

FS Agreement No. 21-MU-11020000-031

Cooperator Agreement No. _____

MEMORANDUM OF UNDERSTANDING
Between The
U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE
ROCKY MOUNTAIN AND INTERMOUNTAIN REGIONS
And The
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
WYOMING DIVISION OFFICE
And The
STATE OF WYOMING
WYOMING DEPARTMENT OF TRANSPORTATION

**FOR PROCESSING FEDERAL-AID HIGHWAY RIGHTS OF WAY,
PLANNING, DESIGN, CONSTRUCTION AND GENERAL OPERATIONS AND
STANDARDS**

JULY 2021

Contents

Definitions & Abbreviations	3
Background:	5
Purpose:	6
Statement of Mutual Benefit and Interest:.....	6
Agency Responsibilities:	6
Operational Procedures	7
Dispute Resolution Process	8
Principal Contacts.....	8
Appendix A: Operating Manual	14
I - Environmental Compliance Process	14
II – Title 23 Highway Easement Process.....	16
II.B – Highway Easement Management.....	20
Use and Disposition of National Forest System Resources	21
Timber	21
Borrow Pits and Mineral Material Sites	22
Design Protocols for Visual Quality Retention	26
Signing.....	27
Access Control	31
Third Party Occupancy.....	32
Appendix B: Example Highway Easement Deed.....	33
Appendix C: Wild & Scenic River Process.....	37

Definitions & Abbreviations

AASHTO – The American Association of State Highway and Transportation Officials

Appropriated Lands - Lands transferred from US Forest Service to FHWA under the authorities contained in 23 U.S.C. §§ 107(d) and 317 for Federal-aid Highways and material sites.

Categorical Exclusion (CE) - This is a NEPA term for categories of projects that do not individually or cumulatively have a significant effect on the human environment, and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these agency procedures regulations at 40 CFR 1507.3 and which, therefore; neither an environmental assessment nor an environmental impact statement is required.

Code of Federal Regulations (CFR) - is the codification of the general and permanent rules and regulations published in the Federal Register by the executive departments and agencies of the U.S. Federal government.

Days - Calendar days

Environmental Assessment (EA) -. (a) Means a concise public document for which a Federal agency is responsible that serves to:

1. Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.
2. Aid an agency's compliance with the Act when no environmental impact statement is necessary.
3. Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

Environmental Impact Statement (EIS) - NEPA requires Federal agencies to prepare environmental impact statements (EISs) for major Federal actions that significantly affect the quality of the human environment. An EIS is a full disclosure document that details the process through which a transportation project was developed, includes consideration of a range of reasonable alternatives, analyzes the potential impacts resulting from the alternatives, and demonstrates compliance with other applicable environmental laws and executive orders. The EIS process is completed in the following ordered steps: Notice of Intent (NOI), draft EIS, final EIS, and Record of Decision (ROD).

The Endangered Species Act of 1973 (ESA) 16 U.S.C. § 1531 et seq. The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions.

Executive Order (E.O.) 13807 – issued March 20, 2018 titled One Federal Decision Framework for the Environmental Review and Authorization Process for Major Infrastructure Projects.

Federal Highway Administration (FHWA) - The FHWA is responsible for administration and management of the Federal-aid Highway program and application for right-of-way appropriation consistent with 23 C.F.R. §710.601, Subpart F. The FHWA is the lead Federal agency and has the authority to administer and monitor the land transfer program involving Federal-aid Highways under Title 23.

Federal Highway-aid Projects - Facilities on the Federal-aid Highway system and projects involving Federal-aid funds, including new pits developed with highway-aid funds.

Finding of No Significant Impacts (FONSI) A NEPA document briefly presenting the reasons why an action, not otherwise excluded as a CE, will not have a significant effect on the human environment and for which an EIS therefore will not be prepared.

Highway Easement Deed (HED) - A deed issued by FHWA to the Wyoming Department of Transportation (WYDOT) for the area incorporating the terms and conditions included in the Letter of Consent (LOC). WYDOT records the deed in the appropriate County Clerk's Office.

Letter of Consent (LOC) - Document issued by the US Forest Service that agrees and authorizes the appropriation of Federal lands under Forest Service jurisdiction for highway and material site purposes. The LOC clearly states the conditions under which the appropriation is granted.

Maintenance Activities - Activities include, but are not limited to, grading, resurfacing, maintenance of fences, cleaning culverts, clearing roadside of brush, pruning vegetation, surveying, and striping.

Material Site – Appropriated site required for construction and long-term maintenance of Federal-aid Highways located on lands under the jurisdiction of the US Forest Service and transferred under the authorities contained in 23 U.S.C. §§107(d) and 317.

Memorandum of Understanding (MOU) - A three party agreement between the FHWA, WYDOT, and US Forest Service defining specific guidelines and policies in the transfer and management of Federal-aid Highways.

MUTCD - Manual of Uniform Traffic Control Devices

Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) 25 U.S.C. 3001 - is a law that establishes the ownership of cultural items excavated or discovered on federal or tribal land after **November 16, 1990**.

National Environmental Policy Act of 1969, as Amended, (NEPA) 42 U.S.C. §§ 4321-4370h requires Federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. To meet this requirement, Federal agencies prepare a detailed statement known as a Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS).

National Historic Preservation Act of 1966, as amended (NHPA) 54 U.S.C. 300101 - legislation intended to preserve historical and archeological sites in the United States.

Public Land Survey System (PLSS) - is the surveying method developed and used in the United States to plat, or divide, real property for sale and settling. Also known as the Rectangular Survey System

Roadway Template - The previously disturbed area of the highway from toe of slope to toe of slope.

Resource Management Plan (RMP) - which serves as a blueprint to keep public landscapes healthy and productive.

Scoping - The NEPA process during which agencies and the public are given the opportunity to express concerns and identify issues for consideration in a NEPA document.

State Historic Preservation Office (SHPO) - The Wyoming State Historic Preservation Office is a governmental function created by Section 101 of the National Historic Preservation Act of 1966 which documents, preserves, and promotes Wyoming's heritage with our preservation partners.

Temporary Construction Easement Deed - A deed issued by FHWA to WYDOT for the temporary construction areas identified in the Letter of Consent (LOC) and is not recorded in the county records.

United States Code (U.S.C.) - The United States Code is a consolidation and codification by subject matter of the general and permanent laws of the United States. It is prepared by the Office of the Law Revision Counsel of the United States House of Representatives.

United States Forest Service (USFS) - An Agency in the Department of Agriculture with the primary mission of sustaining the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations.

U.S. Fish and Wildlife Service (USFWS) - An Agency within the Department of the Interior (DOI) which is the only agency in the Federal government whose primary responsibility is management of fish and wildlife for the American public. The Service helps ensure a healthy environment for people by providing opportunities for Americans to enjoy the outdoors and our shared natural heritage.

The Wyoming Department of Transportation (WYDOT) which is responsible for the planning, construction, operation and maintenance of highways and bridges which make up the state highway system.

Background: This Memorandum of Understanding (MOU) is between the Wyoming Department of Transportation (WYDOT), the Federal Highway Administration (FHWA), and the US Department of Agriculture (USDA), Forest Service, Rocky Mountain, and Intermountain Regions (USFS).

