REVIEW OF STATE LAWS AND PRACTICES FOR DISPOSITION OF RE-ALIGNED OR BYPASSED SEGMENTS AND ASSOCIATED ROW
OUR MISSION

We provide services to the transportation community through research, technology transfer and education. We create and participate in partnerships to promote safe and effective transportation systems.

OUR VALUES

Teamwork
Listening and communicating along with courtesy and respect for others.

Honesty and Ethical Behavior
Delivering the highest quality products and services.

Continuous Improvement
In all that we do.
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15. Supplementary Notes

16. Abstract

This study identified the laws and practices of 11 state DOTs in regard to the transfer of responsibility for re-aligned or bypassed state highway system roads to local jurisdictions—usually cities or counties. Each state’s approach to such transfers was identified by obtaining and analyzing the relevant state statutes and then conducting telephone interviews with strategically placed individuals at the associated DOT. Four states require local approval before the state can abandon a road. These four have a policy of obtaining written consent for the transfer of responsibility for maintenance and do so most often prior to construction of a bypass or re-aligned route. Copies of these negotiated agreements were obtained and analyzed. All copies are in appendix three.
Review of State Laws and Practices for Disposition of Re-Aligned or Bypassed Segments and Associated ROW
KYSPR 10-390

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Executive Summary

The primary goal of this study was the identification of the laws and practices of other state departments of transportation in regard to the transfer of re-aligned and bypassed state highway system roads to local jurisdictions—usually cities or counties.

Using prior studies done for the Cabinet, the study advisory committee developed a list of eleven states most likely to have dealt with similar issues in a similar context. The states are: Arizona, California, Colorado, Illinois, Indiana, Missouri, New York, Pennsylvania, South Carolina, Tennessee, and Wisconsin.

Each state’s approach to the transfer of bypassed roads was identified by obtaining and analyzing the relevant state statutes and then conducting telephone interviews with strategically-placed individuals in those states.

Analysis of the survey results and the statutes revealed three state approaches to transfer of responsibility for a bypassed or realigned road segment.

1. Two states—Arizona and New York—allow abandonment of a bypassed road without local approval (city or county) and the interviewed official confirmed that the state has abandoned roads without the approval of the local government.

2. Four states have laws that require local approval before the state can abandon a road. Those states are Colorado, Missouri, Indiana, and Wisconsin. They obtain consent in writing and do so most often prior to construction.

3. California, South Carolina, Illinois, Pennsylvania, and Tennessee have statutes without a specified requirement for local approval of abandonment of bypassed roads but interviews with state officials suggest that the state only abandons a road when the local government consents.

The study team obtained copies of the negotiated agreements signed by local and state officials in which the local officials agree to accept a transfer of responsibility for the bypassed road from the state. These agreements are drafted and usually negotiated prior to the construction of the new road.

As observed by several of the interviewed officials, negotiating an agreement in advance of construction gives the state some leverage in the process of removing a bypassed road from the state highway system. Putting the agreement in writing reduces the likelihood of any misunderstandings. This is especially the case when the agreement contains technical
descriptions of the road segment in question. Several of the examples of agreements obtained from the states included such descriptions. In addition, all the agreements reviewed in this study clearly stipulated that the transfer of responsibility included local responsibility for future maintenance of the section removed from the state highway system.

As agreed upon in the initial work plan this report does not contain specific recommendations for future action by the Transportation Cabinet. Rather, it presents a systematic analysis and comparison of the approaches to practice in the aforementioned states. The Cabinet reserves to itself all decisions regarding the use of this report including the setting of any new policies.
Chapter 1: Purpose of Study

Introduction

The primary goal of this project was the identification of the laws and practices of other state departments of transportation in regard to the transfer of re-aligned and bypassed state highway system roads to local jurisdictions—usually cities or counties. Upon completion of a road project, the Cabinet often finds itself with roadbed and its associated right of way no longer germane to the state-maintained road system for a variety of reasons with the result that it is responsible for the maintenance of, and potentially liable for, problems on roadways with their associated rights-of-way, scattered across the Commonwealth. Currently, methods to manage or minimize the Cabinet’s financial and legal exposure by removing these roadbeds and associated rights-of-way from the state-maintained road system are not clearly defined. Kentucky law does clearly stipulate, however, that a local government may reject a transfer. The exact wording from KRS 177.020 is as follows:

“The department shall notify the fiscal court of the county at least four months before it eliminates a road, road segment, bridge or street in that county from the state primary road system. Upon receiving notice, the fiscal court may reject title and notify the department that the road shall not become part of the county road system.”

This report contains the findings from a review of the statutes of eleven states chosen by the study advisory committee along with the findings from interviews with knowledgeable officials in those states. Five states provided examples of the legal documents they use to transfer responsibility for the bypassed roads.

This project was not concerned with excess property (acquired without the intention of building a road on it) or surplus property (former roadways that are no longer roads). However, it also investigated the state of the practice of transferring responsibility for low volume roads to local governments.

Tasks

Working with Cabinet Planning staff and the Study Advisory Committee, the research team completed the following tasks:

**Task 1:** Using prior studies done for the Cabinet, it developed a list of eleven states most likely to have dealt with similar issues in a similar context. The states are: Arizona, California, Colorado, Illinois, Indiana, Missouri, New York, Pennsylvania, South Carolina, Tennessee, and Wisconsin.

**Task 2:** Each state’s approach to the transfer of bypassed roads was identified by obtaining the relevant statutes and then conducting telephone interviews with strategic individuals in those
states. Four states which, like Kentucky, require the consent of local jurisdictions prior to a transfer of a road segment, were identified—Colorado, Indiana, Missouri, and Wisconsin. The policies and documents they use to negotiate a consensual transfer of responsibility were then obtained and discussed by the study advisory committee.

**Task 3:** This report is the final task. It contains an analysis of the most relevant policies and documents gleaned from Task 2. As agreed upon in the initial work plan this report does not contain specific recommendations for future action by the Transportation Cabinet. Rather, it presents a systematic analysis and comparison of the approaches to practice in the aforementioned states. The Cabinet reserves to itself all decisions regarding the use of this report including the setting of any new policies.

**Advisory Committee involvement:** The study team met with the study advisory committee in Frankfort on three occasions. The first meeting was held on October 10, 2009, at which time the research team presented the results of a review of a previous study conducted by Wilbur Smith on the criteria used by other states to place a road on or off the state highway system. The Advisory Committee then narrowed the scope of this study to two scenarios in which the state might wish to transfer roads to local governments: bypassed road segments and low-volume road segments. After the collection of additional information in the form of pertinent statutes and interviews with officials in ten states, the research team presented its findings on February 22, 2010. At that time, the study advisory committee requested that the research team again contact those states identified as requiring local consent prior to transfer of a bypassed or realigned road to a local government and attempt to obtain any forms or other documentation used by those states to record the local government’s acceptance of responsibility for a bypassed road segment that is to be removed from the state highway system upon completion of a bypass. These documents were reviewed by the advisory team at the third meeting on May 6, 2010.
Chapter 2: Summary of Findings

The research team obtained and analyzed the content of the statutes from the eleven states selected for study at the October meeting by the study advisory committee. The research team then conducted interviews with officials in the eleven states. The interviews focused on each state’s policies for transfer of responsibility for low volume roads or bypassed or realigned roads from the state to a city or county. See appendix A for the germane sections of their statutes and the comments of the interviewed official.

The members of the study advisory committee reviewed the interview guide prior to use to ensure that it addressed the pertinent issues. See appendix B for a copy of the interview guide.

The interview of officials concerned removal of roads from the state highway system under two separate sets of circumstances: low volume roads or the removal of roads that have been bypassed. A key issue addressed in the interviews was whether the state DOT is required to obtain the consent of the local governmental entity to the transfer of responsibility for a road from the state to the locality. If consent is required, the interviewer sought details on the steps taken to elicit consent, including compensation or improvement of the road’s condition.

A further question asked about the use of a formal agreement or contract prior to construction in which the local government agreed to a transfer of a road to its jurisdiction. A last question enquired into the parties involved in the transfer agreement.

State Practices Regarding Transfers of Low Volume or Bypassed Roads

Analysis of the survey results and the statutes revealed three general state approaches to transfer of responsibility for a bypassed or realigned road segment.

1. Two states—Arizona and New York—allow abandonment of a bypassed road without local approval (city or county) and the interviewed official confirmed that the state has abandoned roads without the approval of the local government.

2. Four states have laws that require local approval before the state can abandon a road. Those states are Colorado, Missouri, Indiana, and Wisconsin.

3. California, South Carolina, Illinois, Pennsylvania, and Tennessee have statutes without a specified requirement of local approval of abandonment of bypassed roads; but interviews with state officials suggest that the state only abandons a road when local government consents.

Thus, the state of the practice appears to strongly favor requiring that local government agreement must be obtained prior to a transfer taking place.
The states were very reluctant to transfer a low volume road from the state highway system to a locality without the consent of the local government. In fact only two states said they did: Arizona and California but the latter requires legislative approval instead of local approval.

Seven of the states were said to negotiate an agreement for transfer of responsibility with a locality in advance of construction. Those states are: Illinois, Indiana, Wisconsin, Tennessee, Missouri, South Carolina, and Pennsylvania. Several states provided examples of the written agreements they negotiate with the city or county. These will be discussed in the next chapter.

The telephone interviews revealed several other approaches to the issue of transferring a road from the state highway system to a local entity. Each of these was said to facilitate local willingness to accept responsibility for a road segment. South Carolina has a limit on:

   a. the size of the state highway system in each county
   b. belt lines and spurs—no more than 2 miles in any county

Colorado and Pennsylvania have set aside money to encourage localities to assume responsibility for roads. Arizona, California, Illinois, and Pennsylvania have statutes saying that prior to a transfer of responsibility to a local government the state must put the road to be transferred in good repair (or provide adequate money to put in good repair) as a condition to abandon the road.

The above findings along with two examples of agreements between states and local governments that were negotiated prior to construction of a bypass were presented to the study advisory committee on February 22, 2010. At that time the committee decided that it would like to see more examples of agreements negotiated between state DOTs and cities or counties.
Chapter 3: Examples of Document Language Specifying Transfer of Responsibility

At the February 22 meeting, the study advisory committee requested examples of the written documents that state DOTs negotiate with local governments before a bypass or other road project is built. Specifically, the committee asked for documents from the four states that require local consent prior to the removal of a road segment from the state highway system. The states are Colorado, Indiana, Missouri, and Wisconsin. The research team obtained copies of contracts from those states. It had previously acquired a copy of an agreement from Tennessee which is not statutorily required to obtain an agreement with the local government but, in practice, generally does so.

The language in the agreements signed by local officials and by state transportation officials is provided below for the five states. The wording differs somewhat; but the transfer of responsibility, especially for maintenance, is clearly stated. Some of the written agreements are quite long and specify a range of concerns about the project. The full-length contracts are in Appendix C.

This chapter focuses on the sections of the agreements that concern the transfer of responsibility. It notes two approaches to the transfer of maintenance responsibility and the language used to describe the transfer: (1) quit claim deed (the approach taken by Colorado and Missouri) or (2) jurisdictional transfer (the approach taken by Indiana, Wisconsin and Tennessee). The first approach grants formal ownership to the local government and the second does not transfer ownership.

Indiana

Indiana does not transfer ownership, but it does transfer jurisdiction. The state lays out the conditions of the transfer with these words:

“WHEREAS, INDOT desires to transfer, according to the terms of this Agreement, jurisdiction of the Transferred Road to the CITY, COUNTY OR TOWN, and the CITY, COUNTY OR TOWN is willing to accept in perpetuity jurisdiction of the Transferred Road under the terms and conditions set forth in this Agreement and assume full responsibility for all future operation, construction, maintenance, regulation and liability of the Transferred Road, including but not limited to, all right of way and all structures, the road surface, bridges, overpasses, medians, pipes, snow and ice removal, sewers, storm water drainage, mowing, traffic signals, signs, outdoor advertising structures, driveways and permits relating to the Transferred Road under the terms of this Agreement…”

Indiana repeats the conditions of the transfer in another section of the agreement in which it notes that it is not transferring title and INDOT retains legal title.

“Purpose. The purpose of this Agreement is to transfer full responsibility for all operation, construction, maintenance, regulation and liability relating to the Transferred Road from INDOT to the CITY, COUNTY OR TOWN to the fullest extent permitted by applicable law. To comply
with Indiana law regarding the sale of real estate, the PARTIES agree that INDOT is not transferring title to any real estate by way of this Agreement and that INDOT shall retain legal title of the Transferred Road including without limitation any real property underneath existing pavement and the accompanying right of way, as described in the land records of the COUNTY in which the Transferred Road is located. [REFERENCE TO COUNTY LAND RECORDS TO BE DISCUSSED]"

**Wisconsin**

Wisconsin does not transfer ownership, although it might under negotiated conditions. The Wisconsin language concerning the transfer of maintenance responsibility is simple and straightforward:

“Following the jurisdictional transfer of existing USH 12 to Sauk County, Sauk County will be responsible for maintenance, operational management, including control of access, and any required repairs or reconstruction of the highway as part of its County Trunk Highway System.”

Wisconsin includes the following statement to indicate that it is not transferring ownership of the property:

“For convenience, WisDOT will provide real property records, access authorizations, and utility and other permits, and related documents to Sauk county to carry out its responsibilities upon and in preparation for the jurisdictional transfer but WisDOT will not convey any real property to Sauk County without a specific request from Sauk County and evaluation by WisDOT of the purpose of the conveyance and any requirements for payment or imposition of restrictions on the transfer.”

**Missouri**

Missouri transfers responsibility by quit claim deed. In the maintenance section of a contract, Missouri lays out the conditions of the transfer in these words:

“(C) Effective upon completion of construction, the Commission shall convey to the county by quitclaim deed, which the County agrees to accept, two sections of the east outer road within the County replaced by this improvement.”

The sections are described in detail and the transfer of maintenance responsibility is specified with this statement.

“…Upon conveyance of these portions of highway to the County, as shown by the date on the quitclaim deeds, the Commission’s responsibility to maintain these portions of highway shall cease and said portions of highway will no longer be considered a part of the state highway
system. Thereafter, the county shall maintain these portions of highway as part of the county roadway system.”

**Colorado**

Colorado transfers ownership by quit claim deed. It specifies the commitments made by the state and the local government with this format and wording. The contract language includes resolutions made by the Colorado transportation commission and the city. These are placed in the agreement as exhibits.

“ I. Commitments on the Part of the State

1. The Transportation Commission has passed resolution TC-1764 (Exhibit D) authorizing the abandonment of Main Street to the city, and upon execution of this Agreement, completion of a quit claim deed, and the filing of the Exchange in Montrose County, the State shall transfer Main Street to the City and accept the transfer from the City of the San Juan Bypass as described in the terms of Operations, Utilities and ROW of Exhibit A and limits described in Exhibits A and B.

2. Upon completion of the Exchange, CDOT shall assume ownership of the San Juan Bypass and designate the roadway as part of US 50 and assume all corresponding maintenance responsibilities.

I. Commitments on the Part of the City

3. The City has passed Resolution No. 2009-19 (Exhibit E) authorizing the transfer of the San Juan bypass to CDOT, and upon execution of this Agreement, completion of a special warranty deed, and the filing of the Exchange in Montrose County, the City shall transfer the San Juan Bypass to the State and accept the transfer from the State of Main Street as described in the terms of Operations, Utilities and ROW of Exhibit A and the limits described in Exhibits A and B.

4. Upon completion of the Exchange, the City shall assume ownership of Main Street and designate the section of roadway as a City street and assume all corresponding maintenance responsibilities, including all federal requirements.”

**Tennessee**

Tennessee transfers jurisdiction, but not ownership. It clearly ties the transfer to the road that is replaced by the highway project. In addition, it specifies that the transfer will occur after the project is complete and open for traffic.

“6. After the project is completed and open to traffic, the CITY will accept for jurisdiction and maintenance such parts of any existing DEPARTMENT highway to be replaced by the project.”

The same wording is used for transfers to a county.
“6. After the project is completed and open to traffic, the COUNTY will accept for jurisdiction and maintenance such parts of any existing DEPARTMENT highway to be replaced by the project.”

