

**MODEL**

**ROAD MAINTENANCE AGREEMENT**

Between

The United States Department of the Interior,  
Bureau of Land Management,  
\_\_\_\_\_ Field Office

and

\_\_\_\_\_ County, \_\_\_\_\_,  
by and through its  
Board of County Commissioners

THIS ROAD MAINTENANCE AGREEMENT (Agreement) is entered into this \_\_\_ day of \_\_\_\_\_, 200\_ by and between the United States Department of the Interior, Bureau of Land Management, \_\_\_\_\_ Field Office, hereinafter referred to as the “BLM,” and the Board of County Commissioners, \_\_\_\_\_ County, \_\_\_\_\_, 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 \_\_\_ Code § \_\_\_\_\_, the County may enter into cooperative agreements with other governmental entities; and

WHEREAS, on \_\_\_\_\_, the County duly adopted its “[formal name]” (Transportation Plan) 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 it is primarily responsible 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" and Map 1 which list and show those roads in the County's Transportation Plan that the BLM and the County have agreed shall be covered by this Agreement. Exhibit "A" provides the following information about each road: (i) a Transportation Plan number that corresponds to the centerline description shared electronically by the County with the BLM; (ii) length; (iii) width (if variable, list the range of widths); (iv) surface type as described in Exhibit B, i.e., paved, graveled, bulldozed, or graded natural surface, etc.; (v) any other relevant information about the physical characteristics of the road or the terrain it crosses; and (vi) the assigned Road Category number or numbers described in Exhibit B.

(b) In the event either party believes that any road listed on Exhibit "A" should no longer be covered by this Agreement, the party (first party) shall provide written notice to the other party (second party) indicating why it believes the road should be excluded from coverage, and requesting that the parties meet to discuss the matter. The parties shall then meet within 20 days (or within any agreed-upon reasonable timeframe if it is not possible to meet within 20 days) to discuss the matter. In the event the second party refuses to meet or, following the requested meeting, the first party continues to believe that the road should no longer be covered by this Agreement, the first party shall provide written notice to the second party of its decision and an amended Exhibit "A." Such amended Exhibit "A" shall be effective 48 hours after its receipt by the second party. In the event that the BLM discovers sensitive resources (i.e., listed species, cultural resources, etc.) that may be subject to unnecessary or undue degradation by reason of the routine maintenance provided for in Section 2 herein, the BLM shall promptly notify the County of such discovery, and the County will suspend any routine maintenance on the relevant portion of the road for the period of time necessary for the BLM and the County to meet and determine how best to protect the resource while allowing routine maintenance of the road. Section 10 herein 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 herein and summarized in Exhibit "B," on each road covered by this Agreement to preserve the existing 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.

2. Routine Maintenance under the Agreement.

(a) The routine maintenance that either 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, maintaining the shape of the road, grading it, making sure that the shape of the road permits drainage, and keeping drainage features open and operable—essentially preserving the status quo.

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

(c) Where practicable, the County shall provide the BLM with forty-eight (48) hours advance notice of the County's intent to undertake routine maintenance on a road covered by this Agreement. The purpose of the notice is not to make the routine maintenance subject to approval or disapproval by the BLM, as that would undermine a basic purpose of this Agreement. 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, as well as allowing 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. The provisions of this section 2(c) also shall apply to any routine maintenance the BLM intends to undertake on the covered roads.

(d) The County shall not undertake any road work beyond routine maintenance without completing the consultation process with the BLM, as briefly discussed in Section 3 herein or, in the absence of completing such process, an order from a court of competent jurisdiction or a FLPMA Title V right-of-way grant authorizing such road work.

3. Consultation

(a) In the event the County wishes to perform road work beyond routine maintenance on one or more of the roads covered by this Agreement that the County asserts it holds as an R.S. 2477 right-of-way, the County and the BLM shall complete the consultation process provided for in Southern Utah Wilderness Alliance v. Norton, 425 F.3d 735 (10<sup>th</sup> Cir. 2005), and set forth in BLM Instruction Memorandum No. \_\_\_\_\_ (“Consultation on Proposed Improvements to R.S. 2477 Rights-of-Way”) with respect to the relevant road(s) before the County may undertake such improvements.

(b) In the event the parties are unable to resolve any disagreements arising during the consultation process, the proposed improvement(s) shall not be undertaken in the absence

of an order from a court of competent jurisdiction or a FLPMA Title V right-of-way grant authorizing such road work.