This MOU supersedes and replaces the MOU of May 2015 (USFS R2# 15-MU-11020000-029 between WYDOT, FHWA and the USFS). This MOU does not supersede or replace the requirements of any national agreements, easements, or permits between the affected parties.

Purpose:

The purpose of this MOU is to document the cooperation between the parties and to outline the roles and responsibilities of the WYDOT, the FHWA, and the USFS during transportation project development and operations. It contains procedural guidance specific to project Planning & Design, National Environmental Policy Act (NEPA) document processing, Federal Land Appropriation, Construction and Operation & Maintenance of transportation facilities on National Forest System (NFS) lands. Direction is also included concerning the Use and Disposition of NFS Resources, Signing, Access Control, Third Party Occupancy, and USFS Communication systems on WYDOT sites/towers within NFS lands.

Statement of Mutual Benefit and Interest:

For the FHWA and WYDOT, effectiveness is manifested by transportation projects that are planned, designed, constructed, and maintained with appropriate engineering standards and safety considerations and appropriate level of environmental compliance, in a timely and cost-efficient manner.

For the USFS, effectiveness is measured by transportation projects that are planned, designed, constructed, and maintained with appropriate consideration of forest management objectives and with emphasis on conservation, restoration and enhancement of national forest lands, resources, and ecological functions.

This MOU seeks to enhance interagency coordination, cooperation and the mutual understanding and benefits of transportation projects on NFS lands and resources. It documents agreement on specific “Implementing Procedures” to be followed to achieve these purposes (see Appendix A – Operating Manual).

Agency Responsibilities:**FHWA SHALL:**

- A. Administer Federal-aid Highway funding and be the lead agency for implementing the National Environmental Policy Act of 1969 (NEPA) as it relates to Federal-aid transportation projects (40 CFR 1500-1508, Title 23 U.S.C.). Federal-aid Highways (Chapter One, Title 23 U.S.C) include the Interstate System, the National Highway System (NHS), and selected state, city, and county routes. The NHS consists of interstate and most federal and state arterial highway routes.
- B. Facilitate the acquisition (through the Federal Land Appropriation process) of highway easement deeds for the use of NFS land for transportation purposes.

WYDOT SHALL:

- A. Be responsible for the planning, location, design, construction, operation and maintenance, and perpetuation of a safe and efficient transportation system to benefit the public in accordance with Title 23, U.S.C., while protecting the environment.

U.S. FOREST SERVICE SHALL:

- A. Be a Cooperating Agency for Federal-aid Highway projects on or adjacent to NFS lands. USFS is responsible for the protection and multiple use management of NFS lands and resources for the benefit of the people of the United States. This responsibility extends to the development of a public lands transportation system both within and providing direct access to the National Forests.

IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

- A. The Wyoming State Highway System and Forest Transportation System are interdependent and of mutual benefit to the public. WYDOT and FHWA need consent and will coordinate with the USFS on issues such as easements, waste and staging areas, visual quality, material sources, and maintenance sites for highway operations and construction projects within or adjacent to NFS lands. The USFS, when developing improvements or approving other uses that may impact a WYDOT right-of-way, will consult with WYDOT and seek approval or concurrence.

Operational Procedures

The USFS, FHWA, and WYDOT have collectively developed an Operating Manual with written operational procedures on the functional interrelated work requirement areas for each of the agencies that are party to the MOU. This Operating Manual is an addendum to the MOU and therefore made a part of the approved MOU.

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Dispute Resolution Process

Disagreements among the agencies that cannot be resolved at the staff level shall be elevated as follows:

USFS	WYDOT Construction	WYDOT Maintenance	WYDOT Environmental / ROW	FHWA
District Ranger	Resident Engineer or District Construction Engineer	District Maintenance Engineer	Environmental Manager / ROW Manager	Area or Program Engineer
Forest Supervisor	District Engineer	District Engineer	Asst. Chief Engineer, Engineering and Planning	
Regional Forester	Chief Engineer	Chief Engineer	Chief Engineer	

Principal Contacts

Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

FHWA ROW Program Manager Contact	FHWA Environmental Program Manager Contact
Name: Dustin Woods Senior Area Engineer Address: 2617 E Lincolnway Suite D City, State, Zip: Cheyenne WY 82001 Telephone: 307-771-2943 FAX: 307-772-2011 Email: dustin.woods@dot.gov	Name: Bob Bonds Area Engineer Address: 2617 E Lincolnway Suite D City, State, Zip: Cheyenne WY 82001 Telephone: 307-771-2951 FAX: 307-772-2011 Email: bob.bonds@dot.gov

WDOT ROW Program Manager Contact	WDOT Environmental Program Manager Contact
Name: Pete Hallsten District Engineer Address: 218 West C, PO Box 461 City, State, Zip: Basin WY 82410 Telephone: 307-568-3425 FAX: 307-568-9318 Email: peter.hallsten@wyo.gov	Name: Scott Gamo Environmental Services Manager Address: 5300 Bishop Blvd City, State, Zip: Cheyenne WY 82009 Telephone: 307-777-4379 FAX: 307-777-4193 Email: scott.gamo@wyo.gov

U.S. Forest Service R4 Program Manager Contact	U.S. Forest Service R4 Administrative Contact
Name: Justin Humble Civil Engineer Address: 1617 Cole Blvd Bldg 17 City, State, Zip: Lakewood, CO 80401 Telephone: 801-625-5412 Email: justin.humble@usda.gov	Name: Tim Wagoner Grants Management Specialist Address: 324 25 th Street City, State, Zip: Ogden UT 84401-2310 Telephone: 801-625-5796 Email: timothy.wagoner@usda.gov

U.S. Forest Service R2 Program Manager Contact	U.S. Forest Service R2 Administrative Contact
Name: Miles Barkhurst Regional Transportation Engineer Address: 1617 Cole Blvd Bldg 17 City, State, Zip: Lakewood, CO 80401 Telephone: 303-275-5181 FAX: 303-275-5170 Email: miles.barkhurst@usda.gov	Name: Lisa Street Grants Management Specialist Address: 1617 Cole Blvd Bldg 17 City, State, Zip: Lakewood, CO 80401 Telephone: 303-275-5228 FAX: 303-275-5453 Email: lisa.street@usda.gov

B. NOTICES. Any communications affecting the operations covered by this agreement given by the USFS or WYDOT or FHWA is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the USFS Program Manager, at the address specified in the MOU.

To WYDOT or FHWA, at WYDOT's address shown in the MOU or such other address designated within the MOU.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

C. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the USFS, WYDOT, or FHWA from participating in similar activities with other public or private agencies, organizations, and individuals.

D. ENDORSEMENT. Any of WYDOT's or FHWA's contributions made under this MOU do not by direct reference or implication convey USFS endorsement of WYDOT or FHWA's products or activities.

- E. NONBINDING AGREEMENT. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate agreements and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation agreement that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective agreement, each party operates under its own laws, regulations, and/or policies, and any Forest Service obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective agreements must comply with all applicable laws.

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

- F. USE OF USFS INSIGNIA. For WYDOT or FHWA to use the USFS insignia on any published media, such as a web page, printed publication, or audiovisual production, permission must be granted from the USFS's Office of Communications. A written request must be submitted, and approval granted in writing by the Office of Communications (Washington Office) prior to use of the insignia.
- G. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no U.S. member of, or U.S. delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.
- H. FREEDOM OF INFORMATION ACT (FOIA). Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to FOIA regulations (5 U.S.C. 552).
- I. TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official government business; or b) using any electronic equipment supplied by the government when driving any vehicle at any time. All

cooperators, their employees, volunteers, and contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official government business or when performing any work for or on behalf of the government.