Summary

With the exception of Tennessee, these states require by statute that a local jurisdiction give its consent to the transfer of a road from the state highway system to a local jurisdiction. The five states discussed here obtain that consent in writing prior to construction of a bypass. The wording of the agreement that state and local officials sign makes explicit that the transfer includes responsibility for maintenance; Missouri and Colorado transfer ownership by quit claim deed, while Wisconsin, Tennessee, and Indiana rely on a jurisdictional transfer.
Chapter 4: Summary and Implications for Development of Guidelines

This study found that many states—by statute or in customary practice—require the approval of a local government prior to the local government’s assumption of responsibility for a road that formerly was part of the state highway system. Many of these states have responded to this requirement by developing the practice of negotiating an agreement signed by local and state officials in which the local officials agree to a transfer of responsibility for the bypassed road from the state to the local government. This agreement is usually written and signed prior to the construction of the new road.

As several of the interviewed officials observed, negotiating an agreement in advance of construction gives the state some leverage in the process of removing a bypassed road from the state highway system. Putting the agreement in writing reduces the likelihood of any misunderstandings. This is especially the case when the agreement contains descriptions (with mile marker points specified) of the road segment in question. Several of the examples of agreements obtained from the states included such descriptions. In addition, all the agreements reviewed in this study clearly stipulated that the transfer of responsibility included responsibility for future maintenance of the section removed from the state highway system.

The members of the advisory committee concluded that the study findings and related documents could serve as possible models for the Kentucky Transportation Cabinet in future discussions with local governments in regard to building bypasses. They intend to explore the utility of constructing similar agreements between the Cabinet and local governments when facilities that affect the state highway system are in the early planning stages.
APPENDIX A

Description of Statutes and Practices for Transfer of Responsibility

Arizona

Arizona ADOT is required to maintain and update biennially a list of state roads that do not serve as integral parts of the state highway system (SHS). For routes that are not necessary for a network of state routes and serve no significant statewide interest, ADOT will actively work to transfer these routes to other jurisdictions. Among the priorities for transfer are routes for which ADOT is constructing a bypass or alternate route.

Arizona Statute

The guiding principle is stated in ARS 28-304/305.

“Routes primarily providing land access and local movement of people and goods should be the responsibility of local governments. The Transportation Board will seek to transfer these routes to other jurisdictions.”

In ARS 28-304 the powers of the Arizona Transportation Board include:

“Establish a complete system of state highway routes.”

“Vacate or abandon a portion of a state route or state highway as prescribed in section 28-7209.”

According to section 28-7209,

A. “If the board vacates or abandons a portion of a state highway pursuant to section 28-304, the board shall:

1. Vacate or abandon the portion of the route or highway in cooperation with an affected jurisdiction and in full recognition of the financial and administrative impacts of the changes on the affected jurisdiction.
2. Provide four years’ advance notice to the affected jurisdiction…

B. Before a paved highway is vacated or abandoned, the pavement before the vacating or abandonment shall be in such a condition that additional surface treatment and major maintenance of the highway are not required for at least five years, unless the board and the affected jurisdiction agree to waive the requirement of this subsection.”

Arizona practice from an interview with Arizona DOT attorney, Ron Aschenbach
Mr. Aschenbach said that Arizona can transfer to local governments the ownership and maintenance responsibility for state maintained highways and do so without the consent or approval of the local government, be it city or county. This is true for low volume roads and for bypasses. But, it can also transfer ownership and maintenance responsibility of high volume roads that begin to function as urban arterials.

There are some conditions the board must follow. The locality can demand four years of advance notice and the road must be in such condition that it does not require “surface treatment and major maintenance for at least five years.”

He said that on some occasions they offer compensation or help with the maintenance of the transferred road segment. However, this is not required and is not typically the case.

In regard to procedures for the transfer, the transportation board issues a resolution. No other parties need to sign it. Occasionally there is a formal agreement signed by the local government, but that is not required.

The Arizona statute mentions concern for the financial and administrative impacts on the locality. Mr. Aschenbach called this procedural and said it did not prevent the board from transferring ownership.

California

California appears to not require local approval; however, as the interview after the quotes from California law reveal, the DOT can rarely transfer responsibility for maintenance to a local entity.

Thus it appears that the following Wilbur Smith conclusion is misleading: “The department’s Project Development and Procedures Manual (Division of Design) includes steps for processes to…remove [a road].” (25-3)

California Statute

California refers to the transfer of a road from state to local authority as relinquishment. Chapter 25 in the manual is a detailed description of the various processes and consultations required. It defines the word relinquish as “the act of turning over to another entity the property rights, liability and maintenance responsibilities of a portion of a state highway.”

A broad summary of the process is captured in this paragraph from Chapter 25 of the manual: “the removal of a state highway, either in whole or in part from the State Highway System, requires a relinquishment approved by the California Transportation Commission (CTC). There are three types of relinquishments: relinquishment by legislative enactment, relinquishment by
superseding [a current highway] with a new state highway, and relinquishment of collateral facilities.” (25-3)

Legislative enactment does not require compensation. “Caltrans is under no statutory obligation to put a facility into a state of good repair, construct improvements or betterments, or incur a financial obligation of any kind to relinquish a state highway to a local agency by legislative enactment.” 25-6

“The CTC may likewise relinquish any portion of any state highway that has been superseded by relocation.” (25-4) However, there are rules to follow in relinquishing by superceding. The road must be in good condition and if it is not, it must be repaired or adequate funds made available. Thus, prior to relinquishing a state highway, the district it is in must “negotiate with the local agency the cost to relinquish, if any.” 25-7

“Caltrans is responsible for relinquishing roads that are safe and drivable. Roads that are to be relinquished should be in a condition that major maintenance is not needed in the near future.” 25-11

The law offers an appeals process to discuss relinquishment and related costs, but a relinquishment can proceed “even if the local agency does not agree with the relinquishment conditions.” 25-15.

**California practice from an interview with Joann Georgallis**

Ms. Georgallis is a lawyer who is the assistant chief counsel for the California DOT. She said that the DOT cannot transfer ownership and the maintenance responsibility of low-volume roads to local governments. However, they can do so when the road has been bypassed or is a frontage road. But, the locality must agree to assume responsibility. These negotiations produce a signed agreement between the DOT and the locality.

California does remove roads for various reasons including low volume, but a legislative action is required. The DOT through the California Transportation Commission cannot do it.

California law says a locality can protest a decision to take a road off the state highway system. In practice they can stop a road from being removed by protesting. The law also says that the road must be in good repair. Regarding incentives to take responsibility for a road, she said that with the exception of putting the road into good repair, they rarely offer anything else.

The DOT routinely negotiates with local governments in advance of construction when the road is a limited access highway. But the negotiation concerns the roads that feed into the limited access highway. These roads are not on the state highway system and no road is removed from the state highway system. These negotiations produce a signed formal agreement.
Colorado Statutes

43-2-106. Abandoned State Highways

(1) (a) When a portion of a state highway is relocated and, because of the relocation, a portion of the route as it existed before the relocation is, in the opinion of the transportation commission, no longer necessary as a state highway, the portion shall be considered as abandoned. The transportation commission may also determine that all or a portion of a state highway no longer functions as a part of the state highway system, and, with the agreement of each affected county or municipality, the state highway or portion thereof shall be considered as abandoned. An abandoned state highway or portion thereof shall become a county highway, upon the adoption of a resolution to that effect by the board of county commissioners of an affected county, or a city street, upon the adoption of an ordinance to that effect by the governing body of any affected municipality, within ninety days after the official notification of abandonment by the transportation commission.

(c) For purposes of this subsection (1), all or a portion of a state highway shall be considered to function as part of the state highway system, and shall not be determined by the transportation commission to no longer function as a part of the state highway system, unless the commission and each county or municipality that would be affected by the abandonment of the state highway or portion of a state highway agree that the state highway or portion of a state highway no longer serves the ongoing purposes of the state highway system.

Colorado practices from an interview with Harry Morrow, General Counsel for the Colorado DOT

Mr. Morrow said that Colorado transfers the responsibility for maintenance to local governments when a bypass has been constructed. To do so, however, they must have the consent of the local government. They do not offer any incentives beyond the new road. There is no formal agreement signed in advance but sometimes a letter is written detailing the new responsibilities of the local government. The Colorado transportation commission approves the abandonment and transfer.

The DOT cannot stop the locals from reneging on the informal agreement, but local governments do not because they realize that the state will not give them money for future projects should they renge.

In regard to low-volume roads and other roads deemed inappropriate for the state highway system, the legislature recently put aside $20 million dollars to pay the local governments to assume responsibility for specific roads that were removed from the SHS. The localities were offered the present dollar value of 20 years of repair costs for the roads in question.
This was done by contractual agreement signed by the DOT and the local government—county or municipality. The state can only abandon a road with the consent of the local government.

**Illinois**

**Illinois Statute**

The following is from Illinois Compiled Statutes (605 ILCS 5/4-201.3 (from Ch. 121, par 4-201.3)) The DOT has authority from sec. 4-201.3 “to relocate any highway, or a part thereof, in the State highway system on a new location or on a different highway. For the purpose of relocating such state highway the department is authorized to lay out, open, alter, widen, extend or locate a new highway.” (Source: Laws 1959, p. 196.)

From (605 ILCS 5/4-206) (from Ch. 121, par 4-206)

Sec. 4-206. “When advisable to serve traffic needs, any State highway route in or through a municipality may be relocated upon other streets in the municipality and the jurisdiction, maintenance and control of the streets upon the abandoned route shall be assumed by the city, town, village, park district or other municipal corporation….No State highway route shall be relocated except to better serve traffic demands and the route abandoned must be left in reasonable condition for traffic.” (Source: Laws 1959, p. 1189)

**Illinois practice from an interview with Ellen Erhardt, a lawyer with the Illinois DOT**

Ms. Erhardt said that Illinois can transfer responsibility for low-volume roads and bypassed roads to local governments. However, she did not know if they could do this without the consent of the local jurisdiction. She said that in her experience they did not transfer responsibility without the consent of the local government. Regarding bypasses, she said that they create a written agreement in advance of the construction specifying that the local government assumes responsibility for the old state highway. The agreement is signed by a highway district official and the local government. The legal office reviews the agreement.

**Indiana**

**Indiana Statute**

**IC 8-23-4-8**

**Changes in location of state highways**

Sec. 8. The department may change the location of a state highway for the following reasons:
(1) To reduce the length of the highway.
(2) To eliminate steep grades or sharp turns.
(3) To widen narrow parts.
(4) To promote public convenience and safety.

As added by P.L.18-1990, SEC.213.

IC 8-23-4-10
Transfer of state highways to county and municipal systems
Sec. 10. Whenever the department determines that, because of the construction of a new state highway, the relocation of a state highway, or a change in general function or use, a part of the state highway system no longer meets the criteria established in section 2 of this chapter for a highway in the state system but that the highway continues to serve a useful purpose, that part of the system may be transferred to a county highway system or a municipal street system.

As added by P.L.18-1990, SEC.213.

IC 8-23-4-12
Transfer of roads and streets between systems; memorandums
Sec. 12. The transfer of roads or streets between systems requires a memorandum of agreement signed by both the transferring agency or unit of government and by the agency or unit of government assuming jurisdiction over the road. The memorandum must state the following:
(1) The purpose of the transfer.
(2) The effective date of the transfer.
(3) Any conditions agreed to by the signers.

As added by P.L.18-1990, SEC.213.

Indiana practice from an interview with George Dremonas, Lawyer for the Indiana DOT

Mr. Dremonas said that Indiana transfers the maintenance responsibility but not ownership when it removes a road or road segment from its state highway system. In regard to bypasses and low volume roads, Indiana transfers the maintenance responsibility; but the locality has to agree to the transfer. If the locality refuses to assume responsibility, the state has to maintain the road.

The transfer of maintenance responsibility requires negotiation with the local entity. Negotiated agreements in the form of a contract are sometimes written prior to construction.

To obtain local consent, the DOT sometimes offers an incentive, such as giving the locality a lump sum for repairs if the road is in poor condition.

Missouri

Missouri Statutes

227.260. The state highways and transportation commission is hereby authorized to make minor relocations in any state highway or any part thereof when in its opinion such minor relocations are necessary in the interest of safety to the traveling public or in the interest of economy and
directness of route; provided, that no such minor relocations shall deviate from any designated point named in any law which may now or hereafter be in force; provided, however, the terms, powers and authority granted in this section shall apply only when the conditions exist as enumerated in sections 227.270, 227.280 and 231.100, RSMo.

236.14.2 Methods of Removal

When a portion of the existing route is not needed for commission use, it may be removed from the state highway system. The location study or alternatives analysis report will recommend a method for removing the existing route from the state system. These recommendations may indicate that sections of the existing roadway be transferred to a local government agency, in which case the written documentation indicating the local government agency's willingness to accept the conveyance of sections of the existing route and any conditions of their acceptance, will also be included in the location/environmental study or conceptual study report. The location/environmental study or conceptual study report may also recommend some other method of removal from the state system. In any case, one of the following methods will be recommended for removing the portion of the existing route from the state highway system and must be described in the CRSR.

Missouri Practice from interview with David Ordway, a Right-of-Way official for the Missouri DOT

Mr. Ordway said that the Missouri DOT occasionally transfers maintenance responsibility for low volume roads and roads that have been bypassed to a local jurisdiction. This can take two forms: a transfer of ownership or just a transfer of maintenance responsibility. But all transfers require the consent of the local government. Missouri DOT, he said, is stuck currently with low volume roads.

He said that the DOT negotiates a signed, formal agreement with a locality. To obtain consent they offer a carrot such as an upfront road upgrade or cash for maintenance. They also offer to undertake a project that the locality wants.

Regarding the construction of a bypass, the agreement is usually, but not always, negotiated prior to the construction of a bypass. The parties involved are usually the transportation commission or a designee, the chief engineer and the locality.

New York

New York Statute

New York HAY. Law Section 341: N.Y. Code—Sec 341

“The state highway system may be modified by abandonments, realignments and additions as provided by law.”
New York HAY. Law Section 345a: NY Code-Section 345-A

Abandonment and Transfer of State Highways

“The abandonment or transfer of state highways to a county, town, city or village shall be deemed a transfer of all right, title and interest of the state of New York to and in such highway to such county, town, city or village respectively unless expressly provided to the contrary.”

New York practice from an interview with New York State DOT attorney, Nancy Jones, was conducted on Feb. 4, 2010.

Ms. Jones said that New York could transfer ownership and maintenance responsibility for a bypassed state highway to a local jurisdiction without the consent of the jurisdiction. They do not have to offer compensation or devise a formal agreement in advance of the construction of the bypass. However, this does not apply to the construction of a four-lane, limited access expressway. To transfer responsibility for the old state highway after the construction of a four-lane, limited access expressway, the DOT needs the consent of the local government. This is done by negotiating with the locality prior to construction.

Ms. Jones said she did not know of a case where a low volume road was taken off the state highway system and its maintenance responsibility transferred to a local jurisdiction. However, she knows that New York has exchanged responsibility for roads in which they negotiate with the locality and sometimes offer to fix or improve the road prior to the exchange.

Pennsylvania

The Wilbur Smith study noted that: “In 1981, Pennsylvania legislature passed a law allowing for the transfer of state highways from [the department of transportation] to municipalities (see Penn consolidated Statutes, title 75, chapter 92). This law allowed PENNDOT to transfer state highways designated by the department as “functionally local highways”. The main focus of this program has been to transfer those roads functioning as local roads to local government.”

However, the wording of that statute (75 Pa. C.S.A. Section 9205) states that: “No highway transfer shall occur between the department and an affected municipality unless the municipality agrees to the transfer of the described highway.” In the definitions part of the statute a municipality is defined as “a county, city, borough, incorporated town or township.”

This law was referred to by a lawyer for PennDOT as the turn back law. He said it did not cover situation for the transfer of state roads that have been bypassed, which is laid out in 36 PS 670-210 and 36 PS 670-214.

