

ROAD MAINTENANCE AGREEMENT

Between

The United States Department of the Interior,
Bureau of Land Management,
Little Snake Field Office

and

Moffat County, Colorado
by and through its
Board of County Commissioners

THIS ROAD MAINTENANCE AGREEMENT (Agreement) is entered into this ____ day of _____, 2011 by and between the United States Department of the Interior, Bureau of Land Management, Little Snake Field Office, hereinafter referred to as the “BLM,” and the Board of County Commissioners, Moffat County, Colorado hereinafter referred to as the “County.”

WHEREAS, pursuant to the Federal Land Policy and Management Act, 43 U.S.C. § 1701, et seq. (FLPMA), the BLM is responsible for the orderly administration, management, and protection of certain federal public lands and natural resources, including federal public lands and natural resources within the County; and

WHEREAS, pursuant to state law, the County is responsible for, among other things, promoting the health, safety, and welfare of its inhabitants, providing for economic development, and sustaining the state’s agricultural and other industries; and

WHEREAS, pursuant to Section 307 of FLPMA, 43 U.S.C. §1737, the BLM may enter into cooperative agreements involving the management and protection of the public lands, and pursuant to CRS 29-1-2003 the County may enter into cooperative agreements with other governmental entities; and

WHEREAS, on January 10, 2003 the County duly adopted its R.S. 2477 Rights of Way Assertions” identifying those roads in the County, including certain roads crossing public land administered by the BLM, that constitute the County’s transportation system, and which the County believes is its primary authority for maintaining or improving as appropriate in discharging its above-referenced responsibilities; and

WHEREAS, it is in the best interests of each of the parties to reach agreement governing the routine maintenance of the roads addressed herein without affecting any determination that may have been previously made regarding the existence of any R.S. 2477 rights of way, and without prejudicing the right of the County to subsequently assert R.S. 2477 rights of way and all rights attendant to such right of way ownership or the right of the BLM to assess or defend against any such assertions;

NOW, THEREFORE, for the mutual promises set forth herein, the BLM and the County hereby agree as follows:

1. Roads Covered by this Agreement.

(a) Attached to this Agreement is Exhibit "A," which lists those roads in the County's Transportation Plan that the BLM and the County have agreed shall be covered by this Agreement, and which has been subject to public comment before its finalization. All the roads included in this RMA are classified as "Secondary Class B" roads. Secondary Class B roads are unimproved roads, which are passable by four-wheel-drive vehicle. Vegetation is generally absent on each vehicle track and present between vehicle tracks; or vegetation has been mechanically removed to bare soil. Some vegetation regrowth may occur depending on the age of the right-of-way or time since last maintained. Secondary, Class B roads are not part of the Secondary, Class A road system, do not have county road numbers, and are often referred to as two-tracks or jeep trails. They are typically 7 – 8 feet in width.

(b) In the event either party decides that any road listed on Exhibit "A" should no longer be covered by this Agreement, the party shall provide written notice to the other party that will include an amended Exhibit "A" and an explanation for the decision to exclude the road. Such amendment to Exhibit "A" shall be effective 48 hours after receipt of the notice. Section 10 below shall not apply to such amendments to Exhibit "A".

(c) The parties agree that the County may perform routine maintenance, as discussed in Section 2 below and summarized in Exhibit "A" on each road covered by this Agreement to preserve the present condition of the road. The BLM also may perform such routine maintenance subject to the requirements of Paragraphs 2(a)-(c).

(d) Neither the inclusion in nor the omission from Exhibit "A" of a road shall create any presumption with respect to or affect in any manner the legal status of the road or the right of any person to assert or contest rights under R.S. 2477 in connection with the road.

(e) The parties acknowledge that some of the roads included in this agreement may be closed to public use currently, or may be closed in the future through the travel management planning or other processes. In these cases, BLM would not authorize maintenance of the road for public use, but would continue to allow maintenance for permitted uses (i.e. grazing, oil and gas). Including a route in Exhibit A does not preclude BLM from closing the route in the future.

