY. THE DATA PORTRAYED SHOULD NOT BE RELIED UPON TO ESTABLISH LEGAL TITLE, BOUNDARY LINES, THE PRECISE LOCATION OF IMPROVEMENTS, OWNERSHIP, MAINTENANCE, EASEMENTS OR PUBLIC RIGHT-OF WAYS.

Appendix A

0 320 640 1,280 1,920 2,560 Feet

1 inch = 1,165 feet

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Gunnison County