Pennsylvania Statute
36 PS 670-210 “The secretary is hereby empowered to change, alter, or establish the width, lines, location, or grades of any State highway or any intersecting road in any township, borough or incorporated town, in such manner as, in his discretion, may seem best, in order to correct danger or inconvenience to the traveling public, or lesson the cost to the Commonwealth in the construction, reconstruction, or maintenance thereof. After the relocation has been opened to traffic, the secretary, by notice to the local authorities, shall abandon as a State highway route or vacate the section of highway between the termini of the relocation. Where the new route, in the judgment of the secretary, supplies and takes the place of any part of the old highway, an such part is of a length of not more than two miles, the secretary, being of the opinion that such part is unnecessary for public use and travel, or burdensome or dangerous, and having due regard for the convenience of access to the new highway by the owners of property abutting on such part, may, at any time, by written order, declare such part to be vacated.” Italic mine.

670-214 “Where any section of a State highway route shall be, or has been relocated, the portion of the public road or highway, thus abandoned as a State highway route, shall be maintained by, and at the expense of the township, borough, incorporated town or city wherein it is located, but the department shall in each case, before abandoning such portion of public road or highway, improve and repair the same so that it shall be in first class condition when it is taken over by the township, borough, incorporated town or city.”

**Pennsylvania Practice from an interview with Steve Roth, lawyer for PennDOT**

Mr. Roth said that they rarely transfer responsibility for low-volume roads to local governments and must have their consent, as PennDot cannot force them to assume responsibility for low volume roads. However, they have a program that offers approximately $2,500 a year for maintenance per mile to induce a local government to voluntarily assume responsibility. That functions as an incentive. The program involves a contract between the state and the locality.

Regarding bypasses, the law doesn’t require consent, but he could not think of a case where the state did not have the locality’s consent. They use money from the turn back program as an incentive. A formal contract is written in advance. He said that bypasses are usually built at the request of the locality and the assumption of responsibility for the old road is in the contract. Sometimes the funding comes from the gas tax through a fund referred to as the liquid fuels program. It too offers $2,500 per year for maintenance.

**South Carolina**

**South Carolina Statute**

**SECTION 57-5-80.** Deletion and removal of roads from secondary system.
The department may delete and remove from the state highway secondary system of roads in any county any roads which are of low traffic importance and substitute there for an equal, or less, mileage of other roads of higher traffic importance as determined by traffic surveys and estimates. Maintenance responsibility for roads deleted and removed from the state highway secondary system pursuant to the provisions of this section shall transfer from the jurisdiction of the department to the jurisdiction of the county or municipality in which such roads are situated, effective upon notice from the department of official action deleting and removing the roads from the state highway system.

SECTION 57-5-90. Belt lines and spurs.

The commission may establish such belt lines or spurs as it deems proper and construct and maintain such belt lines and spurs from funds otherwise provided by law for the construction and maintenance of the state highway system, but the total length of such belt lines and spurs to be established or constructed in any county shall not exceed two miles in any one fiscal year; provided, that should the commission fail to establish belt lines or spurs during a fiscal year the allocation to the counties shall be continued from year to year and the mileage shall be cumulative. Provided, further, that any mileage that accumulated prior to June 30, 1972, under this section shall remain to the credit of the county to which it accumulated.

SECTION 57-5-120. Abandonment of section of relocated highway.

The department may abandon as a part of the state highway system any section of highway which may be relocated, and every such section so abandoned as a part of the state highway system shall revert to the jurisdiction of the respective appropriate local authorities involved or be abandoned as a public way. But the department, in its discretion, may retain in the system any such relocated section when it serves as a needed connection to the new section or when it serves as a proper part of the state highway system.

Interview with Bill Beck, a lawyer with the South Carolina DOT.

Mr. Beck said he could not think of an occasion when the DOT transferred maintenance responsibility of a low volume road to a local jurisdiction. However, he said that they do abandon roads that are functioning as driveways or short stubs, roads that go nowhere in his words.

He said that they sometimes trade with a town by saying they will only build something the town wants if they agree to take responsibility for an old road. Such trades are encouraged by the cap on the size of the state highway system, which is 41,000 miles. Each county has a cap. He said that the state tries to subtract miles when it exceeds the cap.

Regarding bypasses, he said that the DOT holds that the law allows the state to transfer responsibility to a locality without the latter’s consent. However, at this time they obtain consent
and the local government can say no. They negotiate a signed formal agreement before construction. They also offer incentives such as offering to repave the road. The legal department participates in the transfer of responsibility and the writing of the agreement.

**Tennessee**

**Tennessee Statute**

54-5-101 read as follows: “The department of transportation has full power…to designate a system of state highways, to designate the road or roads to be constructed, repaired or maintained by the use funds mention in chapter 2 of this title and to lay out and locate all such roads.”

The power to abandon is not mentioned directly. However, in 54-18-204 the planning commission is given the power to certify an official map. “After the preparation of the master plan or at least a major street plan, the planning commission may make studies or surveys of new, extended, widened, or narrowed highways or of the vacation or abandonment of highways, and may make and certify to the legislative body a map of the area studied or surveyed that shall show the recommended future highways, extensions, widening, narrowings, or abandonments, including any state and federal highways or abandonment proposed by the commissioner.”

**Tennessee practice from an Interview with John Reinbold, a lawyer with the Tennessee Legal Division of the DOT**

Mr. Reinbold said he did not know of any cases where the state removed a low volume road from the state highway system.

Regarding bypasses, he said that they transfer responsibility for maintenance to localities and use a standard form for an agreement, which provides that the local government will take over maintenance. He thought that the agreements were signed prior to construction of the bypass. He said he did not know if the DOT needed the consent of a local government to transfer responsibility for maintenance.

He said the following were involved in the transfer to a local government: the legal division; the commissioner who signs the agreement, the right-of-way division, and the local government. He did not believe that an incentive was offered to the local governments.

Mr. Reinbold provided an example of the agreement. The following statement from the agreement concerns the transfer of responsibility: “6. After the project is completed and open to traffic, the COUNTY will accept for jurisdiction and maintenance such parts of any existing DEPARTMENT highway to be replaced by the project.”

**Wisconsin**
Wisconsin appears to refer to its state highway system as trunk highways.

**Wisconsin Statute**

84.02(1)

(1) Designation. The system of highways known as the trunk highway system heretofore selected and laid out by the legislature and by the highway commission and by special legislative state trunk highway committees and approved by said highway commission and as revised, altered and changed by and under authority vested by law in the highway commission, is hereby validated and confirmed and designated the state trunk highway but without prejudice to the exercise of the power given to change such system….

84.02(3) (a) Changes may be made in the state trunk system by the department, if it deems that the public good is best served by making the changes. The department, in making the changes, may lay out new highways by the procedure under this subsection. Due notice shall be given to the localities concerned of the intention to make changes or discontinuances., and if the change proposes to lay a highway via a new location and the distance along such deviation from the existing location exceeds 2.5 miles then a hearing…shall be held prior to making the change effective….Whenever the department decides to thus change more than 2.5 miles of the system the change shall not be effective until the decision of the department has been referred to and approved by the county board of each county in which any part of the proposed change is situated….

Wis. Stat. 84.02(8)

“(8) Jurisdictional transfers: state-local agreements.

(a) The department may make additions or deletions to the state trunk highway system by entering into a jurisdictional transfer agreement with any local unit of government. Addition to or deletion of any part of the state trunk highway system under this subsection may be made without regard to any mileage limitation or procedural requirement imposed under this section or chapter 518, laws of 1947.

(b) The jurisdictional transfer agreement must be approved by the department and the governing body of any municipality or county board involved before the transfer of any highway becomes effective.

(c) A jurisdictional transfer agreement may contain any terms and conditions that the department and the local unit of government may deem necessary regarding maintenance or rehabilitation of any highway transferred.”

**Wisconsin practice from interview with Jim Thiel, Lawyer with Wisconsin DOT**
Mr. Theil said that Wisconsin transfers ownership or just maintenance responsibility to its localities. However, they get the approval of the local government prior to the transfer. Approval is required by state statute. In the case of a bypass this is done before construction of the bypass. The state negotiates with the locality and sometimes offers incentives for accepting responsibility for the old route. He mentioned as examples of incentives new lights, turn lanes or a new overlay.

The negotiated agreement is formalized in writing and signed by DOT officials and local officials.

In regard to the transfer of low-volume roads, he said the state rarely transfers responsibility. The local entity must agree and they usually will not. He remarked that Wisconsin is currently maintaining roads with less than 150 AADT. In regard to compensation, he said the state has not transferred any low volume roads. So he could not say what the compensation would be. The state has totally abandoned some roads, which then go out of service and are no longer used.
Appendix B: KTC Telephone Survey

Transfer of Road or Road Segments from State Highway System

Kentucky is looking into the various ways that other states handle the issue of transferring the ownership and maintenance responsibility of a road or road segment from their state highway system to a local government entity---city, county, township, etc.

We are interested in two types of transfers to local governments: (1) The transfer of roads which have low traffic volumes and do not fall into the “function” of the state maintained system; and (2) The transfer of bypassed state maintained roads, new access/frontage roads, bridge replacements on local roads, or realigned local roads resulting from construction projects.

Let’s begin with the low-volume situation.

Q1. Do you transfer to local governments, the ownership and maintenance responsibility of low-volume roads which are non-essential to the state maintained system?

_____ YES   _____ NO

Q2. Is this transfer accomplished only with the consent or approval of the local government?

_____ YES   _____ NO

Q3. If yes, do you need to offer some kind of compensation to help with the maintenance of the transferred road or road segment?

_____   YES   _____ NO

Q4. If you need to obtain the consent of a local government before removing a road from the state highway system, what steps including compensation, do you typically take to get the local entity to assume responsibility for the road or road segment? Please describe:
Q5. Is there a formal agreement created between the DOT and the local government detailing the transfer?

_____YES  _____NO

Q6. If you can, please provide a recent example of this agreement.

Q7. How is the transfer formally executed and what offices within the DOT are involved in the execution of the agreement and the transfer of the property?

We turn now to the transfers resulting from the construction of new roads or bypasses.

Q8. Do you transfer to local governments the ownership and maintenance responsibility of bypassed or new roads resulting from road construction projects?

_____YES  _____NO

Q9. Is this transfer accomplished only with the consent or approval of the local government?

_____YES  _____NO

Q10. If yes, do you have to offer some type of incentive or compensation?

_____YES  _____NO

Q11. What type of incentives or compensation is offered to the local government?

Q12. Is there a formal agreement created between the DOT and the local government detailing the transfer?
Q13. If yes, are these transfer agreements accomplished prior to the construction of the project?

_____YES ______NO

Q14  If you can, please provide a recent example of this agreement.

Q15. How is the transfer formally executed and what offices within the DOT are involved in the execution of the agreement and the transfer of the property?
Appendix C: Examples of Agreements

Indiana

ROAD TRANSFER

MEMORANDUM OF AGREEMENT

INDOT/CITY, COUNTY OR TOWN

For Transfer of the TRANSFERRED ROAD

PREAMBLE

This Agreement is made and entered into effective as of __________________, 2008 (hereinafter referred to as “Effective Date”) by and between the Indiana Department of Transportation (hereinafter referred to as “INDOT”), and ______________________ (hereinafter referred to as the “CITY, COUNTY OR TOWN”), and jointly referred to as the “PARTIES.”

RECITALS

WHEREAS, INDOT currently incurs the expense for the acquisition, operation, construction, maintenance, regulation and liability of the Transferred Road (as defined in Section 2(b) of this Agreement), including but not limited to, all right of way and all structures, the road surface, bridges, overpasses, tunnels, medians, pipes, snow and ice removal, sewers, storm water drainage, mowing, traffic signals, signs, outdoor advertising structures, driveways and permits relating to the Transferred Road; and

WHEREAS, INDOT desires to transfer, according to the terms of this Agreement, jurisdiction of the Transferred Road to the CITY, COUNTY OR TOWN, and the CITY, COUNTY OR TOWN is willing to accept in perpetuity jurisdiction of the Transferred Road under the terms and conditions set forth in this Agreement and assume full responsibility for all future operation, construction, maintenance, regulation and liability of the Transferred Road, including but not limited to, all right of way and all structures, the road surface, bridges, overpasses, medians, pipes, snow and ice removal, sewers, storm water drainage, mowing, traffic signals, signs, outdoor advertising structures, driveways and permits relating to the Transferred Road under the terms of this Agreement; and
WHEREAS, I.C. 8-23-4-10 and I.C. 8-23-4-12 authorize INDOT and the CITY, COUNTY OR TOWN to execute this Agreement; and

[INSERT ADDITIONAL RECITALS AS NECESSARY TO REFLECT THE REASONS FOR THE TRANSFER, ANY RELATED PROJECTS, AND MENTION OF ANY ASSOCIATED PAYMENTS.]

WHEREAS, the PARTIES agree that the Transferred Road will no longer be the most appropriate route to serve state traffic, but will continue to serve local access; and

WHEREAS, INDOT has identified the Transferred Road as a lower priority route in the state highway system but determined that the Transferred Road will continue to serve a useful purpose; and

NOW THEREFORE, in consideration of the premises and the covenants herein contained, the PARTIES hereto agree as follows:

1. Interpretation. The Preamble and Recitals recorded above are incorporated by reference into this Agreement.

2. Definitions.

a. Project. The ____________Project means__________. Following is a description of the elements of the ____________Project.

[INCLUDE DESCRIPTIONS OF ASSOCIATED PROJECTS AND TRANSFERRED ROAD.]

30
b. Transferred Road. The Transferred Road means the section of the [INSERT ROUTE NUMBER(S) OF THE TRANSFERRED ROAD E.G., “SR 111” described in Sections 2(b)(1) through 2(b)(3) below and illustrated in Attachments A and B, herein incorporated by reference]

(1) [INCLUDE DESCRIPTION OF ROAD OBTAINED FROM THE OWNER]

(2) [INCLUDE DESCRIPTION AND BRIDGE INVENTORY NUMBERS OF ANY BRIDGES]

(3) [INCLUDE TOTAL MILEAGE].

c. Date of Transfer. Date of Transfer means the date upon which INDOT will transfer the Transferred Road to the CITY, COUNTY or TOWN according to the terms of this Agreement. [INCLUDE EITHER THE DATE ITSELF OR THE METHOD BY WHICH SUCH DATE MAY BE IDENTIFIED IN THE FUTURE.]

3. Purpose. The purpose of this Agreement is to transfer full responsibility for all operation, construction, maintenance, regulation and liability relating to the Transferred Road from INDOT to the CITY, COUNTY OR TOWN to the fullest extent permitted by applicable law. To comply with Indiana law regarding the sale of real estate, the PARTIES agree that INDOT is not transferring title to any real estate by way of this Agreement and that INDOT shall retain legal title of the Transferred Road including without limitation any real property underneath existing pavement and the accompanying right of way, as described in the land records of the COUNTY in which the Transferred Road is located. [REFERENCE TO COUNTY LAND RECORDS TO BE DISCUSSED]
4. Payment. INDOT agrees to make payments to the CITY, COUNTY OR TOWN according to the terms listed below.

a. In lieu of (1) any additional improvements to the Transferred Road; (2) continued maintenance of the Transferred Road other than those described in Section ___ of this Agreement, and/or (3) any costs that may arise pursuant to IC 8-23-21 with respect to an unofficial detour route resulting from any closure of ____ ROAD ____ , INDOT will pay the CITY, COUNTY OR TOWN in an amount not to exceed $X,XXX,XXX.00 (XXXXXXXX DOLLARS).

b. The payment described in Section 4(a) above will be made to the CITY, COUNTY OR TOWN [in __X__ installments] according to the following schedule:

1) First Installment of $X,XXX,XXX.00 (XXXXXXXX DOLLARS) will be transferred to the CITY, COUNTY OR TOWN on or about __DATE__, but in no event before the Date of Transfer [OR INSERT ANOTHER DATE OBTAINED FROM OWNER].

2) Second Installment of $X,XXX,XXX.00 (XXXXXXXX DOLLARS) will be transferred to the CITY, COUNTY OR TOWN on or about __DATE__, but in no event before the Date of Transfer [OR INSERT ANOTHER DATE OBTAINED FROM OWNER].

[INSERT ADDITIONAL INSTALLMENT DESCRIPTIONS AS NEEDED.]
c. The CITY, COUNTY OR TOWN agrees to remit an invoice to INDOT [for each installment] specifically referencing the Agreement on the invoice.

5. Acceptance. The CITY, COUNTY OR TOWN agrees to accept transfer of the Transferred Road on the Date of Transfer, according to the terms of this Agreement.