- J. USFS ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. WYDOT and FHWA shall acknowledge USFS support in any publications, audiovisuals, and electronic media developed as a result of this MOU.
- K. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- L. DEBARMENT AND SUSPENSION. WYDOT or FHWA shall immediately inform the USFS if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should WYDOT or FHWA or any of their principals receive a transmittal letter or other official federal notice of debarment or suspension, then they shall notify the USFS without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- M. MODIFICATIONS. Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.
- N. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through July 30, 2026, at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.
- O. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of the last date written below.
- P. SOVEREIGN IMMUNITY. The State of Wyoming and its agencies do not waive sovereign immunity by entering into this agreement, and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyoming Statute 1-39-104(a) and all other state law.

SIGNATURE PAGE:

Luke Reiner

Luke Reiner (May 20, 2021 11:10 MDT)

May 20, 2021

LUKE REINER, Director
Wyoming Department of Transportation

Date

Bryan Cawley

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Date: 2021.04.14 07:15:51
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BRYAN CAWLEY, WY Division Administrator
Federal Highway Administration

Date

FRANK R. BEUM, Regional Forester
U.S. Forest Service, Rocky Mountain Region

Date

MARY FARNSWORTH, Regional Forester
U.S. Forest Service, Intermountain Region

Date

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The authority and format of this instrument have been reviewed and approved for signature.

LISA STREET
U.S. Forest Service Grants & Agreements Specialist

Date

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

Appendix A: Operating Manual

I - Environmental Compliance Process

This section establishes procedures for compliance of Federal-aid Highway projects with NEPA, ESA, NHPA, NAGPRA, and all other pertinent environmental protection laws. WYDOT will scope the USFS on projects that involve the following, but are not limited to:

- Land transfer
- Installation of new ROW fence (excluding replacement) adjacent to USFS property
- Work outside of the USFS deeded easement area (work outside the existing ROW fence)
- Work on existing USFS Temporary Use permit or Mineral Material permit areas (permitted pits/plant sites, etc.)

WYDOT will not need to scope the USFS when the project occurs on the previously disturbed roadway template. Examples include, but are not limited to asphalt overlay, asphalt milling, crack seal, chip sealing, patching, routine bridge repairs, sign installation, etc.

- A. Early in the planning stages of Federal-aid Highway projects, WYDOT will send a scoping request to the appropriate Forest Supervisor, who will designate a USFS Project Coordinator to work with WYDOT. The submission will include scope of work, GIS shapefile(s) of the project location and any other pertinent information as available. The request is to ascertain whether or not the transfer of public lands for highway or material sites is consistent with USFS Land and Resource Management Plan, as well as any resource concerns. These may include, but are not limited to:
 - a. Anticipated social, economic, and environmental impacts;
 - b. Potential inconsistencies with land management plans;
 - c. Endangered, threatened, proposed, and sensitive species inventories and other relevant data;
 - d. Existing and potentially needed wildlife crossings or aquatic organism passage;
 - e. Existing cultural resource data and USFS recommendations regarding the evaluation and treatment of known cultural resources and USFS recommendations regarding what should be done to further identify cultural resources;
 - f. Public lands survey monuments, location, and monument protection requirements;
 - g. Potential staging, stockpile, or storage areas;

- h. Material sources, disposal sites, and borrow pits;
- i. Public involvement needs for USFS;
- j. Any special conditions that may be required for USFS's agreement with the transfer;
- k. Wild and Scenic River considerations;
- l. Other issues of special concern.

USFS will provide the above information to WYDOT within 30 calendar days after receipt of the request for scoping comments. If USFS needs additional time, USFS will notify FHWA/WYDOT of any anticipated delay in the scoping process, within 15 days after receipt of scoping request.

- B. USFS, FHWA, and WYDOT must comply with NEPA and other pertinent Federal Laws in reaching decisions related to agency actions. The process will support the One Federal Decision approach for major infrastructure projects, established in Executive Order 13807, and FHWA will be the lead federal agency on Federal-aid Highway projects. If there is a disagreement in document type (i.e. CE, EA, EIS), the agencies will meet to resolve any NEPA-related issues.

Meetings may be scheduled at the request of the parties of this agreement to examine and review the project.

- a. Additional scoping may be required if potentially substantial deviations or new conditions to the project are discovered.
- b. WYDOT will complete all phases of required NEPA documentation for Federal-aid Highway projects, including all technical reports and studies required for compliance with NEPA and other environmental protection laws, on behalf of FHWA for projects on USFS administered lands in accordance with NEPA guidelines and in cooperation with USFS.
- c. NEPA documentation shall be submitted to USFS as part of the appropriation request. Additional reports and supporting documents will be sent upon request.
- d. Signatures by FHWA/WYDOT for CE documents will be made according to the NEPA Programmatic Agreement between WYDOT and FHWA. USFS will not be a cooperating agency or participating agency on CE level documents, therefore the USFS is not required to sign or concur with CE level documents.
- e. USFS may request, during scoping, to review CEs before FHWA/WYDOT signature. Parties will agree to a 10-calendar day review. USFS concurrence is not required on CE level documents.
- f. USFS will review and co-sign EAs and related decision documents within 45 calendar days. An agreeable time frame will be established

for review and co-signature on an EIS. No USFS signatures will be required on CE level documents.

- g. USFS will notify FHWA and WYDOT of proposed projects that may affect the physical or operational characteristics of FHWA/WYDOT ROW, easements or facilities (includes but not limited to changes in access, utilities, traffic volumes, encroachments, etc.).

II – Title 23 Highway Easement Process

A transfer will be made by the Easement Deed process. Upon application, the USFS authorized officer will issue a “Letter of Consent” (LOC) to transfer the required land appropriation. The transfer document will be a “Highway Easement Deed - Highways” executed by FHWA to WYDOT. The WYDOT will send a copy of the executed deed to the USFS Supervisors office, and USFS Regional Office.

II.A - Easement Request Processing

- A. After the alignment and ROW design and NEPA are complete for a highway project, WYDOT ROW will submit a request for appropriation and transfer of ROW to the FHWA ROW Program Manager. The request will be accompanied by the ROW plans (alignment, topography and disturbance limits) and the NEPA document.
- B. FHWA ROW Program Manager will review and provide concurrence/approval.
- C. FHWA will request a LOC from the USFS Regional Director of Lands and Minerals (Region 4) or Regional Director of Recreation, Lands, Minerals and Volunteers (Region 2). A LOC will be requested for single segment projects. A Corridor Letter of Consent (CLOC) may be requested when multiple contiguous projects (segments) are planned on a “corridor” of roadway.
- D. USFS will review the request for a LOC. If approved, the LOC will be issued within four months to the FHWA. It will cite the appropriation and transfer of the lands under provisions of Section 317 of 23 U.S.C., Sections 107d and 317, also referenced in 23 CFR 710.601. Appropriate USFS Stipulations will be included with the LOC. FHWA will then send a letter with a copy of the approved LOC and Stipulations to WYDOT ROW for their action. By issuance of the LOC with this statement: “The right to enter to construct the project prior to execution of the Highway Easement Deed is granted.”, the USFS authorizes immediate entry on NFS lands subject to the terms set forth in the LOC and the Stipulations.
- E. The USFS, FHWA and WYDOT may agree to substitute the following language regarding highway boundary survey and monumentation in the standard USFS LOC Stipulations, through negotiations with the USFS Regional Office of General Council (OGC):
 - 1. Highway boundary control monuments shall be established at all directional changes along highway ROW boundaries to include the

following: ROW Jogs, Points of Curvature (PC), Points of Tangent (PT), Tangent to Spiral (TS), Spiral to Curve (SC), Curve to Spiral (CS), Spiral to Tangent (ST) and Angle Points (AP). Established highway boundary control monuments, unless deemed impractical, shall be in accordance with WYDOT Standard Plan 611-1, Highway Monuments. The use of nonstandard monuments shall require the prior approval of the State Land Surveyor or the District Land Surveyor.