2. Routine Maintenance under the Agreement.

(a) The routine maintenance the County or the BLM may perform on each road covered by this Agreement includes work reasonably necessary to preserve the existing

road, including the physical upkeep or repair of wear or damage whether from natural or other causes, replacement of unsafe structures, including those damaged by natural and other events, and keeping drainage features open and operable. Routine maintenance that may cause exposure of an archaeological feature/site either vertically or horizontally such as regrading or maintaining the shape of the road must follow procedures outlined in 2(f).

(b) Upon receipt of the completed Secondary Class B County Road Maintenance Application, an authorized representative from the Moffat County Commissioners and the private entity requesting permission to maintain a Secondary Class B County Road shall schedule to meet on-site to evaluate the condition of the road, including identification of where borrowed material would be gathered. BLM will be notified and given an opportunity to participate in the on-site evaluation with at least a 48 hour notice in advance of the on-site meeting. The representative from the Moffat County Commissioners shall address the following:

- i. Assessment of the existing character of the road, including its width and existing right-of-way.
- ii. Acquire pre maintenance pictures of sections proposed to receive maintenance.
- iii. Identification of general public benefit served by maintaining requested road.
- iv. Assessment of positive and negative impacts of performing maintenance on requested road.
- v. Identify additional stipulations or unique situations that should be acknowledged or applied to the permit.

After a permit has been issued and maintenance has occurred, depending on the type of maintenance performed, the Commissioners may require either another on-site visit by their representative to acquire post-maintenance pictures or a permittee prepared report detailing all maintenance work done including post maintenance pictures. Post maintenance pictures, site visits or reports generally will not be required where no significant disturbance of the existing road surface is contemplated (for example, snow plowing, weed control, litter cleanup, brush removal, and the like). In the case of multi-year permits, the applicant shall annually on the anniversary date of issuance of the permit supply the County with photographs of road conditions documenting the condition of the road.

(c) Each party shall maintain records of the routine maintenance it undertakes pursuant to this Agreement and provide the other with copies of such records upon written request or at the annual meeting provided for in Section 4 herein.

(d) Where practicable, the County shall provide the BLM with forty-eight (48) hours advance notice of the County's intent to undertake routine maintenance. Each time Moffat County issues a road maintenance permit under the terms of this MOU, the BLM shall be notified of the terms of each County Maintenance Permit. The purpose of the notice is not to make the routine maintenance subject to approval or disapproval by the BLM. Rather, the purpose of the notice is to maintain open communication and cooperation between the parties and to allow the BLM to apprise the County of any

circumstances or conditions that the County should be aware of in scheduling and undertaking such maintenance. Advanced notice will also allow the BLM to respond to inquiries from the public about such road work. In the event it is not practicable for the County to provide 48 hours advance notice to the BLM, the County shall provide notice to the BLM in as timely a fashion as is appropriate under the circumstances.

(e) This agreement does not authorize the County to undertake any road work beyond routine maintenance.

(f) A Class III archaeological survey is required prior to the maintenance. If the situation qualifies as emergency as defined in section 4, and a Class III survey cannot be performed promptly, the Class III Survey may be deferred until after the fact. The survey will be paid for by the BLM, unless another party opts to hire a contract archaeologist. If identified during the survey, eligible historic properties will be handled according to the Colorado Protocol in consultation with the Colorado State Historic Preservation Office (SHPO). See Exhibit B for a Section 106 Flow Chart. In the event where the routine maintenance causes exposure of an archaeological feature/site either vertically or horizontally, BLM must be notified immediately.

BLM would NOT need to conduct a Class III archaeological survey in the following situations:

- a. The proposed maintenance does not include new vertical or horizontal disturbance of the natural surface;
- b. A Class III archaeological survey, or its equivalent, has already been performed in the area being proposed for maintenance;
- c. When the situation qualifies as an emergency as described in section 4.

i. If the operator does not wish to relocate activities and to continue the road maintenance, then the operator will be responsible for archeological mitigation costs. The BLM will provide technical and procedural guidelines for the conduct of mitigation. Out of the array of mitigation options available, if a road relocation is recommended, it shall have the same access rights and OHV designation as the original route. Upon verification from the BLM that the required mitigation has been completed, the operator will then be allowed resume maintenance.

ii. If the operator wishes, at any time, to relocate activities to avoid the expense of mitigation and/or delays associated with this process, the BLM will assume responsibility for whatever recordation and stabilization of the exposed materials may be required.