6. Road Condition. The CITY, COUNTY OR TOWN warrants and represents that it has had sufficient opportunity to inspect the Transferred Road and, agrees to accept the Transferred Road in “AS IS” condition.

7. Change of Transferred Road Status. The CITY, COUNTY OR TOWN agrees to notify INDOT if the CITY, COUNTY OR TOWN intends to make a finding that any portion of the Transferred Road no longer serves a transportation purpose, or if the CITY, COUNTY OR TOWN intends to otherwise cease using any portion of the Transferred Road for road transportation purposes. The CITY, COUNTY OR TOWN shall provide such notice to INDOT at least 90 days before any such final actions.

8. No Cost or Expense to INDOT. Except as provided herein, the CITY, COUNTY OR TOWN agrees that INDOT shall not be responsible for any costs or expenses in any manner related to the Transferred Road after the Date of Transfer.

9. Cooperation/Other Projects. In order to expedite construction of the [PROJECT], the CITY, COUNTY OR TOWN agrees to allow INDOT to close [DESCRIBE ROAD TO BE CLOSED OR OTHERWISE AFFECTED]. The CITY, COUNTY OR TOWN further agrees to indemnify, exculpate, and hold harmless the State of Indiana, INDOT, and their officials and employees from any liability due to loss, damage, injuries, wear and tear, or other causalities of whatever kind, or by whosoever caused, to the person or property of anyone on or off the [PROJECT] arising out of, or resulting from the closure of [ROAD TO BE CLOSED].

[DEPENDING ON WHETHER A CONSTRUCTION PROJECT IS ASSOCIATED WITH THE TRANSFER, OR WILL BE TAKING PLACE NEAR THE TRANSFERRED ROAD, SECTION 9 MAY BE DELETED FROM THE AGREEMENT.]
10. **Limited Access Right of Way.** To avoid confusion, the PARTIES agree that according to applicable law, including Federal Highway Administration (FHWA) laws and regulations, INDOT will retain control over breaks in limited access right of way. However, INDOT agrees in good faith to work with both the CITY, COUNTY OR TOWN and the Federal Highway Administration with respect to any requests to break the limited access right of way line.

[DEPENDING ON THE ROAD BEING TRANSFERRED, SECTION 10 MAY BE DELETED FROM THE AGREEMENT.]

11. **National Truck Network or National Highway System Designation.** The CITY, COUNTY OR TOWN understands that the Transferred Road has been designated by FHWA as a part of the National Truck Network (“NTN”) and/or the National Highway System (“NHS”), and as such, the CITY, COUNTY, or TOWN agrees to comply with the requirements of federal law, including 23 CFR Part 470 and/or 23 CFR Part 658, in maintaining and regulating the Transferred Road.

[DEPENDING ON THE ROAD BEING TRANSFERRED, SECTION 11 MAY BE DELETED FROM THE AGREEMENT.]

12. **Standards**
13. **Use of Funds.** The Parties agree that any payment (and any interest or other revenue derived therefrom by the **CITY, COUNTY or TOWN**) made pursuant to this Agreement shall be used solely and exclusively for the Project and for any improvements to connecting local roads and intersections only to accommodate vehicular traffic load and diversion attributable to construction of the Project. Further, the **CITY COUNTY or TOWN** agrees it will not transfer, pledge, assign, use as collateral or otherwise risk or encumber any funds made as payment (including interest or other revenue earned therefrom) from INDOT to the **CITY, COUNTY or TOWN** for the Project and Transferred Road.

[**OBTAIN INSTRUCTION FROM THE OWNER IF LOCAL SHOULD BE RESTRICTED IN USE OF FUNDS FROM INDOT. IF NOT, DELETE THIS SECTION.**]

[Remainder of Page Intentionally Left Blank]
GENERAL PROVISIONS

1. **Access to Records.** The CITY, COUNTY OR TOWN shall maintain all books, documents, papers, correspondence, accounting records and other evidence pertaining to the cost incurred under this Agreement, and shall make such materials available at their respective offices at all reasonable times during the period of this Agreement and for five (5) years from the date of final payment under the terms of this Agreement, for inspection or audit by INDOT, or its authorized representative, and copies thereof shall be furnished free of charge, if requested by INDOT. The CITY, COUNTY OR TOWN agrees that, upon request by any agency participating in federally-assisted programs with whom the CITY, COUNTY OR TOWN has agreed to or seeks to agree to, INDOT may release or make available to the agency any working papers from an audit performed by INDOT of the CITY, COUNTY OR TOWN in connection with this Agreement, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

2. **Audit.** The CITY, COUNTY OR TOWN acknowledges that it may be required to submit to an audit of funds paid through this Agreement. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by the State and/or in accordance with audit requirements specified elsewhere in this Agreement.

3. **Authority to Bind CITY, COUNTY OR TOWN.** The signatory for the CITY, COUNTY OR TOWN warrants that he/she has the necessary authority to enter into this Agreement. The signatory for the CITY, COUNTY OR TOWN represents that he/she has been duly authorized to execute this Agreement on behalf of the CITY, COUNTY OR TOWN, and has obtained all necessary or applicable approval to make this Agreement fully binding upon the CITY, COUNTY OR TOWN when his/her signature is affixed to this Agreement.

4. **Certification for Federal-Aid Contracts Lobbying Activities.** The CITY, COUNTY OR TOWN certifies, by signing and submitting this Agreement, to the best of its knowledge and belief that the CITY, COUNTY OR TOWN has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

   A. No federal appropriated funds have been paid or will be paid, by or on behalf of the CITY, COUNTY OR TOWN, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal agreements, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension,
continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with such federal agreement, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The CITY, COUNTY OR TOWN also agrees by signing this Agreement that it shall require that the language of this certification concerning lobbying activities be included in all contractor agreements including lower tier subcontracts, which exceed $100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure.

5. Compliance with Laws.

A. The CITY, COUNTY OR TOWN shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute, or the promulgation of regulations thereunder, after execution of this Agreement shall be reviewed by INDOT to determine whether formal modifications are required to the provisions of this Agreement.

B. The CITY, COUNTY OR TOWN and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6, et seq., Indiana Code § 4-2-7, et. seq., the regulations promulgated thereunder, and Executive Order 05-12, dated January 12, 2005. If the CITY, COUNTY OR TOWN is not familiar with these ethical requirements, the CITY, COUNTY OR TOWN should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<http://www.in.gov/ethics/>>. If the CITY, COUNTY OR TOWN or its agents violate any applicable ethical standards, the State may, at its sole discretion, terminate this Agreement immediately upon notice to the CITY, COUNTY OR TOWN. In addition, the
CITY, COUNTY OR TOWN may be subject to penalties under Indiana Code §§ 4-2-6 and 4-2-7, and under any other applicable state or federal laws.

C. The CITY, COUNTY OR TOWN certifies by entering into this Agreement, that neither it nor its principal(s) are presently in arrears in payment of its taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Further, the CITY, COUNTY OR TOWN agrees that any payments in arrears and currently due to the State of Indiana may be withheld from payments due to the CITY, COUNTY OR TOWN. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the CITY, COUNTY OR TOWN becomes current in its payments and has submitted proof of such payment to INDOT.

D. The CITY, COUNTY OR TOWN warrants that it has no current or outstanding criminal, civil, or enforcement actions initiated by the State of Indiana pending, and agrees that it will immediately notify INDOT of any such actions. During the term of such actions, the CITY, COUNTY OR TOWN agrees that INDOT may delay, withhold, or deny work under any supplement, amendment, change order, contract or the like.

E. If a valid dispute exists as to the CITY, COUNTY OR TOWN’S liability or guilt in any action initiated by the State of Indiana or its agencies, and INDOT decides to delay, withhold, or deny work to the CITY, COUNTY OR TOWN, the CITY, COUNTY OR TOWN may request that it be allowed to continue, or receive work, without delay. The CITY, COUNTY OR TOWN must submit, in writing, a request for review to INDOT. A determination by the INDOT shall be final and binding on the Parties and not subject to administrative review. Any payments that the INDOT may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC 5-17-5.

F. The CITY, COUNTY OR TOWN represents and warrants that the CITY, COUNTY OR TOWN shall obtain and maintain all required permits, licenses, registrations and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for INDOT. Failure to do so may be deemed a material breach of this Agreement and grounds for termination and denial of further work with the State.

G. The CITY, COUNTY OR TOWN hereby represents and warrants that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports with the Indiana Secretary of State.
H. As required by IC 5-22-3-7: (1) the CITY, COUNTY OR TOWN and any principals of the CITY, COUNTY OR TOWN certify that (A) the CITY, COUNTY OR TOWN, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations], or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the CITY, COUNTY OR TOWN will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law. (2) The CITY, COUNTY OR TOWN and any principals of the CITY, COUNTY OR TOWN certify that an affiliate or principal of the CITY, COUNTY OR TOWN and any agent acting on behalf of the CITY, COUNTY OR TOWN or on behalf of an affiliate or principal of the CITY, COUNTY OR TOWN (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law.

6. Conflict of Interest

A. As used in this section:

"Immediate family" means the spouse and the un-emancipated children of an individual.

"Interested Party," means:

1. The individual executing the Agreement;

2. An individual who has an interest of three percent (3%) or more of CITY, COUNTY OR TOWN, if CITY, COUNTY OR TOWN is not an individual; or

3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Commission" means the State Ethics Commission.

B. INDOT may cancel this Agreement without recourse by the CITY, COUNTY OR TOWN if any interested Party is an employee of the State of Indiana.

C. INDOT will not exercise its right of cancellation under Section B, above, if the CITY, COUNTY OR TOWN gives INDOT an opinion by the Commission indicating that the existence of this Agreement and the employment by the State of the interested Party does not violate any statute or code relating to ethical conduct of state employees. INDOT may take action, including cancellation of this Agreement, consistent with an opinion of the Commission obtained under this section.
D. The **CITY, COUNTY OR TOWN** has an affirmative obligation under this Agreement to disclose to INDOT when an interested Party is or becomes an employee of INDOT. The obligation under this section extends only to those facts that the **CITY, COUNTY OR TOWN** knows or reasonably could know.

7. **Disadvantaged Business Enterprise Program** Notice is hereby given to the **CITY, COUNTY OR TOWN** that failure to carry out the requirements set forth in 49 CFR Sec. 26.13(b) shall constitute a breach of this Agreement and, after notification, may result in termination of this Agreement or such remedy as INDOT deems appropriate.

The referenced section requires the following policy and disadvantaged business enterprise ("DBE") assurance to be included in all subsequent Agreements between the **CITY, COUNTY OR TOWN** and any contractors.

The **CITY, COUNTY OR TOWN** shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The **CITY, COUNTY OR TOWN** shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted agreements. Failure by the **CITY, COUNTY OR TOWN** to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as INDOT, as the recipient, deems appropriate.

As part of the **CITY, COUNTY OR TOWN**'s equal opportunity affirmative action program, **CITY, COUNTY OR TOWN**, it is required that the **CITY, COUNTY OR TOWN** shall take positive affirmative actions and put forth good faith efforts to solicit proposals or bids from and to utilize disadvantaged business enterprise, vendors or suppliers.

8. **Drug-Free Workplace Certification.** The **CITY, COUNTY OR TOWN** hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace, and that it will give written notice to the Indiana Department of Transportation and the Indiana Department of Administration within ten (10) days after receiving actual notice that an employee of the **CITY, COUNTY OR TOWN** in the State of Indiana has been convicted of a criminal drug violation occurring in the **CITY, COUNTY OR TOWN**'s workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of payments due under this Agreement, termination of this Agreement and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total Agreement amount set forth in this Agreement is in excess of $25,000.00, the **CITY, COUNTY OR TOWN** hereby further agrees that this
Agreement is expressly subject to the terms, conditions and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all agreements with and grants from the State of Indiana in excess of $25,000.00. No award of an agreement shall be made, and no purchase order or agreement, the total amount of which exceeds $25,000.00, shall be valid, unless and until this certification has been fully executed by the CITY, COUNTY OR TOWN and made a part of the agreement as part of the executed contract.

The CITY, COUNTY OR TOWN certifies and agrees that it will provide a drug-free workplace by:

a. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the CITY, COUNTY OR TOWN’S workplace and specifying the actions that will be taken against employees for violations of such prohibition;

b. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the CITY, COUNTY OR TOWN’S policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;

c. Notifying all employees in the statement required by subparagraph (a) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify the CITY, COUNTY OR TOWN of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

d. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (c)(2) above, or otherwise receiving actual notice of such conviction;

e. Within thirty (30) days after receiving notice under subdivision (c)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
f. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (a) through (e) above.

9. **Force Majeure.** Before the Date of Transfer, in the event that either Party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected Party (hereinafter referred to as a Force Majeure Event), the Party who has been so affected shall immediately give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

After the Date of Transfer, a Force Majeure Event may not be declared by either party.

10. **Funding Cancellation Clause.** When the Director of the Office of Management and Budget makes a written determination that funds are not appropriated or otherwise available to support continuation of the performance of this Agreement, this Agreement shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

11. **Governing Laws.** This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and the suit, if any, must be brought in the State of Indiana.

12. **Indemnification.** The CITY, COUNTY OR TOWN agrees to indemnify, hold harmless the State of Indiana, INDOT, and their officials and employees from any liability due to loss, damage, injuries, or other causalities of whatever kind, or by whosoever caused, to the person or property of anyone on or off the PROJECT arising out of, or resulting from the work covered by this Agreement or the work connected therewith, or from the installation, existence, use, maintenance, condition, repairs, alteration or removal of any equipment or material, to the extent of negligence of the CITY, COUNTY OR TOWN, including any claims arising out the Worker's Compensation Act or any other law, ordinance, order or decree. The CITY, COUNTY OR TOWN agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on the State and INDOT in connection herewith in the event that the CITY, COUNTY OR TOWN shall default under the provisions of this Section.
13. **Non-Discrimination**

A. Pursuant to I.C. 22-9-1-10 and the Civil Rights Act of 1964, the **CITY, COUNTY OR TOWN**, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin, ancestry or status as a veteran. Breach of this covenant may be regarded as a material breach of this Agreement. Acceptance of this Agreement also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

B. The **CITY, COUNTY OR TOWN** understands that INDOT is a recipient of federal funds. Pursuant to that understanding, the **CITY, COUNTY OR TOWN** agrees that if the CITY employs fifty (50) or more employees and does at least $50,000.00 worth of business with the State and is not exempt, the **CITY, COUNTY OR TOWN** will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The **CITY, COUNTY OR TOWN** shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of Agreement.

14. **Notice to Parties.** Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to: INDOT’s [insert District Direct] with a copy to the INDOT Legal Department, unless otherwise specifically advised.

15. **Payment.** All payments shall be made according to the terms of this Agreement and in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the **CITY, COUNTY OR TOWN** in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Agreement except as permitted by IC 4-13-2-20.

16. **Penalties, Interest and Attorney's Fees.** INDOT will in good faith perform its required obligations hereunder, and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law in part, IC 5-17-5, I. C. 34-54-8, and I. C. 34-13-1.
17. **Severability.** The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Agreement.

18. **Status of Claims.** The CITY, COUNTY OR TOWN shall be responsible for keeping INDOT currently advised as to the status of any claims made for damages against the CITY, COUNTY OR TOWN resulting from any acts or omission relating to this Agreement and/or services performed under this Agreement.

19. **General.** This Agreement represents the entire understanding between the Parties relating to the subject matter, and supersedes any and all prior oral and/or written communications, understandings or agreements relating to the subject matter. Any amendment or modification to this Agreement must be in writing, reference this Section 19 and be signed by duly authorized representatives of the Parties. Neither this Agreement nor any portions of it may be assigned, licensed or otherwise transferred by the CITY, COUNTY OR TOWN without the prior written consent of INDOT. This Agreement will be binding upon the Parties and their permitted successors or assigns. Failure of either Party to enforce any provision of this Agreement will not constitute or be construed as a waiver of such provision or of the right to enforce such provision. The headings are inserted for convenience only and do not constitute part of this Agreement.

[Remainder of Page Intentionally Left Blank]
Non-Collusion

The undersigned attests, subject to the penalties for perjury, that he/she is the properly authorized representative, agent, member or officer of the CITY, that he/she has not, nor has any other member, employee, representative, agent or officer of the CITY, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

In Witness Whereof, the CITY and the State of Indiana have, through duly authorized representatives, entered into this Agreement. The Parties having read and understand the forgoing terms of this Agreement do by their respective signatures dated below hereby agree to the terms thereof.