2. Existing property corners, highway boundary control monuments and land corners of the U.S. Public Land Survey System destroyed by construction shall be re-established in accordance with WYDOT manuals, policies and procedures, and applicable Federal or Wyoming State laws, guidelines and standards. Property corner monuments shall be established at points of intersect with abutting property lines and modified post construction ROW boundaries. This applies only to those property lines previously monumented at intersects with existing ROW boundaries prior to modification.
- F. WYDOT ROW will prepare final highway easement deeds (HED). If a CLOC was issued, a set of ROW drawings with ROW needs, including the width from centerline, for long-term operation and maintenance of the as-built highway and related facilities will be submitted. FHWA will provide the draft HEDs to the USFS for review and approval. The HED package will include easement deed(s), Standard Conditions (10), filing map(s) and an exhibit with the LOC Stipulations. Following their approval, WYDOT, on behalf of the Transportation Commission, will finalize the deeds and forward to FHWA.
- G. FHWA ROW Program Manager will review the easement deeds and, if they meet the requirements of the LOC/CLOC, will execute and return them to WYDOT ROW for recording.
- H. WYDOT ROW will provide a copy of the recorded HED to the FHWA ROW Program Manager, the appropriate USFS Regional office and specific national forest. A copy will also be sent to the Bureau of Land Management (BLM) for notation on the Master Title Plats of the Public Land records.
- I. Where WYDOT is the lead agency for the disbursement of federal funds for off-system projects (county roads and bridges), WYDOT ROW will make application on behalf of the county for an LOC and easement deed in the name of the county using the process described above.
- J. The appropriate WYDOT District Office will comply with USFS procedures for use or occupancy of NFS lands for other transportation related uses outside of the easement areas (e.g.: borrow pits, waste areas, and temporary construction sites).

- K. WYDOT ROW and the FHWA ROW Program Manager will notify Forest Supervisor, District Ranger and/or Regional Office when the need for the appropriation no longer exists. Upon notification USFS will either: 1) accept the road as is; or 2) if a roadway or other improvements are in place and are to be removed, identify rehabilitation standards that WYDOT must complete. Following completion of the rehabilitation and acceptance of same by the USFS, WYDOT ROW will notify the FHWA ROW Program Manager in writing of the need for relinquishment. FHWA will send a request for termination/relinquishment to the appropriate USFS office. USFS will then send FHWA a letter of acceptance of termination/relinquishment. Upon receipt of the approved notice of relinquishment by FHWA, the appropriated lands will immediately revert to the USFS. A formal relinquishing quitclaim deed documenting the termination of the easement and revesting title in the United States will be prepared by WYDOT ROW, endorsed by FHWA, and recorded in the county records. Copies of the document will be sent to the USFS Regional office, FHWA and the BLM for noting to the Master Title Plats.
- L. The LOC appropriation will terminate if construction is not started within (10) years, unless agreed otherwise.
- M. Establishing Easements to Perfect Existing Use (Absent Reconstruction)
1. WYDOT ROW Program, FHWA, and USFS have agreed to verify the ROW status whenever a highway on NFS lands is involved in a transportation (STIP) project (reconstruction, overlay, widening, etc.). A determination will be made whether a formal ROW authorization (HED) is in place.
 2. ROW Widths: The proposed standard ROW width is 200 feet (100 feet either side from centerline), with allowances for cuts, fills, constructed facilities, waste areas, etc., as mutually identified and agreed upon. This ROW width can vary, especially in mountainous terrain, to include highway infrastructure needs (culverts, cut & fill slopes, rockfall mesh installations, wildlife crossings, etc.).
 3. Highway ROW Conversion application packages and processing guidelines: Prior to submitting a formal request thru FHWA to convert a highway ROW to an easement deed, the WYDOT Resident Engineer and USFS District Ranger/designated representative will recon the section of highway affected by in the conversion request. They will determine whether a 100 foot from centerline ROW width is sufficient. When the standard width is insufficient for operation and maintenance needs, an appropriate width will be determined. Once the field review is complete, WYDOT will prepare and submit a set of plans reflecting the agreed upon easement locations and widths being requested, to the USFS for review. The set of plans will consist of an easement plat identifying the centerline location of the existing constructed highway with sub-meter GPS accuracy (or better). Periodic ties to monuments

of record will be provided at approximately one-mile intervals. WYDOT will provide the set of plans in an electronic digital format that is compatible with USFS GIS. USFS will notify WYDOT of its approval of the plans and WYDOT will send a request for LOC to FHWA. FHWA will review and upon approval WYDOT ROW Program will forward the request to USFS. The approved draft HED, LOC and any stipulations will be sent by USFS to FHWA. WYDOT will prepare the final HED package and forward to the USFS for approval. Following USFS approval, FHWA will send the HED package to WYDOT for recording. After recording, WYDOT will send copies to USFS, FHWA and BLM.

USFS shall:

- Review the transfer request to determine whether the project is consistent with the project scoping details, and that all required NEPA and other documentation has been received.
- Notify WYDOT ROW Program of receipt of application and whether there are any deficiencies in the request.
- If USFS agrees to the transfer, it shall issue a LOC within four months of receiving a complete request. USFS shall state, in writing, the conditions under which the approval is given, including the conditions of approval contained in the example deed included in Appendix B of this MOU and any special conditions. The LOC will be issued to FHWA and transmitted to both FHWA and WYDOT. FHWA shall make the transfer of the land to WYDOT subject to the conditions specified by USFS in its LOC.
- If USFS disagrees with the transfer, it shall send a letter to FHWA stating the reasons why the transfer would be contrary to the public interest or inconsistent with the purposes for which the federal lands or materials are being managed.
- If within four (4) months, USFS has not responded in writing to the request for transfer, such land may be transferred by FHWA to the State for the purposes requested. Before exercising this authority FHWA shall notify USFS of its intent to transfer the federal land involved.

FHWA shall:

- Review the application, determine eligibility of the proposed project for the transfer, and determine whether the land is reasonably necessary for the project, and the accuracy of the legal description.
- Submit an approval letter of the LOC request to WYDOT.
- Review and sign the executed deed or deeds and return the executed deeds to WYDOT to record them in the appropriate county.

WYDOT shall:

- File an application with FHWA requesting the land transfer.

