

COMMON USE AGREEMENT

Fed-Aid Route No. _____

Highway Project No. _____

Control No. _____

Designation _____

County

Sec. _____, Twp. _____, Rge. _____

THIS AGREEMENT, made and entered into this _____ day of _____, 20_____, between _____, "COMPANY" and the Montana Department of Transportation, "STATE".

WITNESSETH

WHEREAS, COMPANY is the owner of certain easements or in possession of certain right-of-way, referred to as COMPANY'S EASEMENT, and described as follows:

WHEREAS, STATE has acquired interests in real property for highway purposes in the County of _____, on _____ Highway Project Number _____, between approximate Highway Stations numbered _____ and _____ hereinafter referred to as HIGHWAY RIGHT-OF-WAY, and

WHEREAS HIGHWAY RIGHT-OF-WAY occupies and bounds a portion of COMPANY'S EASEMENT and is therefore subject to that portion of said EASEMENT which is hereinafter referred to as "AREA OF COMMON USE" and particularly described as follows:

WHEREAS, it is in the interest of both parties hereto to identify the mutual respective rights and obligations in order to avoid conflict in the future exercise thereof.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, STATE and COMPANY hereby agree as follows:

1. COMPANY consents to the construction, maintenance and use by STATE of the above referenced Highway Project, upon COMPANY'S EASEMENT in the AREA OF COMMON USE subject to the terms herein contained.
2. STATE acknowledges that the COMPANY'S EASEMENT in the AREA OF COMMON USE has priority over the STATE'S right-of-way. COMPANY shall continue to have an easement to use said AREA OF COMMON USE in common with the public use of said highway for all of the purposes for which COMPANY'S EASEMENT was acquired.
3. If there is a major repair, reconstruction or removal of any of COMPANY'S facilities located within the right-of-way of said Highway Project, COMPANY shall (except in case of emergency) notify in advance the STATE'S District Administrator. In all cases, COMPANY shall provide for the protection of the traveling public.
4. This policy applies to all portions of said Highway Project except those involving the controlled access portions of the Interstate system. Construction work within controlled access limits will only be allowed with prior written permission.
5. If future use of said highway requires the relocation, reconstruction or removal of COMPANY'S facilities located in the AREA OF COMMON USE, STATE will notify COMPANY in writing and reimburse COMPANY for its costs. COMPANY will provide STATE with its proposed relocation plans and an estimate of the cost thereof; and, upon approval thereof by STATE, COMPANY will promptly proceed to do the relocation, reconstruction or removal.
6. If any of the COMPANY'S facilities will be located outside of said AREA OF COMMON USE, STATE will: (1) enter into the standard form of common use agreement covering the new location of COMPANY'S EASEMENT within the highway right-of-way, (2) provide an easement for the COMPANY within the highway right-of-way or across STATE-owned property if necessary to replace COMPANY'S EASEMENT or any part thereof, or (3) reimburse COMPANY for the cost of acquiring another easement for its facilities.
7. Except as set forth herein, this agreement does not modify or terminate any provision of COMPANY'S EASEMENT. STATE and COMPANY will occupy and use said AREA OF COMMON USE so as not to unreasonably interfere unreasonably with the rights of the other. Nothing herein contained will be construed as a release or waiver of any claim for compensation that COMPANY or STATE may now have or may hereafter acquire because of the construction of additional facilities or the alteration of existing facilities by either STATE or COMPANY which cause an unreasonable interference with the use of said AREA OF COMMON USE by the other party.
8. This AGREEMENT shall inure to the benefit of and be binding upon the successors and assigns of both parties.

STATE OF MONTANA
DEPARTMENT OF TRANSPORTATION

By _____
Chief Right-of-Way Bureau

Utility, Cooperative or Common Carrier

By _____
Title