CITY, COUNTY OR TOWN

_________________________
By: _______________________

Title: _______________________

_________________________
Date: _______________________

STATE OF INDIANA  )
Before me, a Notary Public in and for said County and State personally appeared

___________________________________________________, [TITLE OF SIGNING OFFICIAL, CITY OR COUNTY], Indiana, who acknowledged the execution of the foregoing road transfer agreement on this __________ day of ______________________, 20___.

__________________________________________
NOTARY PUBLIC (signature)

__________________________________________
NOTARY PUBLIC (printed)

My Commission expires: ______________________________________________________

My County of Residence is: _____________________________________________________
STATE OF INDIANA
Indiana Department of Transportation

Recommended for approval by:

_______________________________  _______________________________
Joseph Gustin, Deputy Commissioner  _______________________________
Indiana Department of Transportation  District Deputy Commissioner
Indiana Department of Transportation

Date: __________________________  Date: __________________________

_______________________________
Bernard Seel, Deputy Commissioner
Indiana Department of Transportation

Date: __________________________

Executed By:

_______________________________
Karl B. Browning, Commissioner
Indiana Department of Transportation
Date: __________________________

STATE OF INDIANA )

)SS:

COUNTY OF: _________________)

Before me, a Notary Public in and for said County and State personally appeared _________________________________, Commissioner of the Indiana Department of Transportation, who acknowledged the execution of the foregoing road transfer agreement on this _________ day of ______________________, 20___.

__________________________________________

NOTARY PUBLIC (signature)

__________________________________________

NOTARY PUBLIC (printed)

My Commission expires: ___________________________________________________________________

My County of Residence is: ___________________________________________________________________
STATE OF INDIANA
Office of Management and Budget

_____________________________________
Christopher A. Ruhl, Director

Date: __________________________

STATE OF INDIANA
Department of Administration

_____________________________________
Carrie Henderson, Commissioner

Date: __________________________

Approved as to Form and Legality:

_____________________________________(FOR)
Steve Carter
Attorney General of Indiana

Date Approved: _____________________
This instrument was prepared for the Indiana Department of Transportation, 100 N. Senate Avenue, Indianapolis, IN 46060 by the undersigned attorney who affirms, under penalties of perjury, that all Social Security numbers have been redacted from the forgoing, and all attachments thereto, except as allowed by law.

____________________________________

________________________, INDOT Staff Attorney

Attorney No. __________
Wisconsin

Jurisdictional Transfer

Of

United States Highway 12 In Sauk County

Project ID 1674-00-74

Wisconsin Department of Transportation (WisDOT)

Sauk County (Sauk County)

This MEMORANDUM OF AGREEMENT AND JURISDICTIONAL TRANSFER OF UNITED STATES HIGHWAY 12 ("USH 12 JT MOA") is entered into on this ____________ day of ______________, 2008 ("Agreement Date") by and between the Wisconsin Department of Transportation ("WisDOT") and Sauk County Wisconsin (Sauk County).

The “Effective Date” of the actual jurisdictional transfer to Sauk County on the terms and conditions provided herein is the date the New USH 12 Bypass Route is opened to public travel between the intersection of Terrytown Road and existing USH 12 on the new alignment to I 90/94 and the date the improvement of existing USH 12 as provided herein is completed, whichever is later.

Purpose

The purpose of this USH 12 JT MOA is to define the roles and responsibilities of WisDOT and Sauk County and implement the transfer of jurisdiction of a segment of highway presently designated as USH 12 from WisDOT to Sauk County from a point in the vicinity of Fern Dell Road/Moon Road in the Town of Delton near the junction of USH 12 and I 90/94 to a point in the vicinity of the intersection of Terrytown Road and USH 12 in the Town of Baraboo, as more particularly described in Attachment A hereto, while preserving and enhancing the public interests of WisDOT, Sauk County, the United States, and the Ho-Chunk Nation.
**Background**

USH 12 extends from Detroit, Michigan to Aberdeen, Washington. It is part of the National Highway System designated in 23 USC 103(b) and 23 CFR 470.107(b) consisting of interconnected urban and rural principal arterials and highways (including toll facilities) which serve major population centers, international border crossings, ports, airports, public transportation facilities, other intermodal transportation facilities and other major travel destinations; meet national defense requirements; and serve interstate and interregional travel. Within the State of Wisconsin, United States Highway 12 (USH 12) extends from the Hudson Bridge – Minnesota State Line, St. Croix County to the Illinois State Line, South of Genoa City, in Walworth County, Wisconsin, including the segment to be jurisdictionally transferred upon completion and opening of the New USH 12 Bypass Route to public travel between the intersection of Terrytown Road and present USH 12 to I 90/94.

The segment of USH 12 to be transferred is also designated as an Indian Reservation Road for which federal funds are available under 23 USC 101(12), 144, 202, 203, 204 and 25 CFR Part 170. See [Attachment B](#). In brief, "Indian Reservation Roads" are public roads that provide access to an Indian reservation or Indian trust land. The general rule for designation of "Indian Reservation Roads" outside of Indian reservation/trust land boundaries is to follow the State/County or other local road that provides access to the Indian property out to its intersection with a road functionally classified as a collector or higher classification. See 23 CFR 635.117(e).

Designation as an “Indian Reservation Road” is a federal funding eligibility determination with discretion exercised by the Ho-Chunk and the Bureau of Indian Affairs (BIA) through the Federal Highway Administration (FHWA). When the existing USH 12 segment is jurisdictionally transferred to Sauk County and designated as a County Trunk Highway, the segment of former USH 12 transferred will remain an eligible “Indian Reservation Road” as it will continue to provide service to the Ho-Chunk trust lands directly adjacent to the segment transferred to Sauk County. In brief, "Indian Reservation Roads" is a federal funding category and does not require any sort of jurisdictional transfer of existing USH 12 to the Ho-Chunk Nation or BIA.

The Bureau of Indian Affairs of the United States Department of the Interior has authority to provide supplemental funding for construction and maintenance of Indian Reservation Roads if adequate funding is not otherwise available from FHWA. 25 USC 318a
The construction of the New USH 12 Bypass Route and improvement of the existing USH 12 are both subject to the federal and state environmental analyses and commitments made in the federal and state Environmental Impact Statement Record of Decision under Wis. Stat. 1.11 and 42 USC 4331, including the “MEMORANDUM OF AGREEMENT CONCERNING US HIGHWAY 12 BETWEEN MIDDLETON AND LAKE DELTON, WISCONSIN” that is attached hereto as Attachment C and the “IMPLEMENTATION AGREEMENT BETWEEN [WISDOT AND SAUK COUNTY] FOR THE [ABOVE MOA] FOR THE WISDOT BRNRL [Baraboo Range National Natural Landmark] PROTECTION FUND AND SAUK COUNTY BRNRL LAND PROTECTION PLAN.”

WisDOT designated existing USH 12 as a controlled access highway under Wis. Stat. 84.25 and there is a “Controlled Access Plan,” controlled access project 1670-1-29, adopted and approved by WisDOT on January 10, 1994 for the segment to be jurisdictionally transferred. Attachment D. There is also a Transportation Project Plat No. 1674-00-24, approved by WisDOT August 10, 2006 that reflects the improvements and further access controls and other restrictions that WisDOT will effect prior to the jurisdictional transfer to Sauk County. Attachment E.

Sauk County, local governments along USH 12 and the Ho-Chunk Nation have engaged in an extensive, continuing, cooperative and comprehensive planning process for the USH 12 corridor area, including a “Highway 12 Corridor Growth Management Plan,” including a “Tourist Entertainment Corridor Vision” relating to the existing USH 12 corridor adjacent to and including the Ho-Chunk Casino, Hotel and Convention Center:

http://www.co.sauk.wi.us/data/hwy12/index.html

http://www.ho-chunk.com/

http://www.ho-chunknation.com/

Sauk County is located in south central Wisconsin consisting of about 838 square miles of land with a population of approximately 58,000. The Ho-Chunk Nation owns land in Sauk County north of the City of Baraboo and south of Interstate Highway 90/94 generally along the U.S. Highway 12 corridor, primarily in the Town of Delton. The Ho-Chunk Nation operates a casino on a small segment of trust land and resort located adjacent to USH 12 in Sauk County. The Ho-Chunk Nation has approximately 6,000 enrolled members, but a scattered land base consisting of approximately about 2,100 acres of tribal trust land throughout eleven Wisconsin Counties. About 500 tribal members live in Sauk County. The Nation’s seat of government is in Black River Falls, where much of the Nation’s land is also located. Due to the unusual geography of the Ho-Chunk Nation, and the importance of the Casino, Hotel and Convention Center to its welfare, it is important for it to maintain reliable and effective methods of transportation.
**Legal Basis for Memorandum of Agreement and Jurisdictional Transfer**

**Sauk County:** The New USH 12 Bypass Route constitutes a change in the State Trunk Highway System via a new location and the distance along the deviation from the existing location exceeds 2 1/2 miles. As a result, under Wis. Stat. 84.02(3), the change is not effective until the change has been referred to and approved by the Sauk County Board, the county in which this change is situated.

**WisDOT:** The Wisconsin Legislature has approved WisDOT construction of the New USH 12 Bypass Route as part of a larger major project by enacting Wis. Stat. 84.013(3)(ac) to read as follows:

“84.013(3) The department [WisDOT] may proceed with construction of the following major highway projects:

....
(ac) USH 12 extending approximately 11.6 miles from the junction of USH 12 and I 90/94 to approximately 0.75 miles south of Ski Hi Road in Sauk County”

*The first phase of the project will extend from I 90/94 on new location to a temporary connection at the intersection of Terrytown Road and existing USH 12.*

**WisDOT and Sauk County**

Wis. Stat. 84.02(8) authorizes WisDOT to enter into a jurisdictional transfer agreement with Sauk County1 to delete existing USH 12 and add new USH 12 to the state trunk highway system. WisDOT and the Sauk County must approve this Memorandum of Agreement and Jurisdictional Transfer of USH 12 to Sauk County before any transfer becomes effective. The statute provides that a jurisdictional transfer agreement may contain any terms and conditions that WisDOT and Sauk County may deem necessary regarding maintenance or rehabilitation of the existing USH 12 segment to be transferred.

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1 This statute does not authorize a jurisdictional transfer agreement with a federally recognized Indian tribe, including the Ho-Chunk Nation.
WisDOT designated USH 12 as a controlled access highway many years ago under Wis. Stat. 84.25. The statute allows WisDOT to control or deny access to the highway and to close existing direct access points to the highway when it deems it is necessary or desirable for purposes of safety and preservation of the function of the highway. The statute reads in part:

84.25(4) “Connections by other highways. After the establishment of any controlled-access highway, no street or highway or private driveway, shall be opened into or connected with any controlled-access highway without the previous consent and approval of the department [WisDOT] in writing, which shall be given only if the public interest shall be served thereby and shall specify the terms and conditions on which such consent and approval is given.

84.25(5) “Use of highway. No person shall have any right of entrance upon or departure from or travel across any controlled-access highway, or to or from abutting lands except at places designated and provided for such purposes, and on such terms and conditions as may be specified from time to time by the department (WisDOT).”

84.25(6) “Abutting owners. After the designation of a controlled-access highway, the owners or occupants of abutting lands shall have no right or easement of access, by reason of the fact that their property abuts on the controlled-access highway or for other reason, except only the controlled right of access and of light, air or view.”

Sauk County has identical authority under Wis. Stat. 83.027 and may adopt and implement the existing WisDOT Controlled Access Plan and otherwise control access as follows:

83.027(4) “Connections with other highways. After the establishment of any controlled-access highway, no street or highway or private driveway, shall be opened into or connected with any controlled-access highway without the previous consent and approval of the county board (Sauk County), in writing, which shall be given only if the public interest shall be served thereby and shall specify the terms and conditions on which such consent and approval is given.

83.027(5) “Use of highway. No person shall have any right of entrance upon or departure from or travel across any controlled-access highway, or to or from abutting lands, except at places designated and provided for such purposes, and on such terms and conditions as may be specified from time to time by the county board (Sauk County).
83.027(6) “Abutting owners. After the designation of a controlled-access highway, the owners or occupants of abutting lands shall have no right or easement of access, by reason of the fact that their property abuts on the controlled-access highway or for other reason, except only the controlled right of access and of light, air or view.”

WisDOT/Sauk County/and the United States: The previous Environmental Impact Statement(s) and Record(s) of Decision contemplated construction of a New USH 12 Bypass Route with restrictions on design and use of federal and state funds for improvement of existing USH 12. These and other restrictions including the “MEMORANDUM OF AGREEMENT CONCERNING US HIGHWAY 12 BETWEEN MIDDLETON AND LAKE DELTON, WISCONSIN” are binding on WisDOT/Sauk County and the United States and must be and are hereby incorporated by reference in their entirety in this “Memorandum of Agreement and Jurisdictional Transfer” and remain in full force and effect.

Wis. Stats. 84.25(9) and 83.027(9) authorize WisDOT, Sauk County and federal agencies, including the BIA and FHWA, to enter into cooperative agreements for the purpose of effective control of traffic entering upon or leaving intensively traveled highways, including existing USH 12 and the New USH 12 Bypass Route and the segment jurisdictionally transferred to Sauk County that will become a County Trunk Highway in order to advance public safety, convenience and general welfare as follows:

84.25(9) “Cooperative agreements. To facilitate the purposes of this section, the department and the governing bodies of a city, county, town or village are authorized to enter into agreements with each other or with the federal government respecting the financing, planning, establishment, improvement, maintenance, use, regulation or vacation of controlled-access highways or other public ways in their respective jurisdictions.”

83.027(9) “Cooperative agreements. To facilitate the purposes of this section, the county board and the governing bodies of a city, town or village are authorized to enter into agreements with each other or with the federal government respecting the financing, planning, establishment, improvement, maintenance, use, regulation or vacation of controlled-access highways or other public ways in their respective jurisdictions.”
WisDOT/Sauk County/and the Ho-Chunk Nation: Pursuant to federal law, 23 USC 135, WisDOT has developed a statewide transportation plan and a statewide transportation improvement program for all areas of Wisconsin including this portion of Sauk County and lands held by the Ho-Chunk Nation. This continuing, cooperative, and comprehensive planning and programming process is designed to address the transportation concerns and plans of Indian tribal governments, including the Ho-Chunk Nation, and Federal land management agencies that have jurisdiction over land within the boundaries of Wisconsin, including the Secretary of Interior and BIA. The WisDOT statewide plans and program likewise address and are coordinated with the transportation plans, transportation improvement programs, and planning activities carried out by and in consultation with local governments, including Sauk County.

Wis. Stat. 66.0301(2) and (3) authorize WisDOT and Sauk County to enter into a cooperative agreement to accomplish their mutual interests as follows:

66.0301(2) “In addition to the provisions of any other statutes specifically authorizing cooperation between municipalities, unless those statutes specifically exclude action under this section, any municipality [including WisDOT] may contract with other municipalities and with federally recognized Indian tribes and bands in this state, for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law. If municipal or tribal parties to a contract have varying powers or duties under the law, each may act under the contract to the extent of its lawful powers and duties. A contract under this subsection may bind the contracting parties for the length of time specified in the contract. This section shall be interpreted liberally in favor of cooperative action between municipalities and between municipalities and Indian tribes and bands in this state.”

66.0301(3) “Any contract under sub. (2) may provide a plan for administration of the function or project, which may include but is not limited to provisions as to proration of the expenses involved, deposit and disbursement of funds appropriated, submission and approval of budgets, creation of a commission, selection and removal of commissioners, and formation and letting of contracts.” (Emphasis added.)

2 “Municipality” is defined to include WisDOT and Sauk County in Wis. Stat. 66.0301(1)(a).
**Funding**

WisDOT and FHWA provide the funding for the construction of the New USH 12 Bypass Route.