3. Annual Meeting. The BLM and the County agree to meet at least annually to:

- (a) Discuss and provide records of the routine maintenance undertaken on the roads covered by this Agreement during the previous year or since the last meeting;
- (b) Discuss the possible addition to or deletion of roads from this Agreement;

(c) Discuss how this Agreement is or is not working for the parties and any ways to improve the Agreement and the processes it sets forth for undertaking routine maintenance; and

(d) Discuss road improvement projects that the County proposes or may wish to propose undertaking in the coming year.

4. Responding to Emergencies. The BLM and the County recognize that some maintenance projects may need to be performed on an emergency basis to prevent harm to life or physical injury, threat to property, substantial inconvenience to the public, or immediate resource degradation. In such a situation, the BLM shall expedite and promptly complete a consultation process, as described in section 2(d) of this agreement.

5. Effective Date of Agreement. This Agreement shall be effective as of the date shown in the first paragraph of this document.

6. Term. This Agreement shall be in effect for a period of ten (10) years and may be renewed for an additional ten (10) years with the mutual consent of the parties.

7. Termination. In the event of a material breach, this Agreement may be immediately terminated by the non-breaching party. This Agreement may also be terminated immediately by mutual agreement in writing. Otherwise, either party may terminate this Agreement unilaterally following one year's written notice to the other party.

8. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior road maintenance agreement, understanding, or representation of the parties regarding the subject matter hereof.

9. Amendment. This Agreement may be amended by mutual agreement. Such amendment shall be in writing and shall be effective when signed by both parties.

10. Remedies. The parties shall have all rights and remedies provided under law for a breach or threatened breach of this Agreement.

11. Notice. Any notice or request authorized or required by this Agreement shall be made in writing and made first class, postage prepaid, to the following:

Wendy Reynolds
Little Snake Field Office
455 Emerson St.
Craig, CO 81625
Telephone: (970) 826-5000
Facsimile: (970) 826-5002

Tom Mathers Chairman
Moffat County Commission
221 West Victory Way
Craig, CO 81625
Telephone: (970) 824-5517
Facsimile: (970) 826-3411

The designation of the respective addressee, address, telephone and/or facsimile number may be changed by written or email notice given in the same manner as provided herein.

12. No Precedent. Nothing in this Agreement establishes precedent regarding the BLM's future management or administration of the public lands under its jurisdiction or the County's or State of Colorado's management or administration of transportation systems under their jurisdictions, and nothing herein shall preclude or be construed as waiving or limiting any authority, rights, or obligations of the BLM, the County, or the State of Colorado under applicable law. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this RMA shall not be construed so as to create such status. The rights, duties and obligations contained in this RMA shall operate only between the parties to this RMA.
13. No Waiver. This Agreement does not constitute abandonment, waiver, or other termination or modification of any rights under R.S. 2477 with respect to the roads covered by this Agreement, nor does the Agreement constitute acceptance or recognition of any rights under R.S. 2477, or a waiver by the BLM of any defenses to an assertion of such rights or prejudice in any way the BLM's right to contest any assertion of such rights. The parties also recognize that the BLM retains its duty and authority to prevent unnecessary or undue degradation of the surrounding and underlying federal land.
14. Interpretation. This Agreement was produced as a result of negotiations between the parties and shall not be construed against either party as the drafter of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Road Maintenance Agreement in duplicate originals as of the day and year above written.

MOFFAT COUNTY COMMISSION

BUREAU OF LAND MANAGEMENT
Little Snake Field Office

By _____
[name and title]

By _____
[name and title]

Exhibit A
ROAD MAINTENANCE AGREEMENT
Listing of Roads

Please see the GIS data provided.