- Upon FHWA approval, file a request for transfer with USFS. The request must include the following:
 - Project ROW plans;
 - NEPA document (CE, EA, EIS);
 - The proposed reclamation plans and seed mixture for the reseeding of any disturbed areas within the appropriation;
 - FHWA approval to WYDOT's LOC request package;
 - The proposed fence standards to be used on the project.
- WYDOT shall prepare a highway easement deed as part of the LOC application for USFS approval, before final FHWA execution.
- WYDOT will provide USFS a copy of the recorded deed(s) for record keeping purposes.

II.B – Highway Easement Management

A. Construction:

1. Upon request, WYDOT will invite USFS to attend the preconstruction meeting.
2. WYDOT will monitor and implement commitments provided in the roadway design plans, the environmental documents, and the LOC.
3. WYDOT will include USFS, by early notification, of any construction changes that alter the current land use.
4. USFS will consult with the WYDOT Resident Engineer on matters pertaining to project construction conditions in the LOC.

B. Compliance:

1. The grant of a ROW to WYDOT by FHWA does not include the grant of any ROW for non-transportation purposes, facilities, or occupancy by third parties. In the case of a public utility, or any other user including state agency, wishing to locate within the highway ROW over USFS lands, WYDOT will advise the user that it must apply to USFS for a ROW for occupancy and use. WYDOT may issue permits to control highway related activities as required by state law and FHWA rules of accommodation.
2. FHWA will evaluate previously granted ROW for transferred lands that are to be rehabilitated and returned to USFS.
3. USFS, FHWA, and WYDOT will consult before any third-party ROW use agreements or other encumbrances are granted to determine if such non-highway use may impact highway safety, efficiency, maintenance, or adjacent public lands. USFS may request WYDOT's review and concurrence prior to approving occupancy.

4. The WYDOT, when constructing or operating the highway or the materials source, shall comply with the conditions set forth in both the LOC and the easement deed. The USFS will monitor and enforce easement deed conditions and notify FHWA of noncompliance. FHWA will issue written notification to the WYDOT of any violations of the deed conditions. If the noncompliance is not corrected within 30 days, the FHWA will, upon notification from the USFS, first pursue compliance by WYDOT informally and, if necessary, follow up with action pursuant to 23 CFR 1.36.

C. Project Design/Resource Management/Mitigation:

1. Proper highway design and safety is the responsibility of FHWA and WYDOT.
2. FHWA and WYDOT will mitigate highway construction impacts to public land resources in a practical and reasonable manner consistent with the conditions of the LOC. Mitigation measures must be commensurate to the impacts and must not conflict with safety.

D. Handling of Emergencies:

1. If USFS identifies a problem area created as a result of current active construction (e.g. erosion resulting in impacts outside the appropriation area on public land), the USFS point of contact will immediately notify the appropriate WYDOT Resident Engineer or WYDOT District Office of the problem for appropriate action.
2. If an emergency situation exists requiring work beyond the appropriation limits on public land (e.g., snow control and removal, snow fence, washouts, landslides, etc.), the respective USFS District Ranger may verbally authorize (or through an email) WYDOT to proceed with necessary work to restore the facility to a safe, serviceable condition. All verbal agreements will be properly documented, and terms of verbal authorizations will be included in the appropriate use authorization (if necessary), issued for permanent repair work at the site.

Use and Disposition of National Forest System Resources

Timber

- A. The USFS will retain the right to any merchantable timber not specifically appropriated. Before removing timber, the WYDOT Resident Engineer will notify the USFS District Ranger and USFS Project Coordinator of timber within the clearing limits scheduled for removal. The USFS District Ranger will determine whether a timber sale to an independent contractor or another authorization for removal is appropriate.
- B. USFS and WYDOT will develop a joint project implementation schedule that will include timetables related to merchantable timber removal. Timetables

will include dates for completion of items such as clearing limit designation, timber marking and cruising, appraisal and contract preparation

- C. As set forth in the stipulations, any merchantable timber, defined as meeting current utilization standards for saw timber or products other than logs, will be: (1) stockpiled in an area designated by the USFS for disposal by other means; (2) acquired by WYDOT or WYDOT's contractor at fair market value as determined by appraisal; or (3) permitted as a non-sale disposal, if regulations apply, to be disposed of in whatever manner is deemed appropriate by WYDOT, granted the material is removed from NFS land.
- D. When the USFS retains the ownership of the timber cut within the clearing limits, the USFS District Ranger will stipulate the specifications that must be followed for the marking, bucking and decking (cutting and stacking) of the timber.
- E. The USFS District Ranger will provide a written appraisal and contract (if required) in accordance with the joint project schedule. It is understood that the objective is for the appraisal to be completed at least 30 days prior to the bid opening. A timber contract (if required) would be completed no later than 30 days after WYDOT awards the construction contract.
- F. If merchantable timber is being acquired by WYDOT or WYDOT's contractor, at a fair market value as determined by an appraisal, the holder of the contract will provide direct payment to the USFS for the appraised value of the timber prior to cutting, in accordance with the terms of the contract. The negotiated schedule should reflect the applicable dates for flagging of the cutting limit boundaries, the completion of volume estimates and corresponding appraisal and the issuance of the contract.
- G. If timber is stockpiled on NFS land, the site must be identified by the USFS Project Coordinator and agreed to by the WYDOT Resident Engineer & USFS District Ranger. Any necessary environmental clearances must be obtained.
- H. If so allowed and after payment to the USFS, the timber can be given to the public, at no cost, for use as firewood. If this occurs, the wood must be cut to lengths specifically for use as firewood according to USFS requirements prior to removal from the designated NFS land.

Borrow Pits and Mineral Material Sites

- A. USFS Authority for disposal of mineral materials is provided by the Materials Act of July 31, 1947 (30 U.S.C. 601 et seq.), as amended by the Acts of August 31, 1950 (30 U.S.C. 603-604), July 23, 1955 (30 U.S.C. 601, 603) and September 25, 1952 (30 U.S.C. 602), and the following: the Act of June 4, 1897 (16 U.S.C. 602), the Act of March 4, 1917 (16 U.S.C. 520); the

Bankhead-Jones Farm Tenant Act of July 22, 1937 (7 U.S.C. 1010); the Act of September 1, 1949 (section 3) (30 U.S.C. 192c); the Act of June 28, 1952 (section 3) (66 Stat. 285); the Act of September 2, 1958 (16 U.S.C. 521a); the Act of June 11, 1960 (74 Stat. 205); and the Federal Highway Act of 1958 (23 U.S.C. 101 et seq.).