WisDOT and FHWA provide funding for the improvement of existing USH 12 prior to its jurisdictional transfer to Sauk County. Entrances to existing USH 12 that are affected by the project and that are not to be closed or moved for safety and design reasons may be restored as part of the improvement project at WisDOT expense, but thereafter the owner of the premises that are served must maintain those entrances that are allowed to remain. Wis. Stat. 86.05

The Ho-Chunk Nation, Sauk County, and BIA may provide funding for any otherwise non-participating items or improvements that are desired or coordinated with and included in the WisDOT improvement contracts for existing USH 12 utilizing funds available to them including Indian Reservation Roads funds. It may also be possible to include such non-participating items or improvements through a subsequent change order or by including the item in the future New USH 12 Bypass Route contract documents.

Following the jurisdictional transfer of existing USH 12 to Sauk County, Sauk County will be responsible for maintenance, operational management, including control of access, and any required repairs or reconstruction of the highway as part of its County Trunk Highway System.

WisDOT and its predecessors and others acting as its agent have acquired the real property on which this segment of existing USH 12 is located in the name of the State of Wisconsin or held in trust for the State of Wisconsin. The real property interests include purchased rights of access to existing USH 12. Normally real property that has been acquired for highway use may be jurisdictionally transferred to another highway maintaining authority without actually conveying the real property interest, as there is no change in its use or money exchanged. For convenience, WisDOT will provide real property records, access authorizations, and utility and other permits, and related documents to Sauk County to carry out its responsibilities upon and in preparation for the jurisdictional transfer but WisDOT will not convey any real property to Sauk County without a specific request from Sauk County and evaluation by WisDOT of the purpose of the conveyance and any requirements for payment or imposition of restrictions on the transfer.
Recitations

WHEREAS, WisDOT and Sauk County desire to comply with all previous commitments and requirements in the environmental documents, including environmental impact statements and records of decision regarding the existing USH 12 improvement project and the New USH 12 Bypass Route; and

WHEREAS, WisDOT and Sauk County desire to advance their continuing, cooperative, and comprehensive transportation and land use planning efforts to their and the public’s mutual benefit; and

WHEREAS, Sauk County desires to approve the change of USH 12 to its new location and accept the jurisdictional transfer of existing USH 12; and

WHEREAS, the WisDOT and Sauk County wish to advance and protect adequate, reliable and effective transportation and access to Ho-Chunk Casino, Hotel and Convention Center and other future developments for the welfare of the Ho-Chunk Nation and its members and for the citizens and residents of Sauk County and travelers; and

WHEREAS, WisDOT and Sauk County desire to better define the roles and responsibilities and implement the transfer of jurisdiction of a segment of highway presently designated as USH 12 from WisDOT to Sauk County from a point in the vicinity of Fern Dell Road in the Town of Delton near the junction of USH 12 and I 90/94 to a point in the vicinity of the intersection of Terrytown Road and existing USH 12 in the Town of Baraboo, while preserving and enhancing the public interests of WisDOT, Sauk County, the United States, and the Ho-Chunk Nation.

NOW, THEREFORE, WisDOT and Sauk County agree as follows:

(1) WisDOT Agrees:

A. To improve existing USH 12 in accordance with existing preliminary plans and to cooperate in making adjustments in good faith to those plans as requested or funded, or both, in whole or in part by Sauk County and the Ho-Chunk Nation., including the additional work at
the Shady Lane intersection as requested at the December 2007 meeting with the Sauk County Highway Committee and Ho-Chunk Nation, consisting of added left turn lanes on US 12 with roughly 200 feet of storage for vehicles waiting to turn left onto Shady Lane, and added short right turn lanes on Shady Lane to help improve traffic flow, all within the current right-of-way limits established for the project.

B. To construct the New USH 12 Bypass Route in accordance with existing preliminary plans and to cooperate in making adjustments in good faith to those plans as requested or funded, or both, in whole or in part by Sauk County and the Ho-Chunk Nation.

C. To transfer jurisdiction of existing USH 12 as described to Sauk County upon completion of the New USH 12 Bypass Route and completion of the improvement of existing USH 12, whichever is later.

D. To retain title and such ownership responsibility and liability as may exist, if any, for environmental response and restoration for any land, surface water, groundwater, or other natural resources within the jurisdictionally transferred existing USH 12, as required by any applicable Federal or state environmental law, if any. This responsibility only applies to contamination existing as of the effective date of the jurisdictional transfer as a result of WisDOT or its representative(s) or contractor(s) activities and not to any contamination or spill resulting from the actions of others, or subsequent occurrences after the effective date of the jurisdictional transfer.

E. To provide relevant real property records and permits and associated information to Sauk County to facilitate its assumption of jurisdiction over the existing USH 12 segment transferred.

F. To provide relevant WisDOT environmental records, associated information, and construction plans and specifications the Ho-Chunk Nation may desire.

G. To cooperate in good faith with the Ho-Chunk Nation and Sauk County to include any otherwise non-participating enhancements in its construction and improvement contracts that Sauk County or the Ho-Chunk Nation may desire, subject to the availability and eligibility for funding provided by Sauk County or the Ho-Chunk Nation, or both.

H. To coordinate with Sauk County and the Ho-Chunk Nation prior to and after construction activities that may affect their facilities, including the coordination of any proposed location of Ho-Chunk owned or controlled utilities within existing USH 12 or the NEW USH 12 Bypass Route, which requests for location shall not be unreasonably denied.
I. To invite Sauk County and the Ho-Chunk Nation to attend WisDOT sponsored prebid meetings and subsequent WisDOT sponsored preconstruction meetings in order to provide operating requirements and restrictions information and coordination.

(2) Sauk County Agrees:

A. **And does hereby approve** the relocation of existing USH 12 to the New USH 12 Bypass location pursuant to Wis. Stat. 84.02(3), to take effect upon the completion of the improvement of existing USH 12 and the opening to the New USH 12 Bypass Route to public travel.

B. **And does hereby approve** the jurisdictional transfer of existing USH 12 under the terms and conditions and on the “Effective Date” of this Memorandum of Agreement and Jurisdictional Transfer pursuant to Wis. Stat. 84.02(8)

C. To maintain access control pursuant to Sauk County’s authority under Wis. Stat. 83.027 on existing USH 12 after it is jurisdictionally transferred to Sauk County in accordance with WisDOT’s “Controlled Access Plan,” controlled access project 1670-1-29, adopted and approved by WisDOT on January 10, 1994 for the segment to be jurisdictionally transferred, and the Transportation Project Plat No. 1674-00-24, approved by WisDOT August 10, 2006 that reflects the improvements and further access controls and other restrictions that WisDOT will effect prior to the jurisdictional transfer to Sauk County. This includes existing permit or authorization or restrictions in deeds, subdivision plats or other restrictions of record regarding access to or from or regarding limitations on the use of entrances to the highway from adjacent property.

D. To maintain outdoor advertising control to the same extent or greater than WisDOT controls along existing USH 12 under Wis. Stat. 84.30 and its implementing administrative rules or other restrictions of record on adjacent property, including any scenic easements. This provision does not limit the ability of Sauk County to implement more stringent controls that those exercised by WisDOT.

E. Maintain existing adequate and reliable highway access to the Ho-Chunk properties and facilities to the same or greater extent as may exist upon the “Effective Date” of the jurisdictional transfer, unless otherwise modified by mutual agreement of the Ho-Chunk and Sauk County as future changes may require for safety and transportation reasons.
F. Cooperate with the Ho-Chunk Nation in good faith to provide adequate, effective and reliable transportation, access and highway service to its facilities and properties adjacent to existing USH 12 following the jurisdictional transfer, subject to the availability of funding and any cost sharing agreements that may be negotiated.

G. To seek and obtain WisDOT concurrence and approval of any future sales or conveyances, lease or impairment of property held in the name of the State of Wisconsin, the Wisconsin Department of Transportation or its predecessors or held in trust for any of the foregoing.

(4) WisDOT and Sauk County Agree:

To comply with all previous commitments and requirements in the environmental documents, including environmental impact statements and records of decision regarding the existing USH 12 improvement project and the New USH 12 Bypass Route. In particular, all parties agree to abide by the existing environmental documents and restrictions that prohibit expansion of existing USH 12 beyond 4 lanes, with the exception of turn lanes for operational safety purposes.

Termination

This Memorandum of Agreement and Jurisdictional Transfer terminates on mutual agreement of WisDOT and Sauk County. However, the responsibility for approval of the New USH 12 Bypass locations, acceptance of the jurisdictional transfer as provided herein, and agreement to abide by all previous environmental commitments and restrictions shall survive and not be affected by any other mutual termination of this MOA.

Delegation

WisDOT and Sauk County may, in writing, identify a single contact person and delegate their authority under this Memorandum of Agreement and Jurisdictional Transfer to such officers and employees, as they may deem appropriate, in accordance with applicable laws and regulations.


**Dispute Resolution**

WisDOT and Sauk County shall make reasonable efforts to informally resolve disputes, if any, through their respective lines of authority or chains of command in order to resolve issues at the lowest possible level. When the parties cannot resolve a dispute, they shall present the dispute, in writing, to the WisDOT Southwest Region Director (currently Joseph Olson), the Sauk County Highway Commissioner (currently Steve Muchow) for resolution. Failure of any party to honor this USH 12 JT MOA does not relieve the other parties of their obligations to each other.

**Availability of Funds**

The terms of this Memorandum of Agreement and Jurisdictional Transfer are subject and limited by the availability of appropriated County, State and Federal funds as to time, purpose, and amount, and the laws of the United States and Wisconsin. Nothing set forth herein shall require any party to violate the Anti-Deficiency Act, 31 U.S.C. §§ 1341, et seq. or any comparable Wisconsin law.

**Amendments**

This Memorandum of Agreement and Jurisdictional Transfer may be amended at any time with the written consent of all the signatories indicated below, or by the fully authorized and identified successors in interest to the parties to this USH 12 JT MOA. Each amendment shall be sequentially numbered and dated.

**Agreement Date and Effective Date**

The named parties enter into this Memorandum of Agreement and Jurisdictional Transfer on the Agreement Date entered above when executed.

It is in effect and binding upon its ratification and approval by the Sauk County Board according to its legislative procedures. No further ratification is required for WisDOT’s approval to be in effect and binding beyond the signature below and WisDOT receipt of the official ratification and approval from Sauk County.
The “Effective Date” of the actual jurisdictional transfer of existing USH 12 to Sauk County on the terms and conditions provided herein is the date the New USH 12 Bypass Route is opened to public travel between the intersection of Terrytown Road and existing USH 12 on the new alignment to I 90/94 and the improvement of existing USH 12 as provided herein is completed, whichever is later.

Wisconsin Department of Transportation

_______________________________________
Joseph Olson, Southwest Region Director
Department of Transportation

Date: _________________________________

Sauk County

___________________________________________
Steve Muchow, Sauk County Highway Commissioner

Date: _________________________________
ATTACHMENTS

Attachment A: End Points of Jurisdictional Transfer at about Fern Dell Road/Moon Road in the Town of Delton near the junction of USH 12 and I 90/94 to a point in the vicinity of the intersection of Terrytown Road and existing USH 12 in the Town of Baraboo.

Attachment B: "Indian Reservation Roads" inventory of public roads that provide access to an Indian reservation or Indian trust land, including USH 12 in Sauk County received from Bureau of Indian Affairs March 5, 2007. [Double Click on Below.]

Attachment C: “MEMORANDUM OF AGREEMENT CONCERNING US HIGHWAY 12 BETWEEN MIDDLETON AND LAKE DELTON, WISCONSIN” that is part of Record of Decision. [Double Click on Below.]

Attachment D: WisDOT" Controlled Access Plan," controlled access project 1670-1-29, adopted and approved by WisDOT on January 10, 1994 for the segment to be jurisdictionally transferred. [Previously provided separately.]

Attachment E: Transportation Project Plat No. 1674-00-24, approved by WisDOT August 10, 2006 that reflects the improvements and further access controls and other restrictions that WisDOT will effect prior to the jurisdictional transfer to Sauk County. [Previously provided separately.]
TENNESSEE

PROPOSAL
OF THE DEPARTMENT OF TRANSPORTATION OF THE STATE OF TENNESSEE

TO THE COUNTY OF WASHINGTON, TENNESSEE:

The DEPARTMENT OF TRANSPORTATION of the State of Tennessee, hereinafter "DEPARTMENT", proposes to construct a project in the COUNTY of WASHINGTON, hereinafter "COUNTY", designated as State Project Number 90002-1252-54, that is described as SR-34 from SR-36 to SR-381, and the COUNTY agrees to cooperate with the DEPARTMENT as set forth in this proposal, so that the general highway program may be carried out in accordance with the intent of the General Assembly of the State.

Accordingly, the parties agree as follows:

1. That in the event any civil actions in inverse condemnation or for damages are instituted by reason of the DEPARTMENT, or its contractor, going upon the highway right-of-way and easements, and constructing said project in accordance with the plans and as necessary to make the completed project functional, the COUNTY will notify in writing the Attorney General of the State, whose address is 425 Fifth Avenue North, Nashville, Tennessee 37243, of the institution of each civil action, the complaint and all subsequent pleadings, within ten (10)
days after the service of each of the same, under penalty of defending such actions and paying any judgments which result therefrom at its own expense.

2. The COUNTY will close or otherwise modify any of its roads or other public ways if indicated on the project plans, as provided by law.

3. The COUNTY will transfer or cause to be transferred to the DEPARTMENT without cost to it, all land owned by the COUNTY or by any of its instrumentalities as required for right-of-way or easement purposes, provided such land is being used or dedicated for road or other public way purposes.

4. Where privately, publicly or cooperatively owned utility lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including publicly owned facilities such as fire and police signal systems and street lighting systems are located within the right-of-way of any road or other public way owned by the COUNTY, or any of its instrumentalities, the COUNTY agrees that it will take action necessary to require the removal or adjustment of any of the above described facilities as would conflict with the construction of the project. But the foregoing may not be a duty of the COUNTY since it shall become operative only after the DEPARTMENT has been unsuccessful in its efforts to provide for said removals or adjustments for the benefit of the COUNTY.

The foregoing does not apply to those utility facilities which are owned by the COUNTY or one of its instrumentalities, it being understood that the COUNTY has the duty to relocate or adjust such facilities, if required, provided the COUNTY is notified to do so by the DEPARTMENT with detailed advice as to this duty of the COUNTY.
5. The COUNTY will maintain any frontage road to be constructed as part of the project.

6. After the project is completed and open to traffic, to the COUNTY will accept for jurisdiction and maintenance such parts of any existing DEPARTMENT highway to be replaced by the project.

7. The COUNTY will make no changes or alter any segment of a road on its road system that lies within the limits of the right-of-way acquired for any interchange to be constructed as part of the project and will not permit the installation or relocation of any utility facilities within the right-of-way of any such a segment of one of its roads without first obtaining the approval of the DEPARTMENT.

8. No provision hereof shall be construed as changing the maintenance responsibility of the COUNTY for such part of the project as may presently be on its highway, street, road or bridge system.

9. It is understood and agreed between the DEPARTMENT and the COUNTY that all traffic control signs for the control of traffic on a street under the jurisdiction of the COUNTY and located within the DEPARTMENT’s right-of-way shall be maintained and replaced by the COUNTY.

10. When traffic control devices for the direction or warning of traffic, lighting of roadways or signing, or any of them, which are operated or function by the use of electric current are constructed or installed as part of the project, they will be furnished with electricity and maintained by the COUNTY.

11. If, as a result of acquisition and use of right-of-way for the project, any building improvements become in violation of a COUNTY setback/building line requirement, the
COUNTY agrees to waive enforcement of the COUNTY setback/building line requirement and take other proper governmental action as necessary to accomplish such waiver.

12. The COUNTY will prohibit encroachments of any kind upon the right-of-way and easements for the project.

13. The COUNTY will prohibit the servicing of motor vehicles within the right-of-way and easements for the project.

14. The COUNTY will obtain the approval of the DEPARTMENT before authorizing parking on the right-of-way and easements for the project and before installing any device for the purpose of regulating the movement of traffic.

15. The DEPARTMENT will maintain the completed project if it is classified as full access control (i.e., a project which has no intersecting streets at grade), and it will maintain the pavement from curb to curb where curbs exist or the full width of the roadway where no curbs exist on non-access control projects. The COUNTY agrees to maintain other parts of non-access control projects.

16. If a sidewalk is constructed as a component of this project, the COUNTY shall be responsible for maintenance of the sidewalk and shall assume all liability for third-party claims for damages arising from its use of the sidewalk or premises beyond the DEPARTMENT'S maintenance responsibilities as set forth in Section 15 of this Proposal.

