

MODEL ROAD MAINTENANCE AGREEMENT

Between

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

and

\_\_\_\_\_ County  
by and through the  
Board of County Commissioners

THIS ROAD MAINTENANCE AGREEMENT entered into this \_\_\_ day of \_\_\_\_\_, 2005 by and between the United States of America, Department of the Interior, Bureau of Land Management \_\_\_\_\_ Field Office, hereinafter referred to as the “Bureau”, and the Board of County Commissioners, \_\_\_\_\_ County, Utah, hereinafter referred to as the “County.”

WITNESSETH THAT:

WHEREAS, the Bureau is responsible for the orderly administration and management of public lands and natural resources thereon in the County; and

WHEREAS, the County is responsible for the construction and maintenance of certain roads within the County, including roads on or across public lands, according to its established County transportation plan, duly adopted on \_\_\_\_\_; and

WHEREAS, the Bureau and the County desire to formulate an agreement with respect to the routine maintenance of certain roads located on public lands without prejudicing the right of the parties either to claim, contest, or disclaim the existence of R.S. 2477 rights-of-way granted by Congress and the rights attendant to R.S. 2477 right-of-way ownership; and

WHEREAS, the Bureau is authorized to enter into cooperative agreements by Section 307 of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1737), as needed to carry out the purpose of the Act, and the County is authorized to enter into cooperative agreements under Sections 11-13-101, et seq., of the Utah Code; and

WHEREAS, Section 701(a) of FLPMA provides that nothing in FLPMA “shall be construed as terminating any valid . . . right-of-way, or other land use right or authorization existing on the date of approval of [FLPMA]” and Section 701(h) of

FLPMA provides that “[a]ll actions by the Secretary concerned under this Act shall be subject to valid existing rights”;

THEREFORE IT IS MUTUALLY AGREED as follows:

1. The County has adopted a transportation plan that identifies all roads within the County it deems it has the right to maintain, including Class B and Class D roads. The map of these roads has been submitted to the Bureau by the County. From among those roads and the Bureau road system, the roads shown on Exhibit “A,” attached hereto and incorporated herein by reference, are the subject of this Agreement. Exhibit “A” shall not become final until the public has had an opportunity to comment on the Exhibit. The omission of a road or roads from the list provided in Exhibit “A” does not prejudice the rights under law, including R.S. 2477, of any party as to such road or roads. Each road identified in Exhibit “A” is given a County-transportation-plan number, corresponding to the centerline description shared electronically by the County with the Bureau, and is assigned a Road Category as described in Exhibit “B.” It is agreed that the County is entitled to perform routine maintenance on the roads listed in Exhibit “A” in such manner as to preserve the status quo of the roads.
2. Routine maintenance work the County is entitled to perform on roads under this Agreement includes work reasonably necessary to preserve the existing roads, including the physical upkeep or repair of wear or damage whether from natural or other causes, maintaining the shape of the road, regrading it, making sure that the shape of the road permits drainage, and keeping drainage features open and operable, consistent with law. No changes beyond routine maintenance, as defined herein and in Exhibit “B,” may be undertaken by either party without prior consultation with the other party, and in the absence of agreement, court decree.
3. Should the County decide that a road should no longer be on the County transportation system, the County will so advise the Bureau and may abandon the road as provided by state law.
4. The Bureau and the County shall meet at least annually to consult regarding improvement projects beyond routine maintenance for roads on the County’s transportation system, identified or not identified in Exhibit “A.” The County shall advise the Bureau in writing of any County proposals to undertake improvement projects beyond routine maintenance for the roads identified in Exhibit “A.” The Bureau will use its best efforts to process the proposal within 180 days of its receipt. No later than 180 days after receiving the proposal, the Bureau shall inform the county in writing whether the proposal is approved, disapproved, or, if the Bureau has not completed processing the proposal, the date by which the Bureau expects to have a final decision.

5. A County proposal to undertake improvement projects shall include the anticipated time of commencement and completion of the proposed work, a map showing the location of the proposed work, a description of the proposed work, a brief statement describing the need for the proposed work, the approximate date when the County last maintained the road and a brief description of the work performed at that time.
6. The Bureau and the County recognize that some construction projects may need to be performed on an emergency basis to prevent harm or substantial inconvenience to the public. In such a situation, the Bureau agrees to use its best efforts to expedite the approval process.
7. This Agreement shall be effective as of the date shown in the first paragraph of this document, and shall supersede any previous road maintenance agreement.
8. 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.
9. This Agreement may be amended by mutual agreement. Such amendment shall be in writing and shall be effective when signed by both parties.
10. This Agreement does not constitute abandonment, waiver or other termination or modification of any rights under R.S. 2477, with respect to the roads on Exhibit "A," nor shall it be construed as an acceptance or determination of such rights by the Bureau or prejudice in any way the Bureau's the right to contest any assertion of such rights under R.S. 2477.
11. Nothing in this Agreement establishes precedent regarding the Bureau's future management or administration of the public lands under its jurisdiction or the County's or State of Utah's management or administration of transportation systems under their jurisdictions, and nothing herein shall preclude or limit any authority the Bureau, the State or the County has under law.

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

|                              |   |
|------------------------------|---|
| _____ COUNTY COMMISSION      | BUREAU OF LAND MANAGEMENT<br>_____ Field Office |
| By _____<br>[name and title] | By _____<br>[name and title]                    |

Exhibit A – Map of Roads in Agreement with accompanying list of road numbers and names.  
Exhibit B – Scope of Routine Road Maintenance

## Exhibit “B”

### Scope of Routine Road Maintenance

| Road Category | Frequency of Maintenance | Road Character* | Representative Maintenance Activities**   |
|---------------|--------------------------|-----------------|---|
| 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. |
| 11 (Medium)   | As Needed                | Graveled        | Upkeep and repair of existing graveled surface, drainage facilities, bridges, culverts and riprap.  |
| 111 (Low)     | As Needed                | Natural graded  | Upkeep and repair of graded natural surface, including upkeep and repair of existing culverts, and hardened crossings.  |
| IV (Minimal)  | As Needed                | 2-track         | Upkeep and repair of natural surface by removing rocks and fallen trees and filling holes using hand tools only.***   |

The term “routine maintenance” used in this Agreement, is controlled by the September 8, 2005, opinion of United States Court of Appeals, Tenth Circuit in SUWA v. BLM. Under that opinion, “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 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. “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.

- \* Reasonable and necessary use of land proximate to the road is allowed to facilitate routine maintenance activities, i.e., using land to turnaround or operate maintenance vehicles. Routine maintenance includes upkeep and repair of existing site-specific road features outside of the traveled way such as turnouts, cuts slopes, fill slopes, drainage structures, bridges and so forth. Expansion or addition of features requires prior consultation between the parties to determine if any additional authorization is necessary.
- \*\* Listed maintenance activities are non-exclusive and are only intended to be representative of the nature and degree of routine maintenance activities.
- \*\*\* 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 only after consultation between the parties.