- a) The USFS retains the federal management responsibilities for all mineral materials located on NFS lands, including those located within ROWs or easements across NFS lands.
 - b) The USFS concurs that Free Use – Mineral material generated on NFS lands and used in a public purpose project, such as any public transportation construction project (whether on or off federal lands), is free of charge to FHWA or WYDOT (36 CFR 228.62(d)(1)). A “Free-Use” contract/permit may be required. If required, the “Free-Use” permit may be issued to a designated agent (contractor) of FHWA or WYDOT at the discretion of the authorized officer (36 CFR 228.62(c)).
- B. The USFS has established that any excess excavated mineral materials such as landscape rock, topsoil, gravel, fill, or waste material have a marketable value. This excess material, when generated during highway construction activities, will be stockpiled in an area mutually agreed upon by the USFS, FHWA and WYDOT. The site where the material will be stored will be designated in the project specifications. Such mineral materials are the property of the United States [36 CFR 228.43(d)] and the sale or disposal of this material will follow the procedures outlined below. The USFS retains the federal management responsibilities for all excess excavated mineral materials located within ROWs or easements across NFS lands. The negotiated project schedule specified in Section VI. A. 2 must reflect all issues and decisions regarding the disposal or use of excess excavated mineral resources.
- C. The USFS, WYDOT and FHWA will cooperate during development of the project environmental document to identify disposal sites and resolve other issues associated with the storage of excess excavated mineral materials, identify any mitigation necessary to use the sites and complete the needed environmental clearances for use of the sites during project construction.
- D. WYDOT, during all stages of project plan development, will assure that the USFS Project Coordinator is notified of all plan inspections, identify the quantity of excess excavated materials, identify designated or available disposal sites and request USFS authorization, as needed.
- E. At the Final Plan inspection, a Special Provision should be developed for inclusion in construction contracts as needed, to advise the contractor and WYDOT when a Mineral Material sale contract with associated fees will be required by the USFS District Ranger for any excess excavation material

removed from NFS lands and disposed to any private individual or group (non-public agency) or for any private use (non-public use). The USFS will work with WYDOT to develop appropriate specification language for their contracts.

- F. Sale of Mineral Material – A USFS Mineral Material contract is required whenever mineral material is removed from a borrow or pit source, or when excess excavated material is removed from the construction site. A Mineral Material contract may be issued to WYDOT or its contractor. The contract allows excavation, crushing, screening, stockpiling and removal of mineral materials from a borrow or pit source. Further material processing on NFS land, such as concrete batch or asphalt hot plants, requires a separate special use authorization from the USFS.
- G. If needed, any mineral material sale contract will be issued by the USFS to WYDOT or WYDOT’s contractor within 90 days from the date of WYDOT’s notification to the USFS.
- H. Fair Market Value – The USFS must collect fair market value for mineral materials taken from NFS land. [36 CFR 228.43(b)]
 - a) Fair Market Value may be determined by use of existing USFS value schedule (Forest Service Manual Supplement 2850, Section 2856 and “Mineral Material Commodity Rate Schedule for Forests in Wyoming” memo) or by separate appraisal at the discretion of WYDOT.
 - b) Appraisals conducted by WYDOT or private parties must be reviewed and approved by USFS specialists.
- I. On completion of a highway construction project, any remaining mineral materials excavated during the project that are removed from NFS Lands and/or sold for purposes or given to a private entity, other than for public projects, must be purchased by WYDOT or by WYDOT’s contractor at fair market value [36 CFR 228.59(b)].
- J. Borrow Pit Reclamation – USFS contracts and permits will contain requirements to rehabilitate the used area. WYDOT will hold the contractor responsible for meeting these requirements.
- K. Mineral Material Source Development & Permitting

- a) USFS and WYDOT agree to collaborate to develop new or expand existing mineral material sources with the objective of minimizing current and future NEPA/development and permitting costs.
- b) Ensure cultural, environmental and NEPA surveys allow for future expansion where possible. Map and document clearance areas to avoid the need to repeat NEPA and/or cultural resource clearances. Include a specific Plan of Operations for mineral material sites, with criteria for phased development and reclamation of depleted areas.
- c) Write permits for mineral material sources for longest available term (20 years) to optimize front-end NEPA and related development costs.

Design Protocols for Visual Quality Retention

WYDOT will implement project-specific design protocols to support USFS Land and Resource Management Plan (LRMP) standards and guidelines for Visual Quality Retention. These protocols help soften “built” impacts associated with highways and their appurtenances.

A. Guardrail

Self-weathering steel is specified for all guardrail (box beam, W, MGS) located on highways within the Wyoming national forests. Galvanized hardware may be specified due to the difficulty removing rusted bolts.

B. Bridge railings, guardrail end sections, steel signposts, road closure gates

Certain steel structures/components are either unavailable or are not specified with self-weathering steel treatment. Several options are available to “color treat” suitable portions:

- a. Metal staining or etching product (i.e.: Natina Solution for Metals)
- b. Federal Standard 595 Color FS 30227 (light brown, also called beige)
- c. Federal Standard 595 Color FS 20059 (dark brown)

On road closure gates, the swing arm must be galvanized and have reflective tape for enhanced visibility. Contact the USFS for assistance with specific color applications.

C. Sign backs

Sign backs (wood and aluminum) are treated with a non-reflective brown film or equivalent, or by powder coating/painting with Federal Standard 595 Color FS 20059 (dark brown). Implementation of “backsides brown” eliminates the shine and glare often associated with sign backs. This treatment applies to all new or replacement signs located on highways within the boundaries of the Wyoming national forests. The design standard also applies to USFS installed and maintained signs on WYDOT highway ROWs.

D. Intelligent Transportation System (ITS) Equipment

Contact the USFS during project design, prior to the installation of ITS equipment (web cameras, weather stations, dynamic message signs, variable speed limit signs, weigh-in-motion signs, etc.) on roadways within the Wyoming national forests. The USFS will assist WYDOT with selection of a color (Federal Standard 595 Color FS 30227 (light brown) or Federal Standard 595 Color 20059 (dark brown) as determined by the

size, scope and scale of the structure or installation being treated. The color will be applied to suitable components (tower and light pole, electrical cabinets, swing arm elbow, support towers, steel mounting posts, etc.). Typically, heat-sensitive electrical equipment boxes will use the FS 30227 beige color and all other posts, towers, etc. will utilize the FS 20059 dark brown color standard.

E. Concrete wing walls, constructed barrier walls, etc.

Exposed vertical concrete surfaces require a color-treatment. Use stain, etching, or colored concrete to achieve an appearance approved by the USFS. The USFS can provide assistance with other products and applications when color matching is necessary.

F. Rockfall mesh

Galvanized mesh can be sprayed with metal stain/etching product to achieve a darker brown blended color. PVC-coated mesh is typically available in four color choices from the manufacturers: black, gray, tan and dark brown.

G. MSE (block) walls

Block wall color is called out in the contract documents following consultation with the USFS during the design phase. A Munsell color chart can be used to value the project area dirt surface.

Signing

A. General Provisions:

Actions defined in this Plan will be coordinated between personnel at an equivalent organizational level within each agency. Forest Supervisors/District Engineers, District Rangers/Resident Engineers, or Maintenance Foreman are encouraged to confer and reach agreements on matters within their scope of responsibility. All requests for signs will be made to the District Engineer by the Forest Supervisor to maintain consistency within units. Unresolved problems and items requiring approval of higher authority will be referred to the State Transportation Chief Engineer and the appropriate Regional Forester for consideration. WYDOT will color-treat sign backs (wood and aluminum) with either a non-reflective brown film or by powder-coating/painting with Federal Standard 595 Color FS 20059 (dark brown). Mounting hardware (nuts, bolts, washers, brackets, and backing angles) are exempt from the brown color requirement. Weathering steel posts should not be specified or used. Break-away features should not be coated or painted. Square tubular steel signposts 3 inches or less per side and round tubular steel signposts 3 inches O.D. or less are exempt from the brown color requirement. The associated anchor systems for these posts are also exempt.

Steel I-beam breakaway posts (except for the breakaway assembly and base plate) will meet the dark brown color standard.

This treatment applies to all new or replacement signs located on highways within the Wyoming national forests. Interstate and National Grasslands are exempt from this treatment. The sign back color-treatment standard also applies to those signs located in the highway ROW erected and maintained by the USFS.