17. When said project is completed, the COUNTY thereafter will not permit any additional median crossovers, the cutting of the pavement, curbs, gutters and sidewalks, by any person, firm, corporation or governmental agency, without first obtaining the approval of the DEPARTMENT.
18. The DEPARTMENT will acquire the right-of-way and easements, construct the project and defend any inverse condemnation or damage civil actions of which the Attorney General has received the notice and pleadings provided for herein.

19. The project plans hereinbefore identified by number and description are incorporated herein by reference and shall be considered a part of this proposal, including any revisions or amendments thereto, provided a copy of each is furnished the COUNTY.

20. The acceptance of this proposal shall be evidenced by the passage of an ordinance, or by other proper governmental action, which shall incorporate this proposal verbatim, or by reference thereto.
IN WITNESS WHEREOF, the DEPARTMENT has caused this proposal to be executed by its duly authorized official on this ____ day of _____________, 20__.

THE COUNTY OF WASHINGTON

BY: ___________________________ DATE: ___________________________
    County Mayor

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION

BY: ___________________________ DATE: ___________________________
    Gerald F. Nicely
    Commissioner

APPROVED AS TO FORM AND LEGALITY:
BY: ____________________________   DATE: ____________________________
Attorney Department of Transportation
INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT, made this ______ day of ____________, 200__, by and between the State of Colorado for the use and benefit of THE COLORADO DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the “State” or “CDOT”, and the CITY OF MONTROSE, COLORADO, 433 South 1st Street, Montrose, Colorado 81401, CDOT Vendor #: 2000035, hereinafter referred to as the “Local Agency” or the “City”, the State and the City shall be collectively referred to as the “Parties.”

RECITALS

WHEREAS, the Colorado Transportation Commission passed Resolution Number TC-1764, dated August 20, 2009 and the Montrose City Council passed Resolution No. 2009-19, dated July 2, 2009, this agreement memorializes the exchange of a portion of US 50 (a state highway, also known as Main Street) with a portion of San Juan Avenue (a City road, also known as the San Juan Bypass), hereinafter referred to as the “Exchange”; and

WHEREAS, this Agreement is executed by the State under authority of Sections §§ 29-1-203, 43-1-106, 43-1-110, 43-1-114, 43-1-201 et seq., 43-2-102, 43-2-106, and 43-2-144 C.R.S., as amended; and

WHEREAS, this Agreement is executed by the City under the authority of an appropriate resolution duly passed and adopted by the authorized representatives of the City, which also establishes the authority under which the City enters into this Agreement and is attached hereto as Exhibit E; and

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

NOW, THEREFORE, it is hereby agreed that:

The Exchange under this Agreement shall consist of CDOT transferring the portion of US 50 from milepost 92.841 to milepost 93.558 to the City (hereinafter referred to as “Main Street),
and in exchange the City shall transfer the San Juan Bypass located between and extending from US 50 milepost 91.878 to milepost 93.558 (hereinafter referred to as “San Juan Bypass”), to CDOT within Montrose, Colorado, as described in the terms of Operations, Utilities and ROW of Exhibit A and the limits described in Exhibits A and B.

I. COMMITMENTS ON THE PART OF THE STATE

1. The Transportation Commission has passed resolution TC-1764 (Exhibit D) authorizing the abandonment of Main Street to the City, and upon execution of this Agreement, completion of a quit claim deed, and the filing of the Exchange in Montrose County, the State shall transfer Main Street to the City and accept the transfer from the City of the San Juan Bypass as described in the terms of Operations, Utilities and ROW of Exhibit A and the limits described in Exhibits A and B.

2. Upon completion of the Exchange, CDOT shall assume ownership of the San Juan Bypass and designate this roadway as part of US 50 and assume all corresponding maintenance responsibilities.

II. COMMITMENTS ON THE PART OF THE CITY OF MONTROSE

3. The City has passed Resolution No. 2009-19 (Exhibit E) authorizing the transfer of the San Juan Bypass to CDOT, and upon execution of this Agreement, completion of a special warranty deed, and the filing of the Exchange in Montrose County, the City shall transfer the San Juan Bypass to the State and accept the transfer from the State of Main Street as described in the terms of Operations, Utilities and ROW of Exhibit A and the limits described in Exhibits A and B.

4. Upon completion of the Exchange, the City shall assume ownership of Main Street and designate the section of roadway as a City street and assume all corresponding maintenance responsibilities, including all federal requirements.

V. REPRESENTATIVES AND NOTICE

The State will provide liaison with the City through the State's Regional Transportation Director, CDOT Region 3, 222 S. 6th Street, Grand Junction, Colorado 81501 (the “Director”). The Director will be responsible for coordinating the State's activities under this Agreement. All
communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State’s Transportation Region 3 and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to State:  
Tim Woodmansee  
CDOT Region 3  
Right of Way Manager  
222 S. 6th Street, Room 317  
Montrose, Colorado 81501  
(970) 683-6231

If to the City:  
Scott L. Shine  
Community Development Department  
City of Montrose  
P.O. Box 790  
Montrose, Colorado 81402-0790  
(970) 240-1427

VI. GENERAL PROVISIONS

1. This agreement is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in writing.

2. Each party, to the extent authorized by law, shall be responsible for all claims, damages, liability and court awards including costs, expenses and attorney fees incurred as a result of any act or omission by such party or its employees, agents, subcontractors, or assignees pursuant to the terms of this agreement.

3. This contract shall inure to the benefit of and be binding upon the parties, their successors and assigns.

4. To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.

5. It is expressly understood and agreed that the City of Montrose, or their employees, contractors, consultants, or assigns shall not in any respect be deemed an agent of the State.
6. It is expressly understood and agreed that enforcement of the terms and conditions of this contract, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this contract shall give or allow any such claim or right of action by any other or third person on such contract. Further, it is the express intention of the Parties that any person other than parties hereto that may receive services or benefits under this contract shall be deemed to be an incidental beneficiary only.

7. The Local Agency and CDOT each represent and warrant that they have taken all actions that are necessary or that are required by its procedures, bylaws, or applicable law, to legally authorize the undersigned signatory to execute this contract on behalf of said public entity, and to bind said public entity to its terms.

8. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this agreement. Any provision of this agreement whether or not incorporated herein by reference which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this agreement to the extent that the agreement is capable of execution.

9. At all times during the performance of this agreement, the parties shall strictly adhere to all applicable federal and state laws, rules and regulations that have been or may hereafter be established.

10. Except for the agreements listed in the recitals and except as otherwise stated herein, this agreement is intended as the complete integration of all understandings between the parties.
These Special Provisions apply to all contracts except where noted in italics.

1. CONTROLLER'S APPROVAL. CRS §24-30-202(1). This contract shall not be valid until it has been approved by the Colorado State Controller or designee.

2. FUND AVAILABILITY. CRS §24-30-202(5.5). Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. GOVERNMENTAL IMMUNITY. No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. INDEPENDENT CONTRACTOR. Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its employees or agents. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

5. COMPLIANCE WITH LAW. Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

6. CHOICE OF LAW. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.

7. BINDING ARBITRATION PROHIBITED. The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00. State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c). Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.
THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

City of Montrose, Colorado
Legal Name of Contracting Entity

2000035
CDOT Vendor Number

STATE OF COLORADO:
BILL RITTER, Jr., GOVERNOR

By
Executive Director
Department of Transportation

Signature of Authorized Officer

Print Name & Title of Authorized Officer

C0RPORTATIONS:
(A corporate attestation is required.)

Attest (Seal) By
(Corporate Secretary or Equivalent, or Town/City/County Clerk) (Place corporate seal here, if available)

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. The Local Agency is not authorized to begin performance until such time. If The Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay The Local Agency for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
David J. McDermott, CPA

By: ________________________________

Colorado Department of Transportation

Date: __________________________
Exhibit A

Montrose will agree to the following as part of the swap at no cost to CDOT:

1. Operations
   a. Montrose shall implement a signing plan immediately following the jurisdictional swap identifying the new State Highway routes. Montrose will submit a proposed signing plan to CDOT for CDOT’s acceptance prior to implementation of the new signing plan.
   b. Prior to any physical changes or improvements to the newly created Main Street (Old SH-50A) template, CDOT shall require installation of overhead directional signs for the following movements:
      i. Eastbound SH 50 to eastbound SH 50 at the west San Juan intersection
      ii. Eastbound SH 50 to eastbound SH 50 at the east San Juan intersection
      iii. Westbound SH 50 to westbound SH 50 at the east San Juan intersection.

   For the remaining two newly created movements (westbound SH 50 to westbound SH 50 at the west San Juan intersection, and westbound SH 550 to eastbound SH 50 at the west San Juan intersection), Montrose and CDOT will jointly explore solutions to provide adequate guidance to drivers for these movements. Examples of solutions include geometric modifications, highway template changes, raised islands, etc. If no acceptable solution can be found for both Montrose and CDOT, overhead signs shall be installed for these movements as well.

2. Utilities
   a. City of Montrose shall provide the following information:
      i. Boundary Survey
      ii. Franchise Agreement between Kinder-Morgan and City of Montrose.
      iii. Franchise Agreement between DMEA and City of Montrose.
      iv. Language from the City Code that regulates Cable TV use of easements, ROW, etc.
      v. Existing Maintenance Contract between City and CDOT.

3. ROW
   a. The City shall furnish to CDOT, at no cost or expense to CDOT, copies of all surveys, plans, plats, record deeds, record easements and any other relevant information sufficient for CDOT to verify that title to all rights-of-ways and easements required by CDOT to operate and maintain the San Juan Bypass are vested in the City and that the City possesses sole authority to convey the same to CDOT.
   b. In the event CDOT determines that additional right-of-way and/or easements are required for CDOT’s operation and maintenance of the San Juan Bypass the City shall, prior to completion of the swap and at no cost or expense to CDOT, acquire such additional rights-of-ways and/or easements in compliance with all applicable federal and state statutes, rules, regulations, policies and procedures, including, but not limited to, the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, and CDOT’s Right of Way Manual.
c. In the event it is determined that right-of-way and/or easements appurtenant to the San Juan Bypass are encumbered by unauthorized third party encroachments, the City shall either: (1) cause such encroachments to be removed prior to completion of the swap, or (2) formally permit such encroachments by issuing Revocable Permits or similarly appropriate licenses, which instruments shall include express conditions stating that CDOT shall be unilaterally authorized to revoke such permissions without cause or liability and that, upon revocation by CDOT, such encroachments shall be removed by the permittee, at no cost or expense to CDOT, within thirty (30) days of revocation. In the event a permittee shall fail to remove any such encroachments following thirty (30) days of revocation, the City shall exercise its authority pursuant to C.R.S. 43-2-135 to cause such encroachment(s) to be removed at no cost or expense to CDOT. Upon completion of the swap and thereafter, the City shall not license nor permit any encroachment within or upon the San Juan Bypass right-of-way and/or easements without the prior written consent of CDOT, which consent may be withheld without cause.

d. The City shall take all required steps, including the adoption of any necessary resolutions or ordinances and the execution and delivery to CDOT of all necessary conveyances required to transfer title of the San Juan Bypass rights-of-ways and easements to CDOT. All such conveyances from the City to CDOT shall be free and clear of all exceptions which are not acceptable to CDOT and shall be supported with special warranties.

e. Contemporaneous with completion of the swap, the City shall authorize CDOT to utilize its easements, whether such easements are held by the City as of the effective date of this IGA or hereinafter acquired by or dedicated to the City, for the purposes of providing access for vehicles, equipment, materials and personnel to maintain the Montrose Arroyo culvert located under the San Juan Bypass.

CDOT will agree to the Following as part of the swap:

1. Operations
   a. CDOT will assist with removal, installation and resetting of the existing overhead sign panels.
   b. CDOT will assist with design of the overhead signs and any other highway modifications. CDOT will also assist with construction oversight and any associated permit related issues.
   c. CDOT will provide all the information in its possession related to the three traffic signals located in the Main Street right-of-way including wiring plans, operating manuals and any records of installation and maintenance. CDOT will coordinate with the City to remove the locks on the traffic signal boxes and allow the City to install new locks. The City of Montrose will be responsible for obtaining their own software licensing.

2. Utilities
   a. Provide permits for all existing and new utilities
3. **ROW**

   a. CDOT will, within a reasonable time, review copies of all surveys, plans, plats, record deeds, record easements and any other relevant information furnished by the City to verify that title to all rights-of-way and easements required by CDOT to operate and maintain the San Juan Bypass are vested in the City, that the City possesses sole authority to convey the same to CDOT, and whether any unacceptable title conditions exist.

   b. CDOT will, within a reasonable time, perform field survey inspections to verify that the physical features of the San Juan Bypass to be operated and maintained by CDOT are located within existing right-of-way and easements owned and held by the City and whether any unauthorized encroachments exist.

   c. CDOT will furnish to the City copies of all right-of-way plans and conveyance instruments in CDOT’s possession for the City to verify that title to all rights-of-way and easements required by the City to operate and maintain the existing Main Street are vested in CDOT and that CDOT possesses the sole authority to convey the same to the City.

   d. CDOT will convey the existing Main Street right-of-way and easements to the City by Quit Claim Deed, without warranties, subject to any and all easements of record, and also subject to any existing utilities and the perpetual right of the Public Utilities to operate, maintain, repair and replace the same, and subject to the condition that in the event the City shall cease to use the existing Main Street right-of-way for public transportation purposes, said right-of-way shall revert to CDOT.
Exhibit B

US 50 (Main Street) Description and Map
EXHIBIT B

PORTION OF US HIGHWAY 50 TO BE
DEEDED TO THE CITY OF MONTROSE

Description of the portion of US Highway 50
to be deeded to the City of Montrose

That portion of US Highway 50 situate between Mile Post 92.841 and Mile Post 93.558
as depicted in Exhibit B-1 and Exhibit B-2, Montrose County, Colorado.
Exhibit C

San Juan Bypass Description and Map
EXHIBIT C

PORTION OF SAN JUAN AVENUE TO BE DEEDED TO CDOT

Description of the portion of San Juan Avenue
to be deeded to the CDOT

That portion of San Juan Avenue situate between US Highway 50 Mile Post 91.878 and US Highway 50 Mile Post 93.558 as depicted in Exhibit C-1 and Exhibit C-2, Montrose County, Colorado.
Exhibit D

Resolution

from the
Colorado Transportation Commission
Resolution Number TC-1764

WHEREAS, US Highway 50 is part of the State Highway System; and

WHEREAS, San Juan Bypass is part of the City of Montrose road system; and

WHEREAS, under Section 43-2-102, Colorado Revised Statutes (C.R.S.), the Colorado Department of Transportation (CDOT) has the responsibility to maintain US Highway 50, and the Transportation Commission of Colorado has the responsibility, under Section 43-1-106, C.R.S. to formulate the general policy with respect to such maintenance; and

WHEREAS, the Transportation Commission also has the authority, under Section 43-2-106, C.R.S., to abandon that portion of US Highway 50 (Main Street) from Mile Post 92.841 to Mile Post 93.558 which is no longer needed as a State Highway; and

WHEREAS, the Transportation Commission also has the authority, under Section 43-2-106, C.R.S., to accept San Juan Bypass between US Highway 50 at Mile Post 91.878 and US Highway 50 at Mile Post 93.558; and

WHEREAS, the Transportation Commission received from the City of Montrose a resolution accepting the abandoned portion of US Highway 50 (Main Street) to their road system (Exhibit A); and

WHEREAS, no land owner will suffer damages due to this action provided the City of Montrose accepts the abandoned road as part of their road system; and

WHEREAS, the City of Montrose will assume full responsibility and ownership of US Highway 50 (Main Street) from Mile Post 92.841 to Mile Post 93.558; and

WHEREAS, the portion of Townsend Avenue currently designated as US Highway 50 from Mile Post 92.841 to Mile Post 91.878 will be re-designated as US Highway 550 (mile Post 129.257 to Mile Post 130.220)

NOW THEREFORE BE IT RESOLVED, that the Transportation Commission of Colorado agrees to allow the Colorado Department of Transportation to enter into an Intergovernmental Agreement with the City of Montrose for the abandonment of US Highway 50 (Main Street) from Mile Post 92.841 to Mile Post 93.558; and accepts San Juan Bypass into the State Highway System as US Highway 50 between Mile Post 91.878 and Mile Post 93.558; and re-designates US Highway 50 from Mile Post 91.878 to Mile Post 92.841, also known as Townsend Avenue, to US Highway 550, Mile Post 129.257 to Mile Post 130.220.
Exhibit E

Resolution

from the
City of Montrose
RESOLUTION NO. 2009-19


WHEREAS, the City is seeking to transfer Highway 50, which is a highway on the National Highway System, designation from Main Street to the San Juan Bypass and to grant ownership of the San Juan Bypass to the Colorado Department of Transportation (CDOT) in exchange for ownership of the existing Highway 50 route (Main Street), and

WHEREAS, CDOT staff have expressed support of the proposal and have expressed interest in pursuing the transfer of ownership and state highway designation, and

WHEREAS, it is necessary to establish an intergovernmental agreement outlining the terms and conditions of the proposed transfer, and

WHEREAS, the City Council desires to express support for the establishment of an Intergovernmental Agreement to accomplish the abovementioned transfer, and

WHEREAS, the City Council believes that the transfer of ownership and state highway designation will promote the public health, safety and welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MONTROSE, COLORADO, as follows:

SECTION 1:

The City Council formally expresses support for the abovementioned transfer of ownership and state highway designation from Main Street (between the San Juan Bypass intersection and the Townsend Avenue intersection) to the San Juan Bypass (between its intersection with Main Street and its intersection with N. Townsend Avenue) and authorizes staff to continue pursuing the development of an Intergovernmental Agreement that establishes the terms, conditions and procedures of the proposed transfer.