4. Annual Meeting. The BLM and the County shall 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.
5. Responding to Emergencies. Should an emergency situation arise where public health and safety is at risk and road work is immediately required, if at all practicable the County shall notify BLM of the situation and the County and BLM shall coordinate concerning the necessary road work; following which the County may immediately undertake the appropriate road work necessary to respond to the emergency. If it is not practicable for the County to provide such prior notice to the BLM, the County shall notify the BLM of the emergency situation and the County response as soon as possible afterward.
6. Effective Date of Agreement. This Agreement shall be effective as of the date shown in the first paragraph of this document.
7. Term. This Agreement shall be in effect for a period of twenty (20) years and may be renewed for an additional twenty (20) years with the mutual consent of the parties.
8. Termination. In the event of a material breach, this Agreement may be immediately terminated by the non-breaching party. Otherwise, either party may terminate this Agreement following one year's written notice to the other party.
9. 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.
10. Amendment. This Agreement may be amended by mutual agreement. Such amendment shall be in writing and shall be effective when signed by both parties.

11. Remedies. The parties shall have all rights and remedies provided under law for a breach or threatened breach of this Agreement.
12. 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:

_____, Manager _____ Field Office _____ _____ Telephone: _____ Facsimile: _____	_____, Chairman _____ County Commission _____ _____ Telephone: _____ Facsimile: _____
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The designation of the respective addressee, address, telephone and/or facsimile number may be changed by written notice given in the same manner as provided herein.

13. 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 \_\_\_\_\_'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 \_\_\_\_\_ under applicable law.
14. 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 public lands through reasonable regulation of the use of the covered roads.
15. 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.

\_\_\_\_\_ COUNTY COMMISSION

BUREAU OF LAND MANAGEMENT  
\_\_\_\_\_ Field Office

By \_\_\_\_\_  
[name and title]

By \_\_\_\_\_  
[name and title]

Attachments:

Exhibit A

Exhibit B

Map 1



## Exhibit “B”

### Scope of Routine Road Maintenance

Road Category	Frequency of Maintenance	Surface Type <sup>1</sup>	Representative Maintenance Activities <sup>2</sup>
I (High)	As Needed	Paved	Upkeep and repair of existing pavement, guardrails, striping, signing, clear zones, borrow areas, drainage facilities, bridges, culverts and riprap, and removal of snow.
II (Medium)	As Needed	Graveled	Upkeep and repair of existing graveled surface, drainage facilities, bridges, culverts and riprap.
III (Low)	As Needed	Natural Surface, Bulldozed or Graded	Upkeep and repair of graded natural surface, including upkeep and repair of existing culverts, cattle-guards, drainage facilities, and hardened crossings.
IV (Minimal)	As Needed	Natural Surface, 2-track Constructed by Passage of Vehicles	Upkeep and repair of natural surface by removing rocks and fallen trees and filling holes using hand tools only. <sup>3</sup> Any existing facilities such as cattleguards or culverts may be maintained mechanically.

The term “routine maintenance” used in this Agreement, is governed by the decision in Southern Utah Wilderness Alliance v. Bureau of Land Management, 425 F.3d 735 (10<sup>th</sup> Cir. 2005). Under the decision, “routine maintenance” preserves the existing road, including the physical upkeep or repair of wear or damage whether from natural or other causes, maintaining the shape of the road, grading it, making sure that the shape of the road permits drainage, and keeping drainage features open and operable—essentially preserving the status quo. “Construction or improvement” requires advance consultation with the Bureau, and includes the widening of the road, the horizontal or vertical realignment of the road, the installation (as distinguished from cleaning, repair, or replacement in kind) of bridges, culverts, and other drainage structures, as well as any significant change in the surface composition of the road (e.g., going from dirt to gravel, from gravel to chipseal, roto-mill or tar sands, or from chipseal, roto-mill, or tar sands to asphalt, etc.), or any “improvement,” “betterment,” or any other change in the nature of the road that may significantly impact public lands, resources, or values.

<sup>1</sup> Reasonable and necessary use of land adjacent to the road is allowed to facilitate routine maintenance activities, i.e., using land to turn around or operate maintenance vehicles. Routine maintenance includes upkeep and repair of existing site-specific road features outside of the traveled way such as turnouts, cut slopes, fill slopes, drainage structures, bridges, and so forth. Expansion or addition of any such features requires prior authorization.

<sup>2</sup> Listed maintenance activities are not exclusive and are only intended to be representative of the nature and degree of routine maintenance activities.

<sup>3</sup> Extreme circumstances such as landslides and washouts may require mechanized maintenance to restore the traveled way at a specific site or sites. Such restoration activities will take place on Road Category IV roads only after coordination between the parties.