B. Signing on State Highways:

1. USFS related signing will be mutually reviewed and approved by the appropriate USFS line officer and the WYDOT District Traffic Engineer to assure compliance with this agreement and with all State and Federal Transportation Safety Standards.
2. The USFS related signing that is the responsibility of the State shall meet all the State Signing Specifications, which include the standard signing supports and sign materials. Signs which are the responsibility of the USFS shall meet USFS Standards and Specifications.
3. All signs installed shall meet MUTCD and AASHTO Roadside Design Guide Criteria for Roadside Safety.
4. All outdoor advertising on private lands within the forest Boundary are subject to the rules and regulations of the WYDOT
5. For the purpose of this agreement, "Direct Access" is defined as a roadway which leads motorists to their destination without having to divert onto another roadway before reaching that destination.
6. Signs which are not specifically addressed in this MOU (e.g., interpretive waysides, scenic overlooks) and installed within the ROW, shall be mutually agreed upon by WYDOT and the USFS.
7. Sign plan inventories shall be developed to aid WYDOT and USFS efforts to manage signage along roads. Regulatory and warning signs maintain precedence over directional, tourist-oriented direction signs and special use signs.
8. The USFS Level 3 or higher Maintenance Standard is assigned to a road where management direction requires the road to be open and maintained for safe travel by a prudent driver in a passenger car. Traffic volumes are minor to moderate; however, user comfort and convenience may not be a consideration.
9. Incident Management including prescribed fire. The USFS may provide and install temporary emergency signing and traffic control devices in accordance to Incident Management requirement of the MUTCD.

C. Signing on Interstate Highways

1. On Interstate Highways within National Forest Boundaries:
 - i. WYDOT will erect and maintain standard MUTCD signs:
 1. Identifying Entering and Leaving National Forest Lands. Signs will only be placed at exterior boundaries unless significant interior highway length is within private land.
 2. For significant designated recreation areas, as shown on Forest Visitor Maps where an intersecting road at an Interchange provides direct access to the area. For numbered NFS Roads (maintained to a USFS Level 3 maintenance standard or higher) which are directly accessed from an interstate highway interchange and as recommended by the USFS.
 - ii. The USFS will not erect any signs within an interstate highway ROW.
 - iii. No Signs will be allowed for special use facilities, other than General Service Signing provided by law or policy.
2. On Interstate Highways outside of National Forest Boundaries:
 - i. WYDOT will erect and maintain standard MUTCD signs:
 1. For National Forests or significant designated recreation areas which are directly accessed by an intersecting highway from an interchange and are within 50 miles of the interstate highway.
 2. For numbered NFS Roads (maintained to a USFS Level 3 Maintenance standard or higher) which are directly accessed from an interstate highway interchange and as recommended by the USFS.
 - ii. The USFS will not erect any signs within an interstate highway ROW.
 - iii. No signs will be allowed for special use facilities other than the Motorist Service Signing provided by State law or policy.

D. Signing on Primary and Secondary Highways

1. On Primary and Secondary highways within National Forest Boundaries:
2. WYDOT will erect and maintain standard MUTCD signs:
 - i. Identifying entering and leaving National Forest Lands. Signs will only be placed at exterior boundaries unless significant

interior highway lengths are within private lands. If the USFS desires to sign the boundaries with other than the standard State sign, such as with the USFS Standard shaped signs, they may do so at Forest Service expense.

- ii. For numbered NFS Roads (maintained to a USFS Level 3 maintenance standard or higher) which directly access these highways and as recommended by the USFS.
 1. For designated recreation areas, as shown on Forest Visitor Maps, at their direct access point with the highway. If the USFS requests recreation LOGOS on the signs, they will be added at USFS expense for fabrication, erection and maintenance. The USFS, with coordination with WYDOT, may erect and maintain at its expense, through contract or force account, signs for individual developed sites, such as approach and entrance signs.
 2. For on-forest administrative sites or other facilities providing information for forest users.
 3. For significant topographic features within the forest, as coordinated with the USFS (i.e., mountain passes, Continental Divide, rivers, etc.). All other topographic features may be signed by the USFS at its expense.
 - i. WYDOT will erect and maintain significant historical site signs as determined by WYDOT and the USFS.
 - ii. The USFS will be responsible for:
 1. Erecting and maintaining all signs needed for forest management **except** those noted in 1-5 above. These signs will be coordinated with the state for compliance with the Highway Safety Act and as agreement on location and standard.
 2. Special Use permittee signing on the highway ROW. Signs shall be in conformance with the Federal and State Outdoor Advertising laws.
- E. On Primary and Secondary highways outside National Forest Boundaries.
1. WYDOT will erect and maintain standard MUTCD signs:
 - i. For numbered NFS Roads (maintained to USFS Level 3 Maintenance Standard or higher), which directly access these highways, and as recommended by the USFS.
 - ii. For designated recreation areas or National Forests, which are directly accessed and are within 20 miles of the highway. If the

USFS requests recreation LOGOS on the signs, they will be added at USFS expense for fabrication, erection and maintenance.

2. No signs will be allowed for special use facilities, other than the Motorist Service signing provided by state law or policy.
3. Fabrication, erection, and maintenance of signing for Administrative Sites (Offices) will be allowed, at USFS expense, at locations and to standards agreed to by the state and/or other parties having official jurisdiction, such as municipalities.

F. Tourist-Oriented Directional Signs (TODS)

WYDOT will coordinate and consult with the USFS District Ranger regarding any third party brokered TODS-type signs. Approval by the USFS is required prior to WYDOT approving and/or installing TODS signs in the highway ROW on any NFS lands.

G. Outdoor Advertising Program Signs

Provisions of the national Outdoor Advertising (OA) program are contained in Section 131 of Title 23, U.S.C. WYDOT administers the OA program under the terms of an MOU with the FHWA dated June 8, 1971. The OA program applies to interstate highways and specifically to those federal or state highways in Wyoming included on the NHS.

Signs located within the highway ROW, including those on NFS lands, are subject to the provisions of the OA program. USFS permit holders (e.g., lodges) are exempt when the ROW sign is located on premises (within the permit footprint). Signs for permit holders where the premises are located away from the ROW are subject to the OA program.

Access Control

- A. Access to interstate highways will be only by established interchanges, except for emergency use in accordance with the rules and regulations governing the Interstate Highway System.
- B. USFS or its permit holders will obtain a State Highway Access Permit from the WYDOT District for any new or revised road approaches to state highways. New approaches will be at the expense of USFS or its permit holders. Maintenance of road approaches will be the responsibility of the permittee unless specifically addressed in the permit. If development on private land necessitates a revised approach, the joint NEPA efforts identified in this MOU may not apply.
 1. USFS may construct temporary approaches as necessary during firefighting or other emergencies without formal WYDOT approval. USFS will notify the WYDOT District as soon as practicable. Following emergency use, necessary obliteration, and

restoration measures will be made at no expense to WYDOT. The USFS will take precaution during such emergencies to safeguard highway users.

2. In firefighting situations, as necessary without formal WYDOT approval, the USFS may provide and install temporary emergency signing and traffic control devices in accordance with Incident Management requirements of Part VI of the MUTCD.