SECTION 2:

Once the form of the Intergovernmental Agreement, setting forth inter alia the terms, conditions, and details of the transfer of ownership and state highway designation and the procedures relating thereto, are satisfactory to the City Manager, City Attorney and staff from the Colorado Department of Transportation, the City Council will approve and enter into the Intergovernmental Agreement and perform its obligations thereunder.

SECTION 3:

The Mayor or Mayor Pro Tem of the City are hereby authorized and directed to execute, and the City Clerk or any deputy are authorized to authenticate and affix the seal of the City to, the
Agreement, and further to execute and authenticate such other documents, instruments, and
certificates as are deemed necessary or desirable in connection therewith. Such documents are to be
executed in substantially the form hereinabove approved, provided that such documents may be
completed, corrected, or revised as deemed necessary by the parties thereto in order to carry out the
purposes of this Resolution. The execution of any instrument by said officials shall be conclusive
evidence of the approval by the City of such instrument in accordance with the terms of such
instrument, and this Resolution.

ADOPTED this __ day of __________ 2009.

CITY OF MONTROSE

[Signature]
Jose Abeyta, Mayor

ATTEST:

[Signature]
Tori Colvin, City Clerk
MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
MUNICIPAL AGREEMENT

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Bonne Terre, Missouri, a municipal corporation (hereinafter, "City").

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the parties agree as follows:

(1) IMPROVEMENT DESIGNATION: The public improvement designated as Route 67, St. Francois County, Job No. JOS2185 shall consist of a two-lane east outer road constructed from Northwood Drive to Hedgeapple Lane. The median crossing and at-grade connections to the northbound and southbound lanes of Route 67 at the Route 67/Hedgeapple Lane intersection will be permanently removed upon completion of the project to improve safety. Also, miscellaneous improvements will be made to Route K and 47 between Northwood Drive and Berry Road, including the provision of right turn lanes along north side of said routes to help ease the flow of additional traffic resulting from the closure of the Route 67/Hedgeapple Lane intersection.

(2) IMPROVEMENT WITHIN CITY: The improvement within the City is located as follows:

Beginning at Station 22+15.31, a point that is S45°27'04"E 5,334.23 feet from the northwest corner of United States Survey No. 3099 and representing the location where the centerline of the east outer road intersects the north corporate limits of the City of Bonne Terre and continuing in a southerly direction to Station 39+36.74, a point on the centerline coinciding with the end of the project. Length within the city is 0.326 miles.

(3) EXTENT OF AGREEMENT: This Agreement shall apply only to the portion of the improvement lying within the city limits as they exist on the date this Agreement is executed by the City.

(4) LOCATION: The general location of the public improvement is shown on an attached sketch marked "Exhibit A" and made a part of this Agreement. The detailed location of the improvement is shown on the plans prepared by the Commission for the above-designated route and project.
(5) **PURPOSE:** It is the intent of this Agreement that the Commission shall provide without cost to the City, except as otherwise provided in this Agreement, a highway for traffic in the City and the Commission shall so design and construct the highway to serve operating necessities and requirements of local and through traffic.

(6) **RIGHT-OF-WAY USE:** The City grants the right to use the right-of-way of public roads, streets, and alleys as necessary for construction and maintenance of said public improvement.

(7) **CLOSE AND VACATE:** The City shall temporarily close and vacate all streets or roads, or parts thereof, which may be necessary to permit the construction of the project in accordance with the detailed plans.

(8) **RIGHT-OF-WAY ACQUISITION:**

   (A) Upon approval of all agreements, plans and specifications by the Commission and the Federal Highway Administration (FHWA), the Commission will file copies of the plans with the city clerk of the City and the county clerk of the county and proceed to acquire at its expense, at no cost or expense to the City, any necessary right-of-way required for the construction of the improvement.

   (B) The portion of state highway covered by this Agreement shall be a normal access highway and rights of access between the highway and abutting property shall be procured and the cost classified as right-of-way cost and paid for by the Commission in the same manner as other right-of-way costs. Only such rights of ingress and egress shall be allowed as indicated on the plans approved by the Commission and FHWA.

(9) **UTILITY RELOCATION:**

   (A) The Commission and the City shall cooperate to secure the temporary or permanent removal, relocation, or adjustment of public utilities or private lines, poles, wires, conduits, and pipes located on the right-of-way of existing public ways as necessary for construction of the improvement and the cost shall be borne by such public utilities or the owners of the facilities except where the City is by existing franchise or agreement obligated to pay all or a portion of such cost, in which case the City will pay its obligated portion of the cost.

   (B) The Commission shall secure the removal, relocation, or adjustment of any public or private utilities located upon private easements and shall pay any costs incurred therein.

   (C) In cases of public utilities owned by the City which must be moved, adjusted, or altered to accommodate construction of this improvement, and such city-owned utilities, poles, wires, conduits, and pipes are located within the present city limits
and located on an existing city street, not state highway right-of-way, but being taken
over by the Commission as a part of its highway right-of-way, the City will perform the
necessary removal, adjustment, alterations and relocation, and the Commission will
reimburse the City except as otherwise provided. The City shall perform the removal,
adjustment, alterations and relocation in accordance with the detail plans, estimates of
costs and bills of materials prepared by the City in accordance with Federal Aid Policy
December 9, 1991 and any revision of it, and approved by the Commission's district
engineer, and shall perform all work and keep the records of the costs in accordance
with FAPG 23 CFR 645A and its revisions. Upon the completion of any such work and
on receipt by the Commission of the original and four copies of a bill for the actual costs
incurred by the City in making any such removal, adjustment, alteration and relocation,
the Commission shall reimburse the City for the actual cost necessitated by construction
of this public improvement. The Commission's obligation toward the cost of any such
removal, adjustment, alteration and relocation shall extend only to those costs incurred
in accordance with FAPG 23 CFR 645A and its revisions.

(D) Should it be necessary to alter, relocate or adjust any city-owned utility facilities outside the present city limits on public right-of-way or on state highway
right-of-way within or outside the city limits or within the right-of-way of a public way
other than a city street or alley, the alteration, relocation, or adjustment shall be made
by the City at its cost.

(E) The City agrees that any installation, removal, relocation, maintenance, or repair of public or private utilities involving work within highway right-of-way included in this project shall be done only in accordance with the general rules and
regulations of the Commission and after a permit for the particular work has been
obtained from the Commission's district engineer or his authorized representative.
Similarly, the City will allow no work on the highway right-of-way involving excavation or
alteration in any manner of the highway as constructed, including but not limited to
driveway connections, except in accordance with the rules and regulations of the
Commission and only after a permit for the specific work has been obtained from the
Commission's district engineer or his authorized representative. The City shall take
whatever actions that are necessary to assure compliance with this Subsection.

(10) LIGHTING: The Commission will, at its cost and expense, install, operate,
and maintain basic highway intersection or interchange lighting at warranted locations
on the improvement. The construction, installation, and maintenance of any other or
further lighting system on the public improvement covered by this Agreement shall be
only in accordance with the Commission's policy on highway lighting in effect, and to the
extent deemed warranted by the Commission, at the time of any such installation. No
lighting system shall be installed or maintained by the City on the improvement without
approval of the Commission.

(11) TRAFFIC CONTROL DEVICES: The installation, operation and
maintenance of all traffic signals, pavement markings, signs, and devices on the
improvement, including those between the highway and intersecting streets shall be under the exclusive jurisdiction and at the cost of the Commission. The City shall not install, operate, or maintain any traffic signals, signs or other traffic control devices on the highway or on streets and highways at any point where they intersect this highway without approval of the Commission.

(12) **DRAINAGE:** The Commission will construct drainage facilities along the improvement and may use any existing storm and surface water drainage facilities now in existence in the area. The City shall be responsible for receiving and disposing of storm and surface water discharged from those drainage facilities which the Commission constructs within the limits of highway right-of-way to the extent of the City's authority and control of the storm sewer facilities or natural drainage involved.

(13) **PERMITS:** The Commission shall secure any necessary approvals or permits from the Surface Transportation Board, the Public Service Commission of Missouri, or any other state or federal regulating authority required to permit the construction and maintenance of the highway.

(14) **COMMENCEMENT OF WORK:** After acquisition of the necessary right-of-way, the Commission shall construct the highway in accordance with final detailed plans approved by the Federal Highway Administration (or as they may be changed from time to time by the Commission with the approval of the FHWA) at such time as federal and state funds are allocated to the public improvement in an amount sufficient to pay for the federal and state government's proportionate share of construction and right-of-way costs. The obligation of the Commission toward the actual construction of the public improvement shall be dependent upon the completion of plans in time to obligate federal funds for such construction, upon approval of the plans by the FHWA, upon the award by the Commission of the contract for the construction, and upon the approval of the award by the FHWA.

(15) **MAINTENANCE:**

(A) Except as provided in this Agreement, upon completion of the public improvement, the Commission will maintain all portions of the improvement within the Commission owned right-of-way. Maintenance by the Commission shall not in any case include maintenance or repair of sidewalks whether new or used in place, water supply lines, sanitary or storm sewers (except those storm sewers constructed by the Commission to drain the highway), city-owned utilities within the right-of-way or the removal of snow other than the machine or chemical removal from the traveled portion of the highway.

(B) When it is necessary to revise or adjust city streets, the right-of-way acquired for these adjustments and connections will be deeded to the City.

(C) Effective upon completion of construction, the Commission shall convey to the City by quitclaim deed, which the City agrees to accept, the portion of the
east outer road within the City as constructed with this improvement, located between Station 22+15.31, a point where the centerline of the east outer road intersects the north city limit of the City of Bonne Terre, and Station 39+36.74, a point on the centerline of the east outer road coinciding with the end of the project. The length of the east outer road to be conveyed to the City is 0.326 miles. The exact description of the highway shall appear in the quitclaim deed, which shall be filed with the office of the recorder of deeds in the county where this portion of highway is located.

(1) Prior to conveyance of the above-described portion of state highway from the Commission to the City, the Commission shall maintain this portion of highway as part of the state highway system.

(2) Upon conveyance of this portion of highway to the City, as shown by the date on the quitclaim deed, the Commission's responsibility to maintain this portion of highway shall cease and said portion of highway will no longer be considered a part of the state highway system. Thereafter, the City shall maintain this portion of highway as part of the city roadway system.

(16) ACCEPTED WITHIN HIGHWAY SYSTEM: Effective upon execution of this Agreement, the Commission accepts the portion of the City street system described in this Agreement as part of the State Highway System for the purposes of this project. However, during the construction period contemplated in this Agreement:

(A) The Commission will assume no police or traffic control functions not obligatory upon Commission immediately prior to the execution of this Agreement, and

(B) The City shall perform or cause to be performed normal maintenance on the project site.

(17) CITY TO MAINTAIN: Upon completion of construction of this improvement, the City shall accept control and maintenance of the improved street and shall thereafter keep, control, and maintain the same as, and for all purposes, a part of the City street system at its own cost and expense and at no cost and expense whatsoever to the Commission. All obligations of the Commission under this Agreement shall cease upon completion of the improvement.

(18) POLICE POWERS: It is the intent of the parties to this Agreement that the City shall retain its police powers with respect to the regulation of traffic upon the improvement contemplated. However, the City will enact, keep in force, and enforce only such ordinances relating to traffic movement and parking restrictions as may be approved by the Commission and as are not in conflict with any regulations for federal aid. The Commission shall not arbitrarily withhold approval of reasonable traffic regulations, signs, and markings which will permit the movement of traffic in accordance with accepted traffic regulation practices.
(19) **RESTRICTION OF PARKING:** Since the improvement is being designed and constructed to accommodate a maximum amount of traffic with a minimum amount of right-of-way, the City shall take whatever actions that are necessary to prevent parking upon the highway or any part of the area of the highway right-of-way within the limits of the improvement.

(20) **OUTDOOR ADVERTISING:** No billboards or other advertising signs or devices or vending or sale of merchandise will be permitted within the right-of-way limits of the project and the City shall take whatever actions that are necessary to enforce this Section.

(21) **WITHHOLDING OF FUNDS:** In the event that the City fails, neglects, or refuses to enact, keep in force or enforce ordinances specified or enacts ordinances contrary to the provisions in this Agreement, or in any other manner fails, neglects or refuses to perform any of the obligations assumed by it under this Agreement, the Commission may, after serving written request upon the City for compliance and the City's failure to comply, withhold the expenditure of further funds for maintenance, improvement, construction, or reconstruction of the state highway system in the City.

(22) **FEDERAL HIGHWAY ADMINISTRATION:** This Agreement is entered into subject to approval by the Federal Highway Administration, and is further subject to the availability of federal and state funds for this construction.

(23) **INDEMNIFICATION:** To the extent allowed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's performance of its obligations under this Agreement.

(24) **AMENDMENTS:** Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved on or between the duly authorized representatives of the City and Commission.

(25) **COMMISSION REPRESENTATIVE:** The Commission's District Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(26) **CITY REPRESENTATIVE:** The City's City Manager is designated as the City's representative for the purpose of administering the provisions of this Agreement. The City's representative may designate by written notice other persons having the authority to act on behalf of the City in furtherance of the performance of this Agreement.
(27) **NOTICES:** Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or upon receipt by personal or facsimile delivery, addressed as follows:

(A) To the City:

Larry Barton, City Manager  
City of Bonne Terre  
118 N. Allen Street  
Bonne Terre, MO 63628  
Facsimile No: 573.358.1525

(B) To the Commission:

Mark Shelton, P. E., District Engineer  
Missouri Department of Transportation  
2675 N. Main Street, P.O. Box 160  
Sikeston, MO 63801  
Facsimile No: 573.472.5364

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document.

(28) **ASSIGNMENT:** The City shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(29) **LAW OF MISSOURI TO GOVERN:** This Agreement shall be construed according to the laws of the State of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of the contract.

(30) **VENUE:** It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(31) **SOLE BENEFICIARY:** This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the City.

(32) **AUTHORITY TO EXECUTE:** The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.
(33) **SECTION HEADINGS:** All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

*[remainder of page intentionally left blank]*
IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the City this 11 day of January, 2010

Executed by the Commission this ____ day of ________________, 20__:

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

By: ______________________
Title: ______________________

ATTEST:

____________________________
Secretary to the Commission

APPROVED AS TO FORM:

____________________________
Commission Counsel

CITY OF BONNE TERRE, MISSOURI

By: ______________________
Title: ______________________

ATTEST:

____________________________
Secretary to the Commission

APPROVED AS TO FORM:

____________________________
Commission Counsel

Ordinance Number 201X3
EXHIBIT A

CONTRACT BETWEEN
MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
-AND-
CITY OF BONNE TERRE, MISSOURI
JOB NO. J052185 ST. FRANCOIS COUNTY