Third Party Occupancy

The consent to a highway easement deed on behalf of WYDOT by the USFS does not include any rights for non-highway purposes, facilities or occupancy by third parties. WYDOT and USFS will consult before any third-party occupancy permits or other encumbrances are acted upon by either party, to determine if such occupancy may impact highway safety, maintenance, and efficiency.

The USFS will request WYDOT review and concur prior to approving and permitting third party occupancy. In the event the USFS and WYDOT concur in granting permission to a utility to locate a facility within the ROW, placement will be in accordance with the WYDOT Utility Accommodation Regulation.

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for the aforementioned project, and does not include the grant of any rights for non-highway purposes or facilities, nor the right to utilize or derive materials from the easement area or for other highway projects or purposes without securing additional separate authorization. The Grantee shall not establish borrow, sand or gravel pits; stone quarries, permanent storage areas; sites for highway operation and maintenance facilities, camps, supply depots, or solid waste disposal areas within the right-of-way, unless shown on approved construction plans, without first obtaining approval of the Regional Forester;

- (6) The design and construction of the highway project situated on this right of way will be in accordance with the provisions of Title 23, United States Code Highways: the implementing regulations found in Part 23 of the Code of Federal Regulations; official policy and directives issued by FHWA pursuant to Order 1321.1C; the construction specifications of WYDOT as approved by FHWA for use on Federal-aid projects; and the terms and conditions specified by the Forest Service, United States Department of Agriculture in an attachment hereto.

The Regional Forester will be provided an opportunity to review plans relative to effects, if any, that the project works as planned will have upon adequate protection and utilization of the land traversed by the right-of-way and adjoining land under the administration of the Forest Service for the purposes for which such land is being administered. Those features of design, construction, and maintenance of the highway facility and of use of the right-of-way that would have effect on the protection and utilization of the land under the administration of the Forest Service are to be mutually agreed upon by the Regional Forester and the Grantee by conference or other communication during the preparation of the plans and specifications for each construction project, and the plans shall be revised, modified, or supplemented to meet the approval of the Regional Forester, or when deemed appropriate, supplemented by written stipulation between the Regional Forester and the Grantee, prior to start of construction;

- (7) The final design and construction specifications for any highway construction project on the right-of-way will be presented to the USFS for approval. USFS approval is assumed after 45 days and construction shall not begin until after 45 days from submittal.;
- (8) Construction of the highway facility is to be undertaken by the Grantee in compliance with the Grantee and the USFS shall determine the necessity for archaeological and paleontological reconnaissance and salvage within the easement, and the Grantee shall undertake such reconnaissance and salvage to the extent determined necessary because of construction of the highway facility, in compliance with the acts entitled "An Act for the Preservation of American Antiquities," approved June 8, 1906 (34 Stat. 225, 16 U.S.C 432-433), the "Archaeological Resources Protection Act of 1979," as amended (93 Stat. 721, 16 U.S.C. 470aa-470mm), the "Native American Graves Protection and Repatriation Act," as amended (104 Stat. 3048, 75 U.S.C. 3001-3013), and State laws where applicable. In the event of discovery of potential sites, the Grantee shall contact the USFS.
- (9) Consistent with highway safety standards, Grantee shall:
- a. Protect and preserve soil and vegetative cover and scenic and esthetic values on the right-of-way outside of construction limits.
 - b. Provide for the prevention and control of soil erosion within the right-of-way and on any adjacent lands where soils are disturbed by highway construction or maintenance operations, and shall vegetate and keep vegetated with suitable species all earth cut or fill slopes feasible for revegetation or other areas on which ground cover is destroyed where it is deemed necessary during a joint review between the Regional Forester and the Grantee prior to completion of the highway and the Grantee shall maintain all terracing, water bars, lead off ditches, or other preventive works that may be required to accomplish this objective. This provision shall also apply to slopes that are reshaped following slides which occur during or after construction;
- (10) The Grantee shall maintain the easement free of noxious weeds that have been identified in Federal, State, county, or local laws, regulations or orders. The Grantee shall control noxious weeds or other vegetation by means of chemicals only after consultation with the

USFS. Consultation must address the time, method, chemicals, and the exact portion of the easement to be chemically treated.

The Grantee, in consideration of the grant of this easement, does hereby covenant and agree as a covenant running with the land for itself and its successors that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 242) and that:

a. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed, and

b. The Grantee shall use said easement so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation, including any future amendments thereto.

(11)13. The Grantee shall notify the USFS if the need for the highway easement, or segments thereof, no longer exists. Upon notification the USFS will either (1) accept the easement as is, or (2) if a roadway or other improvements are in place and are to be removed, identify rehabilitation standards that the Grantee must complete. Upon notice of USFS intent to accept the easement as-is, or upon notification of USFS acceptance of completed rehabilitation, the Grantee shall notify the Grantor, in writing, of its request to relinquish the easement. Upon acceptance of this notice of relinquishment by the Grantor, the easement will immediately revert to the USFS. The Grantor shall submit a formal relinquishment documents to the appropriate County Recorder's Office and to the Bureau of Land Management's Records Office (at the Bureau's State Office in Cheyenne, Wyoming) for notation to the official records.

(12) The Grantee will abide the special stipulations contained in **Exhibit B** which are hereby also incorporated as terms and conditions of the easement.

I, _____, the undersigned, being admitted to practice and member in good standing of the bar in State of [state], representing the Grantee and duly authorized by the state Attorney General, oversaw the preparation of this deed and certify that it is legally sufficient as required by 23 C.F.R. § 710.601(f).

Date

Assistant Attorney General

FOR GRANTOR:

In witness whereof, I, _____, Wyoming Division Administrator, pursuant to delegations of authority from the Secretary of Transportation and the Federal Highway Administrator, by virtue of the authority in me vested by law, have hereunto subscribed my name as of the day and year first above written, and do convey the aforesaid interest to the grantee.

Date

Wyoming Division Administrator, Federal Highway Administration

STATE OF WYOMING)

Appendix C: Wild & Scenic River Process

Roles and Responsibilities

WYDOT

- WYDOT will send a scoping letter to the USFS on projects that WYDOT identifies as needing a Wild and Scenic River (WSR) determination.
- WYDOT is responsible for providing information (design plans) that goes into Section 7 analysis or preparing the Section 7 analysis.
- WYDOT will submit USACE permit, if applicable, after finalized Section 7 and USFS decision document. WYDOT will copy the USFS on the permit submittal.

USFS

- The USFS scoping letter response will identify if the project needs a WSR evaluation and what type of evaluation. It will also include what information the USFS needs to complete the Section 7 analysis. This information will be provided within the 30-day scoping letter timeframe. Response will be sent to WYDOT and the USACE.
- The USFS WSR Core Team will provide guidance on project design to be Section 7 compliant after receipt of grading plans. Coordination with WYDOT Environmental Services, Bridge Program, and Project Development may be required.
- USFS will draft the Section 7 analysis report within 30 days after receiving grading plans.
- Further coordination between USFS and WYDOT will occur prior to finalizing the Section 7 report. The final Section 7 report and decision document will be completed within 45 calendar days after the draft report. This includes a potential site visit.
- USFS provides a formal letter and copy of the final Section 7 report and decision document to WYDOT and the USACE.
- USFS coordinates with WYDOT and internal specialists to conduct quality assurance/quality control monitoring during and post construction.

FHWA

- Will assist in preparing the Section 7 proposal for submittal to the USFS.